

FCC Bugged 117173 Employees' Phone Calls

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A House subcommittee yesterday accused the Federal Communications Commission of violating the law by monitoring employees' telephone conversations during a 1970 security investigation of leaks from the FCC.

In a report based on a staff investigation and on hearings last spring, the Special Subcommittee on Investigations of the House Committee on Interstate and Foreign Commerce said that "the guardian agency of communications," the FCC, had "transgressed the law" against wiretapping not authorized by a court.

Submitted to the House last week by the committee chairman, Rep. Harley O. Staggers (D-W.Va.), the report also accuses FCC Chairman Dean Burch of attempting to cover up the monitoring in his contacts with another House subcommittee.

It chides the commission's general counsel, John W. Pettit, for submitting a memorandum defending the monitoring, which "advanced a legal

See FCC, A17, Col. 1

FCC, From A1

proposition which would justify wholesale wiretapping by employers everywhere."

But the report includes Burch's assurances to the subcommittee that the action will not be repeated.

While it also makes clear that no criminal punishment is envisioned against the commission employees involved, congressional sources suggested that the subcommittee report could provide the basis for a law suit by the employees who were bugged.

According to the chronology in the report, and acknowledged by the FCC, the wiretapping occurred between February 17 and March 20, 1970, and covered three telephone extensions on the third floor of the commission's headquarters on M Street NW.

Five different employees

regularly used the extensions.

The investigation began after the FCC's security officer, Fred Goldsmith, was told by an "employee informant" that a member of the commission staff was meeting in his office after-hours with an attorney, himself a former FCC employee.

On occasion, according to the tip, the staffer seemed to be displaying confidential "agenda information" to his visitor, and the visitor then used the staffer's telephone to make personal calls.

Top commission staff, including then Executive Director Max Paglin and then General Counsel Henry Geller, discussed whether to use "a wall microphone with attached tape recorder" or "a secret telephone extension" in their investigation, and finally obtained approval from Burch for the latter.

The Chesapeake and Potomac Telephone Co., working after FCC business hours, wired three lines from the third floor to a special telephone in Goldsmith's eighth-floor office and, in order to keep the procedure a secret, billed the FCC for the installation "outside of normal procedures."

Goldsmith monitored incoming and outgoing calls on the lines, but the conversations he heard "were trivial in nature and in no way incriminating."

Both the "suspected employee" and the outside attorney were later interviewed by FCC investigators after the bugging had produced no evidence. Both denied any wrongdoing and provided explanations of the "suspicious" events.

In October, 1970, the FCC closed its investigation, taking no administrative action against anyone and permitting the employee to remain in his job.

It had been discovered, for example, that he remained in his office late because he had

special permission, for health reasons, to avoid the rush hours and work a later schedule than the FCC's normal 8 a.m. to 4:30 p.m. work day.

(The employee is not named in the subcommittee report, and officials of the FCC and the subcommittee declined to identify him. The Washington Post learned, however, that he

is an elderly man who works in the commission's broadcast bureau and plans to retire soon.)

The House subcommittee began its own investigation of the incident last March, after receiving what the report calls "a most bizarre allegation" of FCC wiretapping on its employees.

Testifying before the subcommittee in executive session on March 28, Burch explained that the monitoring had occurred at a time when the commission was especially concerned about leaks regarding confidential matters before the commission. He complained that even the FBI had been unable to help tighten security.

"I was, I suppose, more concerned about the leaks in the agency than I was about that particular gentleman's privacy," Burch said.

By May 16, when several FCC officials testified at an open hearing, Staggers and some of his colleagues were infuriated over two developments:

- The discovery that Burch, even while the leak investigation was going on, had responded to an inquiry from the House Government Information Subcommittee in 1970 by saying that the FCC never monitored telephone conversations without notifying both parties.

(Burch later explained that this answer was a mistake.)

- The submission of a memorandum by general counsel Pettit, suggesting that the wiretapping was perfectly proper and citing legal cases to argue that the outside attorney who visited the FCC employee was "a trespasser" and therefore gave up his right of privacy.

The memo also said that the phone monitoring was part of "supervising employee performance" and "maintaining a reasonable degree of order and security."

During his second appearance before the subcommittee, Burch claimed that, without regard to its legality, his decision to approve the 1970 bugging was "sound and reasonable" under the circumstances.

In a war of correspondence that followed, Staggers got the criminal division of the Justice Department to repudiate the FCC general counsel's memorandum and got the full FCC to pledge last October that there would be "no repetition" of the wiretapping incident.