

HEINL RADIO BUSINESS LETTER

2400 CALIFORNIA STREET

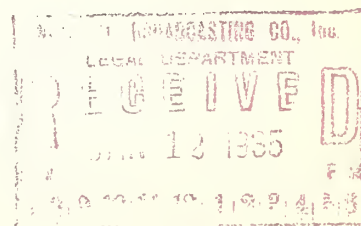
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SENATE SOON TO CONSIDER PRALL AND FCC NOMINEES

Senator Burton K. Wheeler, of Montana, new Chairman of the Senate Interstate Commerce Committee, is expected to call his committee at an early date to consider the nominations of former Representative Anning S. Prall, who was named by President Roosevelt last Thursday, and Commissioners Sykes, Brown, Walker, Stewart, Case and Payne, who were appointed last June but who, as yet, have not been confirmed by the Senate.

Mr. Prall was appointed to fill the unexpired term of former Commissioner Hampson Gary which ends in July. At that time it is expected the President will appoint the former New York Representative to a regular seven year term.

It is not believed that the FCC nominees face serious difficulty in getting confirmed but this depends largely upon the members of the Interstate Commerce Committee, the new line-up of which is as follows:

Senators (Democrats) Wheeler, Montana, Chairman; Wagner, New York; Barkley, Kentucky; Neely, West Virginia; Dieterich, Illinois; Loneragan, Connecticut; Huey Long, Louisiana; Brown, New Hampshire; Bone, Washington; Donahey, Ohio; Minton, Indiana; Moore, New Jersey; Truman, Missouri; Republicans - Couzens, Michigan; Metcalf, Rhode Island; Hastings, Delaware; White, Maine; Davis, Pennsylvania and Shipstead, Minnesota. Those who have not previously served on this committee are Senators Bone, Donahey, Minton, Moore, Truman, Davis and Shipstead.

Just what opposition, if any, these new members may have to the President's FCC nominees, time only can tell. Of the older members, Senator Couzens is known to be opposed to Col. Thad Brown, a Republican, of Ohio, and previously opposed his confirmation as a member of the Radio Commission. Also Senator Huey Long is always good for some trouble. He was quoted in recent press dispatches as intended to apply for a license for a 50,000 watt broadcasting station for the University of Louisiana. If he expects to do this, he doubtless is aware of the scarcity of clear channels and realizes that he will probably have a fight on his hands. That being true, Huey may want to scrutinize the personnel of the Federal Communications Commission very closely as it will be this body which will have to pass upon his application.

The opinion seems still to prevail that Senator Wheeler and the Interstate Commerce Committee will not seriously consider any communications or radio legislation until the recommendations, which Congress ordered the FCC to make, are in. These are due

February 1st. There are those who even think the confirmation of the Commissioners may be held up until the Senators see what kind of a report the Commission will make and that the members will be judged accordingly.

"I don't think Senator Wheeler will look at radio until he receives the Commission's recommendations", a broadcaster said. "I then expect to see a flock of radio bills introduced, some of them 'wildcat', on the order of the one already put in by Representative Ruud, of New York, who would set aside 25% of all radio facilities for religious and educational institutions.

"If the Commissioners are obliged to make their report on the educational-religious situation before they are confirmed, the report is likely to be a 'straddle' with concessions to the educational-religious group. If they make their report after they are confirmed, concessions to the commercial broadcasters may be expected."

That the educators expect an unfavorable report is indicated in the following expression of the National Committee on Education by Radio:

"The Federal Communications Commission will report presently to Congress its findings on the allocation of broadcasting facilities for educational and cultural purposes. If the report should cover the present radio broadcasting practise with copious quantities of whitewash, it would lend credence to a belief that the Commission has failed to realize the most important function which radio can perform - that of raising the educational and cultural level of the people. It would indicate that they had been led to believe that the industry had educational capabilities far beyond the real facts in the case. Finally, it would indicate that they had failed to get at the heart of the problem and to see how really unsatisfactory is the tenure of the educational broadcaster under the present practise."

It is understood that Commissioner Prall, though he will head the Broadcast Division, does not desire to have any part in preparing the educational-religious report, preferring to have that done by the other members of the Commission who heard the evidence in the case.

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WOULD HOLD BROADCASTER LIABLE FOR MISLEADING ADVERTISING

A bill which broadcasters will watch closely (H.R. 197) was introduced by Representative Buckbee (R) of Illinois. It would prohibit untrue, deceptive or misleading advertising through the use of mails, or in interstate and foreign commerce. This would include broadcasting and mean that any misrepresentation of fact by an advertiser over the air would constitute a criminal offense.

It is believed that the fact that Representative Buckbee is a member of the House Post Office Committee caused him to introduce the bill, and that the radio angle was purely incidental. The Buckbee bill was referred to the Interstate and Foreign Commerce Committee.

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FIELD INTENSITY AT RADIO BROADCAST FREQUENCIES

During the past three years, graphical records of the field intensity of over 300 broadcasting stations in the United States and Territories have been made at the Bureau of Standard's receiving station at Meadows, Md., near Washington, D. C. The method used for recording the field intensity was developed at the Bureau several years ago. The data obtained in this way was analyzed to determine the diurnal variations of the received intensity of broadcasting stations at various distances from the transmitting antennas. The data was also analyzed to determine the variation of received intensity as a function of the distance from the transmitter for day-time and night-time transmissions.

The maximum sky-wave field intensities at night are received from stations at a distance of about 600 kilometers, or 375 miles. A theory of the propagation of radio waves in the upper atmosphere was developed to explain the data. The principal conclusion of the paper aside from the presentation of quantitative data on sky-wave field intensities, is that the variation with distance of the field intensities at night is determined primarily by the radiation characteristics of the transmitting antennas in the vertical plane.

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A. P. TO APPEAL RADIO NEWS DECISION

The Board of Directors of The Associated Press meeting in New York directed that an appeal be taken from the decision of Federal Judge John C. Bowen in the case brought on behalf of The Associated Press against Radio Station KVOS.

Judge Bowen, on Dec. 18, 1934, at Seattle, Wash., ruled that once published, "news, reports from that moment belong to the public." The decision was given in dismissing a temporary restraining order against Station KVOS of Bellingham, Wash., instituted by The Associated Press. The station had been charged with "pirating" local and telegraph news from three of its member newspapers, The Bellingham Herald, The Seattle Post-Intelligencer, and The Seattle Times. The station also was charged with "unfair competition."

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Judge Bowen dismissed both the restrainer and the suit, holding that the radio station was not a news-gathering agency and hence the suit did not involve "pirating" of news by one news-gathering agency from another.

"The court finds", said the opinion, "that defendant has in its radio news broadcast taken and 'pirated' local and general news dispatches in some specific instances, as charged by the complainant, but not until after such news items were published and distributed to the public in the regular editions of the newspapers."

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EXCESSIVE LOAN ADVERTISING BILL INCLUDES BROADCASTING

Representative Sauthoff, of Wisconsin, has introduced a bill in the House (H. R. 3252) "to prohibit the use of the mails, certain periodicals, and broadcasting stations, having a range covering more than one State, to the advertising of loans for which interest in excess of 15 per centum per annum is charged, and providing a penalty."

The bill, which has been referred to the House Committee on Post Office and Post Roads, is as follows:

"That on and after the date on which this Act takes effect, no person, partnership, association, or corporation that makes a business of loaning money and charges a rate of interest in excess of 15 per centum per annum upon any sum loaned shall use for advertising its business either the United States mails or any broadcasting station with a range covering more than one State. Nor shall any such person, partnership, association, or corporation advertise its said business in any magazine, periodical or other publication which is circulated in more than one State.

"Sec. 2. Any person, partnership, association, or corporation that violates any provision of this Act shall, in addition to all other penalties prescribed by law, be punished by a fine of not less than \$50, nor more than \$2,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

"Sec. 3. This Act shall take effect from the date of its enactment."

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SEES NAZI CENSORSHIP PARALLEL IN U. S.

Recent denials by members of the new Federal Communications Commission that there has been any censorship of radio in the United States met with vigorous assertions to the contrary with the publication on Thursday (Jan. 10) of the current issue of the Annals of the American Academy of Political and Social Science. The issue contains two articles bearing on the subject, one written by Dr. Dressler-Andress, President of the German Broadcasting Chamber, and the other by Louis G. Caldwell, formerly General Counsel of the Federal Radio Commission (the predecessor of the present Commission), and now Chairman of the Special Committee on Administrative Law of the American Bar Association.

In terms that are frank to the point of bluntness, the German author describes the aims and purposes of his country's broadcasting system under the Hitler regime. "Radio today", he says, "is the representation of a state before all the world.* * * The development of radio, among other countries and in Germany especially, proves that broadcasting is and must be the means to an end." When the Nazi party seized the governmental power, he explains, it "made the radio the all-embracing instrument for proclaiming its theses which were to be binding for everybody", and, inferentially, denied access to the microphone to all persons holding views not in accord with those of Hitler and his lieutenants. The directing board "purposely made the fulfilling of political aims its main task" and, neglecting or subordinating the artistic and cultural programs for which the German broadcast stations were formerly justly noted, used the radio "for nothing else than the creation of a united political will." Political broadcasts by which this was done were in the nature of reports by the government on its activities and measures and "a systematic campaign of explaining its plans and purposes, in the form of a direct talk by the Leader to every single member of the Nation." Pointing out that in the United States President Roosevelt spoke over the radio 26 times in the year 1933, the German author asks rhetorically, "has not America put its radio at the service of the Government?"

Approaching the subject of radio censorship from an entirely different angle, Mr. Caldwell's article asserts that the power heretofore claimed and exercised by the Federal Commission is such that, if a state of national hysteria should set in, "little short of a miracle can prevent at least the partial equivalent of what has happened to the German broadcasting system." In the absence of a state of hysteria, he concedes, only a few persons, commonly regarded as extremists, have been or will be persecuted for the free expression of opinions. He argues, however, that "the test is not whether there is now any visible governmental tyranny over the expression of opinions", and that the real test is whether the governmental agency has power to impose a restraint on free speech by radio. From this point of view, "broadcasting", he declares, "has no immunity in

time of war, and in time of peace must be content in the main with lip service to the principle instead of the principle itself."

So far as wartime is concerned, he points out that the Communications Act expressly confers power on the President to close down any station and to confiscate its equipment merely upon proclamation "that there exists war or a threat of war or a state of public peril or disaster or other national emergency", that this power is arbitrary and unqualified and that the President need give no reason for his action. In view of the many recently enacted statutes and Presidential proclamations reciting that a national emergency now exists, the words "or other national emergency" in the statute have implications which, ot put it mildly, are disturbing.

Most of Mr. Caldwell's article, however, is devoted to a comparison between the rights of newspaper publishers under the Constitutional guaranty of a free press and the rights of broadcasters under the sister guaranty of free speech, in time of peace. As the principal basis for comparison, he takes the subject of censure (including defamation) of public men, that is, public officials, candidates for public office and generally men identified with issues and institutions of public interest.

After showing that, as a result of the Supreme Court's decision in the famous Minnesota Gag-Law Case, a newspaper may not be suppressed for publishing matter defamatory of public men (although, of course, the publisher may be liable in damages or even to criminal penalties if the matter is untrue), he says:

"yet a broadcasting station can be put out of existence and its owner deprived of his investment and means of livelihood for the oral dissemination of exactly the same language."

He reviews at length several cases in which this was actually done by the now defunct Federal Radio Commission, to whose powers the Federal Communications Commission has succeeded, and two cases in which such actions by the Commission were upheld on appeal to the courts.

The way in which this is done, he explains, is by the Commission's refusing to renew a broadcasting license on the ground that speeches previously made over the station do not meet the test of "public interest, convenience or necessity", the standard prescribed by Congress for the guidance of the Commission. This has been successfully accomplished in the face of an express statutory provision by Congress forbidding the Commission to exercise any power of censorship over radio programs and forbidding any interference with the right of free speech.

Although the statute permits a maximum license period of three years, the Commission limits broadcast licenses to six months so that twice a year every broadcaster must apply for the right to continue in business and, in connection with the

application, may be required to show that his programs have been such as to meet the Commission's approval. If he is unsuccessful, his application is denied and he must close down his station.

The known existence of this power, he says, is bound to have - has already had - incalculable consequences. "One immediate and visible consequence is that it forces the broadcasters themselves, or at least the more timorous among them, to exercise a private censorship over the speeches of those who use their facilities." A second consequence of the present state of the law is that the broadcaster "is effectively deprived of a means of protection without which no constitutional guaranty is more than a sentiment", the right of effective judicial review by the courts of the United States. A third consequence "is that the guaranty of the freedom of speech has ceased to keep pace with the progress of science." In other words, "freedom of speech still exists for the obsolescent public platform, but not for the great means of mass communication that is replacing it."

In closing, Mr. Caldwell calls attention to the fact that "Broadcasting was born in an age greatly resembling that which saw the birth of the press - an age of great social and economic changes and a marked tendency to concentrate power in the executive."

The effect of these articles in Washington will be watched with considerable interest, particularly since certain members of the Commission have been at such pains recently to disclaim any exercise of censorship over broadcasting. In a radio address over a nation-wide hook-up as recently as December 8th last, Commissioner Thad H. Brown, Vice-Chairman of the Broadcast Division of the Commission, declared that any charge of censorship of radio is "sheer bunk", and two months earlier, on September 11th, Commissioner Irvin Stewart, Chairman of the Telegraph Commission, declared that any such charge is "poppycock". In view of the actual decisions of the Commission cited and quoted by Mr. Caldwell, it remains to be seen whether the Commission will repudiate its former rulings or whether these particular Commissioners do not regard censorship as being involved when a broadcaster is put out of business because of speeches which have been made over his station.

The issue of the Annals in which the two articles appear is, according to the statement of the National Association of Broadcasters, which organization issued the above statement, entirely devoted to radio in its various aspects. It was produced under the editorship of Dr. Herman S. Hettinger of the faculty of the University of Pennsylvania.

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NEELY INTRODUCES AMENDMENT TO COMMUNICATIONS ACT

Senator Neely (D) of West Virginia, introduced the following amendment yesterday (Thursday) relating to costs in radio proceedings before the Federal Communications Commission:

"That Sec. 309 of the Communications Act of 1934 be amended by adding at the end thereof, the following section:

"(c) In any proceeding before the Commission upon an application which involves a contest with the owner or owners of any existing radio station for the use of all or any of the facilities of such stations, if the Commission dismisses the application or in any other manner denies the relief sought by the applicant, it shall, in its order of dismissal or denial, direct the applicant to pay to the owner or owners of the station, all reasonable counsel fees and other costs which such owner or owners may have expended or incurred in resisting such application. Any such order for the payment of counsel fees or other costs may be enforced in the same manner as an order for the payment of money under Section 407."

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16 ADVERTISERS USE DAILY'S "RADIO LOG"

A means of developing revenue from the smaller radio users is being tried out by the Los Angeles Times, the first appearance of the feature in a recent Sunday issue bringing copy from 16 advertisers. This is through the publication of a supplementary radio log on the radio page each day, space in which is open to any station or advertiser at line rates.

The plan is similar to one developed by an eastern advertising agency, except that this is handled directly by the newspaper, and instead of catering to programs on the national hook-ups, provides a means by which the quarter-hour and half-hour programs on small stations may be brought to the attention of the listener.

The listings are classified as to hour, and list the station, the kilocycle, the name of the program and any other information about it which the advertiser desires. A minimum of three lines is required. It does not conflict with the Times' regular "Dial", in which are listed, hour by hour, the programs of all local stations. The "Dial", however, does not name sponsors, nor give any information on recorded programs except to indicate their type. The new "Log", therefore, is being well-received by small advertisers and the small station operators, many of whom turn leads over to the newspaper.

The rate charged is based upon the regular display inch rate. Some figuring was done to determine how much waste there would be from the headings, etc., and the rate was then increased by the same amount to bring the same revenue from the space occupied by the log as would be received from the same amount of display space.

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ABS SEEKS NEW OPERATING CONTRACT

Station WMCA in New York City will cease to be operated by the Federal Broadcasting Corporation effective midnight, Saturday, January 12th. The stockholders and directors of the Federal Corporation voted unanimously last Tuesday to terminate the contract with Knickerbocker Broadcasting Company, licensee of the station.

WMCA has been the key station of the American Broadcasting System since the new major network was organized in October. ABS is now conducting negotiations with the Knickerbocker Company with the view to continuing WMCA as the New York outlet.

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WESTINGHOUSE GIVES UP MORE RCA HOLDINGS

Directors of the Westinghouse Electric & Manufacturing Company have declared a dividend consisting of one-quarter of a share of common stock of the Radio Corporation of America for each share of preferred stock and of common stock of the company, payable on Feb. 18 to holders of record of Jan. 21.

In view of the preferential rights of the preferred stock of the company, the Directors declared also an optional dividend of \$3.50 a share on the preferred stock, the holder having the option to accept such cash dividend in exchange for the quarter share of Radio Corporation. This dividend, including the optional, constitutes as to holders of the company's preferred stock full payment of preferential dividends for 1935, the announcement said.

On Feb. 18, when the distribution of Radio Corporation stock is made, full information will be given by the company with regard to handling fractional receipts and also with respect to the exercise by holders of preferred stock of the right to the optional dividend. The company advised no action need be taken prior to Feb. 18 by holders of preferred shares with reference to the optional dividends.

The distribution will virtually exhaust the holdings by Westinghouse of Radio Corporation common shares. Westinghouse and the General Electric Company held at one time 2,842,950 and 5,188,755 common shares of Radio Corporation, respectively. Both companies were ordered in the consent decree, which terminated the United States Department of Justice suit against the "Radio Group" on Nov. 21, 1932, to distribute or otherwise dispose of their Radio holdings.

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TREADWAY MANUFACTURERS' TAX BILL REINTRODUCED

Reintroducing, with very few changes, the so-called "manufacturers' excise tax" bill which was submitted to Congress in the Seventy-Second Congress by the Ways and Means Committee, Representative Treadway (R), of Massachusetts, said:

"At the rate of $2\frac{1}{4}$ percent, with food, clothing, and medicine exempted, that bill would raise \$450,000,000. As things are, with the administration spending billions of dollars, \$450,000,000 will not go very far toward balancing the Budget. Nevertheless, the manufacturers' excise tax is a fair form of taxation, and one that I commend to the people of the country for careful study.

"The bill was not accepted by Congress, and since then many States have adopted a State sales tax. As far as I know of the various State sales taxes, they are all different from the manufacturers' excise tax, which is a wholesale tax, so that in a way they do not conflict. I have added a section to this bill which will give an opportunity for consideration of that point - whether or not the Federal Government should cooperate with the States in allocating a certain sum to States to be used in place of the State sales tax. I am not saying that I advocate it, but I do think it is well worth the consideration of the House."

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EXCEPTIONS TAKEN BY W. U. AND POSTAL ON TELEGRAPH FRANKS

Exceptions have been filed by Western Union and Postal with regard to the proposed rules covering the issuance of telegraph franks.

"The Western Union Telegraph Company respectfully excepts to the following proposed rules covering the issuance of telegraph franks:

(1) Rule 1, insofar as it restricts the right of the Western Union Telegraph Company to issue franks to officers, agents and employees of common carriers not subject to the Communications Act of 1934 and to their families .

(2) Rule 4(a) insofar as it limits the amount of service calculated at commercial rates, that may be performed under franks issued by it."

The Postal brief was a lengthy one.

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APPLICATIONS GRANTED BY BROADCAST DIVISION, FCC

Jan. 8 - WNBZ, d/b as Smith & Mace, Saranac Lake, N. Y. C.P. to make changes in equipment and increase day power from 50 to 100 watts; WGH, Hampton Roads Broadcasting Corp., Newport News, Va., C.P. to install new equipment and increase day power from 100 to 250 watts; NEW, Wilton E. Hall, Anderson, S. C., C.P. for new station to operate on 1200 kc., 100 watts, unlimited time; WFBC, Greenville News-Piedmont Co., Greenville, S. C., C.P. to install new equipment, increase day power from 1 to 5 KW, and change transmitter site to a location to be determined subject to approval of the Commission; WDAY, WDAY, Inc., Fargo, N. Dak., C.P. to make changes in equipment and increase day power from $2\frac{1}{2}$ to 5 KW; WMT, Waterloo Broadcasting Co., Waterloo, Ia., C.P. to move transmitter from about 5 miles from Waterloo to a site to be determined near Cedar Rapids, and move studio from Waterloo to Cedar Rapids on condition that no increase to interference results to WREC.

Also, WDGY, Dr. George W. Young, Minneapolis, Minn., C. P. to make changes in equipment and increase day power from $2\frac{1}{2}$ to 5 KW; KWCR, Cedar Rapids Broadcast Co., Cedar Rapids, Ia., C.P. to move station from Cedar Rapids to site to be determined near Des Moines, and move studio to Des Moines; KWK, Thomas Patrick, Inc., St. Louis, Mo., C.P. to make changes in equipment and increase day power from $2\frac{1}{2}$ to 5 KW; KGKF, Hilliard Co., Inc., Scottsbluff, Neb., C.P. to make changes in equipment and increase day power from 100 to 250 watts; KFXD, Frank E. Hurt, Nampa, Idaho, C.P. to make changes in equipment and increase day power from 100 to 250 watts; KPQ, Westcoast Broadcasting Co., Wenatchee, Wash., C.P. to move station locally and make changes in equipment and increase day power from 100 to 250 watts; WOL, American Broadcasting Co., Washington, D. C. modification of C.P. to extend completion date from Jan. 15 to May 15, 1935; KGW, Oregonian Publishing Co., Portland, Ore., modification of C.P. increasing day power from $2\frac{1}{2}$ to 5 KW and extending commencement date and completion date.

Also, WJEJ, Hagerstown Broadcasting Co., Hagerstown, Md., license to cover C.P., 1210 kc., 100 w. daytime only; WLVA, Lynchburg Broadcasting Corp., Lynchburg, Va., license to cover C.P. 1200 kc., 100 watts night, 250 w. day, unlimited time; WDOD, WDOD Broadcasting Corp., Chattanooga, Tenn., modification of license to increase day power from $2\frac{1}{2}$ to 5 KW; KFSG, Echo Park Evangelistic Assn., Los Angeles, Cal., modification of license to increase day power from 500 w. to 1 KW; KRKD, Radio Broadcasters, Inc., Los Angeles, Cal., modification of license to increase day power from 500 w. to 1 KW; WLIT, Lit Bros. Broadcasting System, Inc., Philadelphia, Pa., consent to voluntary assignment of license to WFIL Broadcasting Co.; WFI, WFI Broadcasting Co., Philadelphia, Pa., consent to voluntary assignment of license to WFIL Broadcasting Co.; WIOD, Isle of Dreams Broadcasting Corp., Miami Beach, Fla., consent to transfer of control of Isle of Dreams Broadcasting Corp. from Jesse H. Day to Metropolis Publishing Co.