

A. BY STATUTE

1. *The Communications Act*

(a) Section 4(j) (47 U.S.C. 154(j)) provides in part that the Commission " * * is authorized to withhold publication of records or proceedings containing secret information affecting the national defense."

(b) Section 213(f) (47 U.S.C. 213(f)) provides that the Commission may make rules and regulations for the purpose of administering that section and states: " * * Unless otherwise ordered by the Commission, with the reasons therefor, the records and data of the Commission shall be open to the inspection and examination of the public * * ." This provision has been interpreted as giving the Commission discretionary authority to withhold from public inspection reports required by that section.

(c) Section 412 (47 U.S.C. 412) provides that the Commission may, if the public interest will be served thereby, keep confidential any contract, etc., relating to foreign wire or radio communication when the publication of such would place American communication companies at a disadvantage in meeting the competition of foreign communication companies.

(d) Section 605 (47 U.S.C. 605) prohibits the Commission from publicly divulging information obtained in the course of its monitoring activities, except, of course, in the instance where there is involved the question of a violation of the Communications Act of 1934, as amended, or sections 1343 or 1464 of title 18 of the United States Code.

(e) Section 606 (47 U.S.C. 606) gives certain war emergency powers to the President.

2. *The Administrative Procedure Act*

(a) Section 3 (5 U.S.C. 1002) of the Administrative Procedure Act provides that an agency need not publish or make available the information otherwise required to be published or made available for inspection if it involves any function of the United States requiring secrecy in the public interest or concerns any matter relating solely to the internal management of an agency. In addition, subsections (b) and (c) of that section permit an agency to hold confidential for good cause found all final opinions or orders in the adjudication of cases and matters of official record.

3. *18 United States Code 1905*

Under this penal statute, certain confidential information relating to business operations, trade secrets, etc., which an officer or employee of the United States obtains in the course of his employment or official duties is prohibited from disclosure.

4. *5 U.S.C. 631*

Pursuant to that provision, Executive Order No. 10450 provides that with respect to Government personnel, certain reports and investigative material developed by investigations described in that Executive order shall be maintained in confidence.

B. AGENCY RULE

1. Section 0.403 (47 CFR 0.403), by providing that the offices of the Commission are open from 8:30 a.m. to 5 p.m., Monday through Friday, excluding legal holidays, limits the hours when the records made available by section 0.417 (47 CFR 0.417) to the public at the offices in the Commission designated by sections 0.411, 0.413, and 0.415 (47 CFR 0.411, 0.413, 0.415) may be inspected.

2. Section 0.417 provides, with some limitations, that Commission records are open to public inspection. The limitations are based on the statutory sections set out above.

Subsection (a) provides that all Commission records which are available for public inspection are subject to the security provisions set out in sections 4(j) and 606 of the Communications Act.

Paragraph (2) gives access to valuation reports filed by common carriers under section 213 of the Communications Act, except those designated by the Commission as confidential.

Paragraph (4) provides for public inspections of contracts, agreements, or arrangements between carriers filed pursuant to section 211(a) of the Communications Act, except for those kept confidential by the Commission pursuant to section 412 of the act because their disclosure would place American communica-