25th Anniversary 1978-2003

Director

November 21, 2003

The Honorable Ernest F. Hollings
Ranking Minority Member
Committee on Commerce, Science,
and Transportation
United States Senate
Washington, DC 20510

Dear Senator Hollings:

This letter sets forth the views of the Office of Government Ethics on S. 1264, a bill "To reauthorize the Federal Communications Commission, and for other purposes."

We limit our comments to section 8, which would deem individuals who serve in named positions at the Federal Communication Commission (FCC) to be senior employees for purposes of the post-employment restriction at 18 U.S.C. § 207(c). The Office of Government Ethics does not object to paragraphs (1)-(12) that list positions that are senior in nature and comparable to those that are covered by § 207(c). However, for the reasons noted infra, we believe that paragraph (13) is overly broad and unfair. We urge the Senate to delete paragraph (13).

The post-employment restrictions applicable to officers and employees of the executive branch and independent agencies are set out at 18 U.S.C. § 207. Broadly speaking, 18 U.S.C. § 207(c) establishes a one-year bar on the representational activities of former senior personnel of the executive branch and independent agencies. Significantly, § 207(c) is an additional restriction on senior employees that is specifically tailored to diminish any appearance that a Government decision has been affected by a former senior employee's improper use of his former position. For the purpose of this discussion, a senior employee is an individual employed in a position for which the rate of pay is either (1) specified or fixed according to the Executive Schedule or (2) equal to or greater than the rate of basic pay payable for level 5 of the Senior Executive Service.

Under section 8(13), any individual who is appointed pursuant to section 4(f)(2) of the Communications Act of 1934 (47 U.S.C. § 154(f)(2)) would be considered a senior employee for the purposes of § 207(c). We believe that paragraph (13) is overly broad because the individuals who are appointed pursuant to section 4(f)(2) include secretaries and administrative assistants. Those persons clearly do not hold positions for which the rates of pay are either specified or fixed according to the Executive Schedule or equal to or greater than the rate of basic pay payable for level 5 of the Senior Executive Service and, by extension, do not exercise the authority and influence that could give rise the to harm that § 207(c) is designed to prevent. Additionally, we believe that paragraph (13) is unfair as these individuals would be subject to § 207(c) while other FCC employees who receive comparable or higher rates of pay and exercise like or greater authority and influence would not. The effect is more pronounced when one considers the hundreds of secretaries and administrative assistants employed throughout the executive branch and independent agencies who are not deemed senior employees for the purposes of § 207(c).

We are confident that 18 U.S.C. § 207(a), the post-employment restriction that is applicable to all federal employees, is adequate to address any harm that might rise with regard to the individuals. Specifically, we believe that the lifetime representational bar at § 207(a)(1), which prevents any individual who participates in a particular matter involving specific parties while employed by the Government from later representing another person on the same matter before the United States, is sufficient.

Finally, the Department of Justice has advised that section 3(b) of the bill raises a concern under the Recommendations Clause of the Constitution (Art. II, sec. 3) and expects to provide the Committee with additional details at a later date.

Thank you for your consideration of our views. If we can be of further assistance, please do not hesitate to contact either Jane Ley, Deputy Director for Government Relations and Special Projects at 202-482-9292 or Michael Goad, Congressional Liaison, at 202-482-9243.

An identical letter has been sent to Chairman McCain.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report to the Congress.

Sincerely,

Amy L. Comstock

cc: The Honorable Susan M. Collins
The Honorable Joseph I. Lieberman

Director

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Chairman
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