

HEINL RADIO BUSINESS LETTER

INSURANCE BUILDING

WASHINGTON, D. C.

VICE PRESIDENT AND GENERAL ATTORNEY

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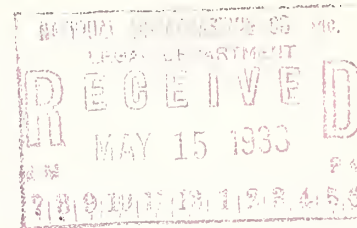
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INDEX TO ISSUE OF MAY 12, 1933

✓	Sweeping Supreme Court Decision May Cause Further Upheavals..	2
✓	Advocate Independent Radio Advertising Bureau.....	4
	Radio Industry Making Better Showing.....	5
	Amateurs To Meet In Buffalo in June.....	6
✓	NBC Hit For Cancellation of Oratorical Contest.....	7
✓	NBC Institutes New Audience Mail Analyzing Method.....	7
	Canadian Radio Rules and Regulations Published.....	8
✓	Schuetz Takes Up Cudgel For Small Restaurant Owners.....	9
✓	Decisions of the Federal Radio Commission.....	10

No. 622

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SWEEPING SUPREME COURT DECISION MAY CAUSE FURTHER UPHEAVALS

Coming as it does on the eve of a possible reallocation of broadcast facilities as a result of international conferences and agreements at Mexico City, the Supreme Court decision in the case of Station WIBO vs. Federal Radio Commission, the station of the Nelson Bond & Mortgage Company of Chicago, must be regarded as of unusual significance and will in all probability control the action of the Commission in any such reallocation. Also, this decision will in all probability stimulate the filing of applications by stations from underquota zones and states for the facilities now being used by stations in overquota zones and states, and thus stimulate considerable radio litigation.

It is also probable that this decision and the resulting shift of station assignments will give rise to new schedules of rates and charges to be paid by advertisers for commercial coverage by radio stations. If station owners generally and the chains in particular are required to locate their stations with a view to an equitable geographical distribution and service to the entire nation rather than economic advantages to be derived from congested metropolitan areas, the rates of advertisers in the metropolitan areas will undoubtedly be increased in order to help carry the programs which are to be used in less productive areas.

A brilliant array of counsel participated in the case. Duke M. Patrick, then general counsel of the Federal Radio Commission, argued it in the Court of Appeals. When that court reversed the opinion he took the matter up with John Lord O'Brian and Solicitor General Thatcher at the Department of Justice. Among the counsel who were at one time or another engaged in the procedure were Mrs. Mabel Walker Willdebrandt, the late Levi Cooke, and Representative James M. Beck, of Pennsylvania.

The recent decision of the Supreme Court in the Chicago case is of far-reaching importance to broadcasters and to the public generally. It is the first case arising out of an appeal from a decision of the Federal Radio Commission to the Court of Appeals of the District of Columbia, to be reviewed on the merits by the Supreme Court and is decisive of two fundamental questions. First, that under the Radio Act of 1927, as now amended, the Supreme Court has jurisdiction to review the decisions and orders of the Federal Radio Commission in such cases, and second, that the equalization requirements of the Davis Amendment to that Act are reasonable and valid enactments made by Congress under its power to regulate interstate commerce.

Of the two questions decided perhaps the first is of paramount importance. With the almost universal use of radio as a medium of mass communication and its great and inherent possibilities for abuse as well as for use in the public interest, it is to be expected that many and varied questions will arise which should be passed upon by the nation's highest tribunal. This decision guarantees such a review in proper cases.

The second question, while somewhat more technical, is nevertheless vastly important. It guarantees to the public and makes mandatory upon persons desiring to use radio facilities, equality of radio transmission and reception. Under this decision broadcasters will no longer be permitted to place all or a considerable portion of the broadcast facilities of the country in thickly populated areas where the benefit to be derived is largely economical rather than social. On the other hand, they will be required to distribute such facilities equally between the five zones established by the Radio Act of 1927 and between the states within those zones on a basis of population.

The facts of the case decided were substantially as follows: Station WJKS, located at Gary, Indiana, applied to the Commission for use of the frequency then and previously used by Stations WIBO and WPCC, located in Chicago. Both Indiana and Illinois are located in the fourth zone, the State of Indiana being 2.08 units or 22% underquota, and the State of Illinois 12.40 units or 55% overquota, in station assignments. Following the hearing before an Examiner, the Commission ordered the application of Station WJKS be granted and Stations WIBO and WPCC deleted.

On appeal the Court of Appeals by three to two decision reversed the decision, and the decision of the Supreme Court, written by Mr. Chief Justice Hughes and concurred in by the entire court, reversed the Court of Appeals and upheld the Commission's original decision and order. The reasons given by the Supreme Court in its decision for its action were essentially those given by the minority of the Court of Appeals in its dissenting opinion.

It is a matter of general knowledge that Illinois is one of the most overquota states in the entire United States, and that the city of Chicago contains the vast majority of all the radio stations located in the State of Illinois. Indiana, on the other hand, is and always has been materially underquota.

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ADVOCATE INDEPENDENT RADIO ADVERTISING BUREAU

The following program for the advancement of radio advertising, previously adopted by the Radio Committee of the American Association of Advertising Agencies, headed by C. F. Gannon, of Erwin, Wasey and Company, of New York, was approved by the executive board of the Association at a meeting in connection with the sixteenth annual convention in Washington last week:

Develop an independent bureau, supported by stations, advertisers and agencies, to study radio coverage through signal strength measurements, and popularity and listening habits through field surveys.

In advance of signal strength measurements, to continue the interchange of agency experience with local station coverage throughout the country.

Issue and promote, with the cooperation of the National Association of Broadcasters, the Standard Order Blank for Spot Broadcasting, for use between agencies and individual stations in placing spot broadcasting contracts.

Promote publication of all rates of stations in combination.

Promote payments by radio stations of standard 15% agency commission and 2% cash discount on station time.

Encourage the listing of complete information about radio stations in Standard Rate & Data Service.

Encourage the use of standard rate cards for radio by stations.

Protect agencies' and advertisers' interests in case of license fees or other charges which tend to increase radio costs and which might make the medium less productive.

Study and make available, agency operating data and compensation in handling of radio.

Favor the development of radio representatives.

The usual procedure was reversed at the dinner of the American Association of Advertising Agencies. Speaker Rainey, who was to have been heard in person, came in via the loudspeaker from Pittsburgh, his plane having been grounded by storms. John Charles Thomas, Countess Olga Albani and the Revelers, usually heard over the air, were there in person. The two last name were by courtesy of NBC.

RADIO INDUSTRY MAKING BETTER SHOWING

Some of the leading radio manufacturers report that sales during the first four months of the current year approximately were double the volume handled during the same period a year ago. The outlook for the Summer trade is unusually encouraging and the future is being viewed with more cheerfulness than was in evidence at the beginning of the year, according to a survey of the industry, which has just been completed by Dun & Bradstreet, Inc.

"During the last six months", the survey continues, "the chief source of income of many retailers has been replacement business. They have been particularly aggressive in calling on the owners of sets of the vintage of 1928 and 1929, and have uncovered a profitable field for replacement sales. Conservative trade estimates set replacement sales at 3,000,000 for the current year.

"The use of radios in automobiles gradually is becoming popular, and the revenue from this department has contributed to a satisfactory portion of the total volume handled. During May and June, it is expected that automobile radio business will be larger than the home radio business. No important mechanical improvements or changes in design have developed in recent months, although very satisfactory results are being obtained with electric sets now in use under the existing chain system of broadcasting.

"Fully 75 per cent of the orders being filled are for the moderately-priced units, bracketed within \$15 to \$50, although there is general recognition on the part of the buyers that the cheaper sets will not be satisfactory in the end. Few high-priced models are being sold. While the price trend has been downward, the enhanced commodity prices are expected to lead to revisions in an upward direction.

"From a toy less than twenty years ago", the survey points out, "the radio has passed through the period when it provided the chief source of entertainment for nearly 70,000,000-odd listeners in the United States alone, to become an indispensable part of the country's commercial life. Its pre-eminence as an advertising medium has made possible yearly gains which supersede the records established by newspapers and magazines.

"In national advertising expenditure in the last three years, radio broadcasting was the sole medium to gain, jumping from \$27,000,000 in 1930 to \$37,502,000 in 1931, and making a further moderate increase in 1932 to \$39,106,000.

"Installment payments, as a whole, have been more prompt during the last thirty days, and many customers that were in arrears have been able to bring their accounts up to date.

"While there was a slight increase in the number of firms which defaulted in 1932, a total of 193 contrasting with 175 in 1931, the liabilities involved were reduced more than half.

"For, the total of defaulted indebtedness of \$9,067,804 recorded for the 175 failures in 1931, dropped to \$3,805,673 for 193 failures in 1932, a decrease of 58 per cent. For the first four months of the current year, the trend has been slightly upward, particularly in the manufacturing division."

The complete insolvency record of the radio industry since 1930, including the first four months of 1933, as compiled by Dun & Bradstreet, Inc., shows:

Manufacturers

<u>Year</u>	<u>Number</u>	<u>Liabilities</u>
1930	40	\$3,522,400
1931	15	4,088,445
1932	23	1,826,995
1933	10	2,390,536

Wholesalers and Retailers

1930	217	2,071,392
1931	160	4,979,359
1932	170	1,978,678
1933	44	954,252

(The 1933 figures are for January to April, inclusive).

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AMATEURS TO MEET IN BUFFALO IN JUNE

A convention of the Atlantic Division of the American Radio Relay League will be held in the Hotel Lafayette, Buffalo, New York on June 23 and 24, 1933.

Described as "an amateur convention, for amateurs, by amateurs" there will be technical talks, demonstrations, and visits to several amateur radio stations in and around Buffalo.

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NBC HIT FOR CANCELLATION OF ORATORICAL CONTEST

The cancellation of the planned broadcast of the oratorical contest at Catholic University Tuesday night was termed an "insult" to Archbishop Michael J. Curley, of Baltimore, by the Rev. Louis Veath, of Baltimore, director of Catholic University conference of clerics and religious of the Catholic Students Mission Crusade, which sponsored the affair.

Father Veath declared in a short talk after the four contestants had delivered their orations that the "National Broadcasting Co. had openly insulted the archbishop". He said that arrangements had been made with Station WMAL for the broadcast and that shortly before the time scheduled, persons at the station telephoned and asked the subject of the orations.

When told it was "The Part of the Catholic Student in Home and Foreign Mission Activity", he said, the station's representative replied that it could not be broadcast as it was not "important".

The archbishop, who announced the winner and standing of the other three contestants in the competition after Father Veath had bitterly assailed the radio company's cancellation of the broadcast, made no reference to the matter.

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NBC INSTITUTES NEW AUDIENCE MAIL ANALYZING METHOD

The National Broadcasting Company felt for a long time that its audience mail could be made to yield additional valuable information if more thoroughly analyzed. Now, that is being done. On February 1st, a battery of card-punch and counting sorter machinery was put into operation at NBC headquarters, 711 Fifth Avenue, New York City.

Although still "feeling its way", the new set-up has already revealed some very interesting facts. It is felt that the method has already proved its value. For the present, only eastern mail directed to sponsors' programs, and "fan" mail addressed to the National Broadcasting Company's eastern division, is being handled and analyzed.

The mail is classified into two groups - "direct" and "indirect" response. The direct mail includes letters addressed to sponsors of commercial programs by name. This mail is tabulated but not opened and is sent direct to sponsors or their advertising agents.

The indirect mail -- that is, letters and cards addressed to the broadcasting company only, includes sustaining program comments, letters of general appreciation and the like.

During February, indirect mail constituted 10.3% of the total eastern division response. Requests for offers 39.3%; appreciation response, 29.9%; while critical response amounted to only 2.1% of the total.

The sex of the writer making up this total of indirect mail is also highly encouraging. Male response totalled 38.8% as against 47.7% for female response. Thus, a widespread opinion that women are many times more prolific letter writers than men seems to be definitely refuted.

The percentage story for February of the indirect mail response for NBC's eastern division follows:

Appreciation.....	29.9%
Constructive Criticism.....	7%
Adverse Criticism.....	1.4%
Requests for Offers.....	39.3%
Requests for Information.....	6.1%
Requests for Invitations.....	11.1%
Response to Contests.....	3.7%
Contributions.....	7.8%
	<u>100.0%</u>

Sex of	
Writer	
Male.....	38.8%
Female.....	46.7%
Children.....	2.2%
Unknown.....	12.3%
	<u>100.0%</u>

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CANADIAN RADIO RULES AND REGULATIONS PUBLISHED

The Canadian Radio Broadcasting Commission has issued rules and regulations governing radio broadcasting in the Dominion of Canada. Copies, in pamphlet form, may be secured by addressing the Commission, National Research Building, Ottawa, Canada.

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SCHUETTE TAKES UP CUDGEL FOR SMALL RESTUARANT OWNERS

Oswald F. Schuette, in charge of copyright activities of the National Association of Broadcasters, already engaged in battle with the American Society of Composers over the license fees charged for the use of copyrighted music by the latter, has taken up the cudgel for small restaurant owners using radio sets in their establishments.

"Although the ASCAP gave a formal promise to Congress a year ago that it would make no effort to collect royalties from small restaurants and other minor business establishments, an ASCAP campaign to exact such license fees is now going on in various parts of the United States. Broadcasting stations have sent me details of the campaigns in their localities, together with copies of the threatening letters received from the Society by restaurants that have radio receiving sets," Mr. Schuette writes in a copyright bulletin.

"Apparently there is no uniformity in this campaign. As it is important that we should have full information concerning the methods used in different cities, I am asking all stations to make inquiries in their own localities concerning these operations. It will be of particular service if each station will send me copies of correspondence and other information about the methods by which the Society is undertaking to obtain fees from small restaurants in violation of its pledge to Congress."

The bulletin also includes testimony of officers of ASCAP during the hearings of the Patents Committee of the House of Representatives on the Sirovich Copyright Bill to the effect that it was not the intention of the Society to levy fees against small restaurants, ice cream parlors, cigar stores or barber shops. He then gives the text of letters said to have been sent out by the Society recently by which it has sought to exact license fees from restaurants for use of radio sets.

"To secure the protection guaranteed by these pledges, restaurants and other small business houses who receive such threatening notices should ask their Senators or Representatives to present the matter to Chairman Sirovich of the House Patents Committee, to whom the pledges were given", Mr. Schuette said, in conclusion. "Or they should ask their Senators and Representatives to call the situation to the attention of the Department of Justice or the Federal Trade Commission. Both of these government departments are now investigating the ASCAP organization and its methods."

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DECISIONS OF THE FEDERAL RADIO COMMISSION

Applications Granted

WJBU, Bucknell University, Lewisburg, Pa., granted consent to vol. assign. of lic. to Charles S. Blue; WJBU, Charles S. Blue, granted CP to move transmitter and studio from Lewisburg to Sunbury, Pa.; WSAR, Doughty & Welch Electric Co., Fall River, Mass., granted CP to make changes in eqpt. reducing max. rated power from 500 w. to 250 w.; KFAC, Los Angeles Brdcastg. Co., Inc., Los Angeles, Cal., granted mod. of lic. to increase hours of operation from sharing with KGEF (deleted) to unlt'd;

KBPS, Benson Polytechnic School, Portland, Oreg., granted auth. to discontinue operation May 26 to Sept. 12, 1933, during regular school vacation of licensee; WRAK, WRAK, Inc., Williamsport, Pa., granted mod. of lic. to change time from sharing with WJEQ to unlt'd. (facilities of WJEQ); KFJB, Marshall Electric Co., Inc., Marshalltown, Ia., granted spec. temp. auth. to operate unlt'd. time from June 4 to June 10, incl.; WMBH, W. M. Robertson, Joplin, Mo., granted special temp. auth. to operate from 9:30 to 10:00 p.m. CST, May 20 and 27, June 3, 10, 17, and 24, 1933.

Applications Granted - Other Than Broadcasting

WPFO, City of Knoxville, Tenn., granted auth. to operate station as broadcast pickup station May 15, regular lic., frequencies, 50 w.; New, Libby, McNeill and Libby, Egushik, Alaska, granted CP fixed private pt. to pt. tel. 3190 kc., 4 w. for communication with pt. to pt. stations and ships owned by applicant; New, Town of Palm Beach, Fla., granted CP for police service, 2442 kc., 50 w.; New, The Norfolk Daily News, Norfolk, Neb., granted CP for temp. broadcast pickup service, 2342 kc., 1 w.; New, John P. Moses, mobile, Mass., granted gen. exp. CP, freq. 60000-400000 kc., 10 w.;

WAEQ, Aeronautical Radio, Inc., Elmira, N.Y., granted CP to substitute transmitter (400 w. power) for West. Elec. 8-B, 50 w.; New, same Co., portable based at Kansas City, Mo., granted aviation - aero CP., freq. 2906, 3072.5, 3088, 4967.5, 4987.5, 5672.5, 5692.5 kc., unlt'd. 50 w.; W10XBE, State of New York, Conservation Dept., portable in New York State only, granted license, gen. exp. service, 60000-80000 kc., 4.3 w.; W3XU, City of Philadelphia, Pa., granted lic. exp.-spec exp. 2470 kc., 25 w.; W9XC, United States Radio & Television Corp., Marion, Ind., granted lic. exp. spec. exp. 43000-46000, 48500-50300, 60000-80000 kc., 1 kw., initial operating power 15 w.; to Nov. 1, 1933; W9XE, same;

WBA, Commonwealth of Pa., Harrisburg, Pa., granted lic. police service, 257 kc., 300 w.; WPEM, City of Birmingham, Ala., granted lic. police service, 2414 kc., 150 w.; WMDZ, City of Indianapolis, Ind., police service, granted lic. 2442 kc., 300 w.; KGZP, City of Coffeyville, Kans., granted lic. for police service, 2450 kc., 50 w.;

KGSI, Aeronautical Radio, Inc., Kansas City, Kans., granted lic. covering change in location from Universal Hangar to No. 1 Hangar, Fairfax Airport, Kansas City, Kasn.; KGSM, same co., Salina, Kans., granted aviation license 2906, 5692.5 kc., 100 w.; New, Pacific American Airways Co. NC-16-V, NC-17-V, granted aviation-aircraft lic. 333, 500, 1708, 3082.5, 5405, 5692.5, 8220, 12330 and 16440 kc., 12 w.; New, same co., NC-12195, granted aviation-aircraft lic. 3105, 3127.5, 3232.5, 3242.5, 3257.5, 3447.5, 3467.5, 3485, 5602.5, 5612.5, and 5632.5 kc., unlt'd., 3222.5 kc. day only, not to be used within 300 miles of Canada or Mexico; 4917.5 kc. day only, not to be used within 600 miles of Mexico, 50 w.;

KHMSH, Transcontinental and Western Air, Inc., NC-12277 - KHMTG, NC-12278, granted aviation-aircraft license, freqs. 3105, 2906, 3072.5, 3088, 4967.5, 4987.5, 5672.5, 5692.5 kc., 50 w.; KHMTG, Standard Oil Co., of Cal., NC-233-M, granted mod. of lic. to add the freqs. 3147.5, 5122.5, 5592.5, 3322.5 all other terms of license to remain the same; WQS, RCA Communications, Inc., New Brunswick, N.J., granted mod. of lic. to communicate primarily with Prague, Hamburg; secondarily with any other points of communication specifically named in pt to pt. telg. sta. license;

WBA, Commonwealth of Penna., Penna. State Police, Harrisburg, Pa., granted mod. of lic. to change freq. from 257 to 190 kc.; KHSXC, National Air Transport, Inc., NC-10352, granted consent to vol. assign. of lic. to Varney Air Lines, Inc.; WMH, Radiomarine Corp. of America, Baltimore, Md., granted consent to vol. assign. of lic. to Mayor and City Council of Baltimore, Md.; WLXAK, Westinghouse E and M Co., Chocopee Falls, Mass., granted ren. of spec. exp. lic. 990 kc., 50kw; KIBT, Bristol Bay Packing Co., Kvichak, Alaska, granted ren. of fixed pt. to pt. telg. license, freqs. 262, 274 kc., 50 w. to communicate WZE, Kanakanak on 274 kc., KIBU Nushagak and other pt. to pt. stations on 262 kc.; KYM, same co., Kvichak, Alaska, granted ren. of public coastal teg. lic. 425 kc., 500 kc., 50 w.; KSV, Alaska Salmon Co., Nushagak, Alaska, granted same as KYM; WCEN, Dr. Alexander Forbes, aboard the Yacht "Ramah", granted auth. to communicate with amateurs in addition to third class ship license; the ship telg. freqs. above 3000 kc., except 5510 kc., 50 w.; New, American Airways, Inc., to be located on a licensed air-plane, granted broadcast pickup station to operate from May 15 to May 20, incl. on freq. 2342 kc., 50 w.; to be used in connection with a demonstration of air transport operation.

Set For Hearing

New, The Lorain County Radio Corp., CP, public coastal - coastal harbor serv. 2512 kc., 500 w.; WAMC, Raymond C. Hammett, Anniston, Ala., CP to move transmitter to a location to be determined in Muscle Shoals, Ala., and studio to Muscle Shoals, from Anniston, and make changes in eqpt.

Miscellaneous

KGGC, Golden Gate Brdcastg. Co., San Francisco, Calif., denied special auth. to use following spec. hrs. in addition to present specified hours: 9 to 11 p.m. PST, daily, 10 to 11 p.m. PST, Sunday.

Oral Argument Granted

Ex. Rep. No. 470 - KWKH - Hello World Brdcastg. Corp., Shreveport, La., oral argument was granted in this case, to be held June 21, 1933, one hour for each applicant; these applicants are: WWL, New Orleans; International Brdcastg. Corp., Shreveport, La., National Union Indemnity Co., Shreveport; and WSPA, Spartanburg, S. C.

Ratification of Acts Of Commissioners

KFWF, St. Louis Truth Center, Inc., St. Louis, Mo., the Commission extended the effective date of its order made April 14, to and including 3 a.m. Thursday, May 18, 1933; WIL, Missouri Brdcastg. Corp., St. Louis, Mo., same. Action taken May 8.

KDHC, Radiomarine Corp. of America, New York, granted 60-day auth. to operate transmitter aboard Harvester, 375 to 500 kc., 50 w., pending receipt of formal application. Action taken May 8.

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The stockholders of the International Telephone and Telegraph Corporation at the annual meeting held in Baltimore, Md., May 10, 1933, elected the following directors for the ensuing year:

Arthur M. Anderson, Hernand Behn, Sosthenes Behn, F. Wilder Bellamy, Edward J. Berrind, Edwin F. Chinlund, Philip K. Condict, John W. Cutler, R. Fulton Cutting, George H. Gardiner, George S. Gibbs, A. H. Griswold, Allen G. Hoyt, Russell C. Leffingwell, Clarence H. Mackay, John L. Merrill, Walter E. Ogilvie, Henry B. Orde, Bradley W. Palmer, George E. Pingree, Wolcott H. Pitkin, Lewis J. Proctor, Lansing P. Reed.

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