

REPORT TO
COMMISSION

FEDERAL TRADE COMMISSION

IN REPLY TO LETTER OF

WASHINGTON

November 13, 1936.

1132

Dear Mr. President:

Referring to your request for a memorandum on the subject of Federal incorporation, we beg to advise that the Federal Trade Commission made a study of and report on Federal incorporation or licensing in connection with the investigation of electric and gas utilities, with particular reference to holding companies, made pursuant to Senate Resolution.

I am herewith handing you Volume 73-A, on pages 42 to 47 and 73 to 75 of which you will find our discussion of this subject.

I am also handing to you volume 69-A of the same series of reports, on pages 3 to 143 of which you will find a Compilation of Proposals and Views For and Against Federal Incorporation or Licensing of Corporations.

The Table of Contents giving detailed and classified references to this study appears on pages V to VII.

In the light of our studies we are clearly of the opinion that appropriate and constitutional legislation may be enacted by Congress requiring corporations engaged in interstate commerce to take out a Federal license or a Federal charter of incorporation, and that such conditions, limitations and regulations may be imposed as are reasonable and within the limits of the Federal Constitution. The difficulty would arise on the question of whether or not the conditions sought to be imposed through the license or charter of incorporation or the administration thereof are authorized by the Constitution and within the authority of the Federal Government. It is a generally recognized principle of law that you can not do indirectly what you can not do directly. It will undoubtedly be strongly urged that the Federal Government can not through the instrumentality of a Federal license or charter of incorporation compel or prevent a course of conduct which can not constitutionally be done by direct legislative enactment.

However, as indicated in our reports we are of the opinion that much could be accomplished through Federal licensing or incorporation, preferably the former. In fact, among the methods of regulating electric and gas utilities we recommended "compulsory Federal licensing, and permissive Federal incorporation" (No. 73-A, page 76).

As to just how much may be thus accomplished remains to be seen. Assuming that Mr. Dooley was correct, we may anticipate more than heretofore.

If we can be of any further assistance, please let us know.

By direction of the Commission.

Yours sincerely,



Charles H. March,
Chairman.

The President,
The White House.