

HEINL RADIO BUSINESS LETTER

INSURANCE BUILDING

WASHINGTON, D. C.

ISSUED TWICE A WEEK AND CONTAINING THE LATEST INFORMATION REGARDING THE RULINGS OF THE FEDERAL RADIO COMMISSION, RADIO LEGISLATION, DEPARTMENT OF COMMERCE REGULATIONS, CHANGES IN WAVELENGTH, CALL LETTERS AND POWER, PATENTS, EXPORTS, FEDERAL TRADE COMMISSION RULINGS AND OTHER MATTERS OF INTEREST TO BROADCASTERS AND MANUFACTURERS. :: :: **CONFIDENTIAL—NOT FOR PUBLICATION.** :: ::

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EDUCATION COMMITTEE PRODS FORMER COMMISSION EMPLOYEES

The National Committee on Education by Radio, in a current issue of its bulletin makes the following reference to some of those who were formerly connected with the Federal Radio Commission:

"William Howard Taft, according to Mark Sullivan, had accumulated no private means when he left the Presidency. 'It was open to him and he was solicited to unite with some of the greatest law firms in New York. Taft declined. He said that as President it had happened to fall to him to appoint about 60 per cent of all the district, circuit, and Supreme Court justices on the United States bench. He could not, he said, appear before his own appointees as an advocate in private litigation. And he accepted the small remuneration of a teacher at Yale University'

"This action is in striking contrast to the former members and employees of the Federal Radio Commission who have taken positions with the radio monopolies which they had previously been obliged to deal with as members of the Commission, thus placing themselves in a situation where the information they gained as public servants may be used for private advantage contrary to the public interest."

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I.C.C. EXAMINER REPORTS IT CANNOT CONTROL BROADCASTERS

The Interstate Commerce Commission, according to recommendations of Examiner W. M. Chesaldine, in a proposed report to the Commission, has no jurisdiction over the charges, rates, rules, regulations and practices of radio broadcasting companies. Dismissal of the complaint of the Sta-Shine Products Company, Inc., against Station WGBB, of Freeport, L.I., and the National Broadcasting Company, was urged.

The complaint, which served as a test case, was filed with the Commission in September, 1931, by the Sta-Shine Company, manufacturers of furniture polish. It was alleged that the Freeport radio station and the National Broadcasting Company charged "unreasonable" rates for the "Transmission of intelligence for hire in interstate commerce by wire or wireless". Discrimination against the Freeport company and preference of other users of broadcasting facilities of the defendants also was charged by the complainant.

The Commission was asked to require the broadcasters to cease and desist from the alleged violations of the Interstate Commerce Act. The case was set for hearing solely upon the question of jurisdiction over broadcasters by the Interstate Commerce Commission.

Excerpts from the Examiner's report follow:

This is the first complaint filed with the Interstate Commerce Commission attacking the rates, charges, rules, regulations, and practices of a broadcasting company. It purports to be brought under those provisions of the Interstate Commerce Act which apply to common carriers engaged in the transmission of intelligence by wire or wireless for hire.

Defendants, in their answers, which generally deny the allegations of the complaint, aver, among other things, that they are not common carriers engaged in the transmission of intelligence by wire or wireless for hire, or in any other business subject to the provisions of the Interstate Commerce Act, and asked that the complaint be dismissed.

They questioned the Commission's jurisdiction over the subject matter complained of and requested that a hearing first be had on the jurisdictional question, leaving the question of the reasonableness and otherwise lawfulness of the matters and things complained of for further hearing should the Commission take jurisdiction. In view of the novelty of the case, this course was taken, and a hearing has been had which was limited to facts bearing upon the jurisdictional question.

Defendants insist that their business is merely that of an advertising agency, disseminating through the medium of radio apparatus entertainment or information which its customers, or clientele, wish to extend to, or hope will reach, a potential listening public, but which is not directed or addressed to any specific individual or concern; and that they have never engaged in or held themselves out to perform point-to-point communication by wireless, i. e., the transmission of a message from a definite sender to a definite receiver, for pay, which they contend is the type of message or communication contemplated in the Interstate Commerce Act.

They further insist that they never intended to operate as common carriers and for any and all who wished to avail themselves of their facilities, and, moreover, that they have neither the authority, license, nor the equipment to do so. On the contrary, their licenses to operate, received from the Federal Radio Commission, forbid them to do so. All broadcasting performed by them, except that which they offer to the public themselves, is done under private contract and only for such clientele as they wish to serve.

They contend, however, that they have the right to select and choose the programs they shall broadcast; that their business cannot be conducted in any other way; and that they are subject only to such Federal regulation and control in the conduct of their business as the Federal Radio Commission or the Department of Commerce, under powers delegated by the Congress, may wish to exercise.

The provisions of the Interstate Commerce Act apply to the transmission of intelligence by wire or wireless, within the confines of the United States, by telegraph, telephone, and cable companies, and all persons, natural or artificial, engaged in such transmission as common carriers for hire; and that they apply to such "transmission" through the application of electricity, including radio apparatus, or other wireless appliances, and all instrumentalities and facilities for and services in connection with its receipt, forwarding, and delivery.

They thus clearly apply to messages or communications in connection with which there is to be a forwarding and delivery service, that is, a carrier and a receiver. In other words, that the carrier receiving the message for transmission shall forward and deliver it, notwithstanding that radio or other wireless apparatus is used in the transmission of the message. The act is thus undoubtedly applicable to the transmission of wireless messages by persons or concerns engaged in the transmission of such messages as a common carrier for hire, that is, one holding itself out to transmit for the public at large and deliver such messages to a designated receiver. But can it be construed as applying to persons or concerns engaged merely in the business of broadcasting as performed by defendants here? * * *

Since broadcasting was unknown at the time of the passage of the Transportation Act, it is reasonable to assume that the Congress did not intend to pass any law to regulate the charges and practices of broadcasting concerns.

It cannot be supposed that it was looking into the future and attempting to regulate a mere potential service, one that might or might not be developed, and particularly a service so distinct and different in character from the means of transmission of intelligence then known.

What it had in mind must have been the transmission of messages by wireless from a definite sender to a definite receiver, that is, point-to-point wireless communication as was then being performed by the United States Army and Navy and commercial concerns which held themselves out to perform such service for the public as common carriers for hire by means of signals, an entirely different type of communication from that of ordinary broadcasting.

The mere fact that the subject-matter under consideration may be within the literal language of the statute is not sufficient to bring it within its intent * * *

The very nature of defendants' business prevents them from opening up their facilities to all who would wish to use them, without regard to the value or propriety of the matter to be broadcast to the listening public. Listener good-will is the broadcaster's greatest asset, for without it, he could not hope for commercial success. The Congress is even now giving grave

consideration to the quality of broadcasts being put on the air, with a view to improvement, because of the growing dissatisfaction with the present use of radio broadcasting facilities.

As the Congress established the Federal Radio Commission as its agency to supervise and control matters and things arising out of radio activities, may it not be presumed that it gave to that Commission such powers as it then deemed necessary and appropriate to adequately take care of and protect the public interest in radio broadcasting?

And as one of the purposes of the bill was to centralize control over radio, may it not further be presumed that if it then thought that the rates, charges, rules, regulations and practices of radio broadcasting concerns should be regulated, supervised or controlled, it would have then taken proper action and placed those powers with that Commission?

And this, notwithstanding opinions expressed by certain Members of Congress when the radio bill was being considered by that body that the Interstate Commerce Commission then had jurisdiction over and authority to regulate and control the rates and charges of a broadcaster, and that Section 14 of the Radio Act makes a finding by the Interstate Commerce Commission, in the exercise of authority conferred upon it by law, that the charges and practices of a licensee with respect to the transmission of radio communication or service are unreasonable or discriminatory, a basis for revocation of a license of a broadcaster by the Radio Commission.

But these facts do not invest the Interstate Commerce Commission with such powers of regulation. We must look to the Interstate Commerce Act for any power the Interstate Commerce Commission may possess in this respect, and we must conclude that the act does not give it the power or authority to regulate or control the rates, charges, rules, regulations and practices of defendants.

The Commission should, therefore, conclude, and find, that it has no jurisdiction over the matters and things here complained of. The complaint should be dismissed.

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CHICAGO STATIONS COME HIGH

Columbia has been paying WGN, Chicago, \$260,000 a year for the use of three hours an evening over that station, Variety reports.

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ALABAMA COMMISSION WITHOUT POWER IN RADIO CLASH

In most cases throughout the United States, electric light companies and other public utilities receiving complaints from radio listeners regarding interference caused by leaky power lines and other sources have voluntarily endeavored to correct the trouble and cooperated with them to the fullest extent.

Apparently, however, the Alabama Public Service Commission has encountered difficulty in adjudicating such a case for it finds that it is without authority to require the elimination of radio interference by compelling electric utilities to remove transmission lines adjacent to stores and residences, according to an opinion by the Attorney General, Thomas E. Knight, Jr.

The opinion was given in response to an inquiry by the President of the Commission, Hugh White, who stated that the Commission had received several complaints against radio interference caused by transmission lines.

After reviewing decisions by courts and commissions on the subject of jurisdiction, Mr. Knight concluded his opinion as follows:

"In my judgment, the Alabama Public Service Commission is without authority to require electric utilities to eliminate radio interference caused by transmission lines of such utilities, such lines being located near or adjacent to stores and residences. Such matters are beyond the jurisdiction of the Commission.

"The Public Service Commission does not exist for the purpose of settling or adjudicating the equities or rights of parties in such matters. Such matters must be settled in the courts and not by the Public Service Commission. Our courts exist for the purpose of settling such disputes and controversies. The Public Service Commission does not exist for such purpose. I am convinced that the Commission is without jurisdiction and authority to require the elimination of such interference by the removal of such transmission lines."

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HEDGES HEADS CHICAGO BROADCASTERS

William S. Hedges, Manager of Station WMAQ, and past president of the National Association of Broadcasters, was unanimously elected President of the Chicago Broadcasters' Association at the end of a meeting held this week. Homer Hogan, Manager of Station KYW, was re-elected Vice-President, and W. E. Hutchinson, of Station WAAF, was elected Secretary and Treasurer. The Directors elected were Quinn Ryan, Manager of WGN, and Morgan Eastman, of WENR, retiring president.

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RADIO EDUCATORS TO MEET IN BUFFALO

Radio advertising, broadcasting into the schools, and the ultimate control of radio will be among the topics discussed at the Second Annual Assembly of the National Advisory Council on Radio in Education, to be held in Buffalo, New York, May 18-20, at the Hotel Statler.

The meeting will open on Wednesday evening, May 18th, with a joint session with the American Association for Adult Education. The Council will devote the Thursday morning and afternoon sessions to reports from the Committees responsible for the radio programs on psychology, economics, vocational guidance, labor and civics now being broadcast. The Committee Chairmen will discuss problems involved in devising and broadcasting various types of educational programs. The Chairman of the Committee on Engineering Developments will report on the latest scientific developments in radio. Experienced librarians will suggest ways and means through which the public library may cooperate with the broadcaster offering educational programs.

The topic for the evening session will be "Broadcasting into the Schools". Florence Hale, President of the National Education Association, is in charge of this meeting, and William John Cooper, United States Commissioner of Education, will preside.

The Friday morning session will include addresses on "The Broadcasting Station as a Community Enterprise", and "The Ultimate Control of Radio." "What the Radio Can Do for the Farmer and the Rural Community", "Broadcasting Abroad", and "Development of Radio Legislation" will be discussed during the afternoon session.

The evening meeting will be devoted to the consideration of radio advertising from the standpoint of the broadcaster, the advertiser, and the general public.

Others who will address the sessions include Cline M. Koon, United States Office of Education; Lyman Bryson, of the California Association for Adult Education; Senator Arthur Capper; Walton Hale Hamilton, of the Yale University Law School; William Hard, political correspondent; Carroll Dunn, Director of Research, Crossley, Inc.; Harold Lafount, Federal Radio Commissioner.

All broadcasters and persons interested in broadcastings are invited to attend the Assembly.

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NEW AND RENEWED CONTRACTS OF CBS

NEW - H. J. Heinz Co., Pittsburgh, Pa. (Rice Flakes); Agency - Young and Rubicam, Inc., New York City; Program - "Heinz Presents Joe Palooka", 6:45-7 P.M., Tues., Thurs., Rebroadcast 11:15-11:30 P.M., 55 stations.

RENEWAL - J. A. Folger & Co., Kansas City, Mo.; Agency - Blackett-Sample-Hummert, Chicago, "Judy & Jane" Script act, Monday through Friday, 2:15-2:30; on and after April 25th, 3-3:15; 13 stations.

NEW - Zoro Company, Chicago, Ill. (Zorex Moth Cakes); Agency - Faxon, Inc., Chicago, Ill.; Program - Mon., Wed., Fri., 12:45-1:00 P.M. (program to be determined), 29 stations.

NEW - Wm. Rogers & Son, division of International Silver Co., Meriden, Conn.; Agency - Benton & Bowles, New York City; Program - "Brad & Al", Singing and script, 21 stations.

NEW - Photoplay Publishing Co., Chicago, Ill. (Photoplay Magazine); Agency - Aubrey & Moore, Inc., Chicago, Ill.; Program - Saturday 8:30-9:00 P.M., Dramatic sketch, Lives of movie stars, and incidental music, 15 stations.

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: BUSINESS LETTER BRIEFS :
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Arcturus Radio Tube Co., year ending December 31st: Chester H. Braselton, president, reported net loss after charges and adjustments, of \$268,103, compared with loss of \$1,368,898 in previous year. Net operating profit before depreciation was \$63,394 in 1931, against net operating loss of \$791,891 in 1930.

At the meeting of the Board of Directors of the Radio Corporation of America held a short time ago, announcement was made of the election of Mr. Harold Smith, Vice-President of the Westinghouse Electric and Manufacturing Co., to membership in that body, according to the "RCA News". Mr. Smith fills the vacancy in the Radio Corporation Board caused by the death of Mr. Harry P. Davis.

Copies of the report "Solar Activity and Radiotelegraphy", by L. W. Austin (Bureau of Standards, Washington, D.C.) may be obtained by writing to The Institute of Radio Engineers, 11 West 42nd Street, New York City.

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APPLICATIONS RECEIVED BY FEDERAL RADIO COMMISSION

April 4 - Boston Herald-Traveler Corp., Boston, Mass., C.P. resubmitted amended as to equipment and to request unlimited time on 1500 kc.; WFOX, Paramount Broadcasting Corp., Brooklyn, N. Y., license to cover C.P. granted 12/8/31, to move station locally; WHBC, Rev. Edward P. Graham, Canton, Ohio, C.P. to increase power from 10 watts to 100 watts, and change from sharing with WNBO, Silver Haven, Pa., to unlimited, make changes in equipment; Peoples Broadcasting Corp., Jacksonville, Fla., C.P. for a new station to use 1200 kc., 100 watts, unlimited, facilities of WMBR, Tampa, Fla.; KFPW, Southwestern Hotel Co., Ft. Smith, Akr., C.P. to change from 1340 kc., 50 watts, daytime, to 1210 kc., 100 watts, unlimited, and make changes in equipment; KARK, Arkansas Radio & Equipment Co., Little Rock, Ark., C.P. amended to request 250 w., 500 w., LS instead of 500 watts day and night.

April 6 - Request Authority to install automatic frequency control: WLW, Crosley Radio Corp., Cincinnati; WFAJ, Grove City, College, Grove City, Pa.; WQDX, Stevens Luke, Thomasville, Ga.; WJAS, Pittsburgh Radio Supply House, Pittsburgh, Pa.; KFBI, Farmers and Bankers Life Insurance Co., Milford, Kans.

Applications Other Than Broadcasting

April 4 - Aeronautical Radio, Inc., Chicago, Ill., license covering C.P. for 3162.5, 3172.5, 3182.5, 5572.5, 5582.5, 5662.5 kc. 10 watts, aeronautical service; Radio Institute of California, Los Angeles, Calif., new C.P. for 16000-17000, 20000-21000, 21000-22000, 27500-28500 kc., power not specified, experimental visual broadcasting; Charles Newton Kraus, on police car, E. Providence, R. I., new C.P. for 60000-400000 kc., 4 watts, general experimental service; WPDZ, City of Fort Wayne, Police Dept., Fort Wayne, Ind., C.P. to install new equipment 2470 kc., 100 watts; A. L. Blodgett, R.T. Dunlap, Los Angeles, Calif., new C.P.s for 10000 kc., 15 watts, private point-to-point telegraph.

Also, Press Wireless, Inc.: W6XB, San Francisco, Cal., renewal of experimental license for 11640, 19340 kc., 1.5 KW; WRDK, Hicksville, N. Y., license covering C.P. for 4725, 4935, 4985, 5335 kc., 10 KW., point-to-point telegraph service; W2XAJ, Hicksville, N. Y., renewal of special experimental license for 11640, 12862.5, 17310, 19340 kc., 5 KW; Same for W2XAC, Hicksville.

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DECISIONS OF THE FEDERAL RADIO COMMISSION

The Commission on April 5th took the following action:

Applications Granted

KTW, First Presbyterian Church of Seattle, Wash., license covering changes in equipment 1200 kc., 1 KW, shares with KWSG; KRMD, Robert M. Dean, Shreveport, La., consent to voluntary assignment of license to Radio Station KRMD, Inc.; WEBR, Howell Broadcasting Co., Inc., Buffalo, N. Y., modification of license to increase day power from 200 to 250 watts.

Also, Aeronautical Radio, Inc., Rocky Point, N. Y., ~~xxxxx~~ ~~fixxxxx~~ C.P. aeronautical service; freqs: 2906, 3072.5, 3082.5, 3088, *5510, *5540, 5672.5, 5692.5 kc., 5 watts, A3 emission (*available until March 1 only); RCA Communications, Inc.: WKU, Rocky Point, N. Y., modification of license for change in normal transmitter number to Serial No. 6; KEE, Bolinas, Cal., modification of license for additional frequency of 7835 kc.; WPE, Rocky Point, N. Y., modification of license for additional frequency of 15760 kc., and change in transmitter number to RCA Composite VT #38.

Also, Press Wireless, Inc.: KDG, Island of Oahu, T. H., modification of license for additional frequencies of 7715 and 7960 kc.; KOQ, San Francisco, Cal.; WJO, Hicksville, N. Y., KOP, San Francisco, Cal., WJP and WJS, Hicksville, N. Y., modification of licenses for additional frequencies of 14635, 10750, 16255, 17440, 18560, 20800, 7715, 7950, 7960 kc.; WJA, Chicago, Ill., and WJK, Needham, Mass., modification of licenses for additional frequencies 14635, 10750, 16255, 17440, 18560, 20800 kc.

Also, WEBC, Head of the Lakes Broadcasting Co., Superior, Wis., granted renewal of license for auxiliary transmitter to operate with 600 watts on 1290 kc., unlimited time.

Application Denied

Communications, Inc., Oakland, Cal., denied request for special authority to operate general exp. station on shipboard in San Francisco Bay on April 2, in conjunction with amateur station, between 9 A.M. and 4 P.M. on 60000 kc. with 1 watt power.

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