

HEINL RADIO BUSINESS LETTER

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No. 797



CONTENDS FCC REGULATIONS FORCE PRIVATE CENSORSHIP

Declaring that broadcasting is burdened with a real, though somewhat elusive, censorship and citing the fact that four stations have been closed down for objectionable utterances - KVEP, Portland, Ore., owned by William B. Schaeffer; KFKB, Milford, Kans., Dr. Brinkley; KTNT, Muscatine, Ia., Norman Baker, and KGEF, Los Angeles, Rev. Schuler - Louis G. Caldwell, first General Counsel of the old Radio Commission, addressing the American Academy of Political and Social Science, declares that the Federal Communications Commission 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. Mr. Caldwell contends that they feel it necessary to require advance submission of the manuscripts of proposed speeches and to scrutinize them carefully for matter which might be deemed objectionable by the Commission.

"The guarantee of the freedom of speech has ceased to keep pace with the progress of science", Mr. Caldwell said. "The Court of Appeals suggested that a speaker is perfectly free to indulge in his strictures upon the characters of men in public office anywhere except over a broadcast station. That is to say that freedom of speech still exists for the obsolescent public platform, but not for the great means of mass communication that is replacing it. This is but another way of saying that the freedom of speech (in its true sense of the right of the public not to be deprived of unobstructed avenues for the communication of ideas) has failed to keep abreast of the freedom of the press, and the latter henceforth must carry the torch alone.

"I am confident that if the reader will examine the contents of the issues of the Saturday Evening Press involved in the case of Near v. Minnesota, and compare them with those involved in the four radio cases I have referred to, he will concede that the following conclusion is unassailable: 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 language which, if printed in a newspaper, is protected by the First Amendment to the Constitution against exactly the same sort of repression."

Suggesting remedies, Mr. Caldwell said that Congress can contribute greatly by amending the Radio Act so as to eliminate the arbitrary power of the Government in time of war or of emergency, and specifically to exclude consideration at any time of broadcast programs and particularly speeches, as well as to negative any invasion of the jurisdiction of the Federal Trade Commission over unfair methods of competition, of the National

Recovery Administration and the Federal courts over code violations, or of any other Federal or State agency.

"The matter of obscene, indecent, or profane language should be left to the criminal laws of the States; medical charlatanry should be left to the State medical practice acts", he continued. "Language which is not illegal within a State should not become a crime by the accident of crossing the State boundaries. If, however, any of these matters are to be prohibited by Federal law, let them be treated solely as crimes, punishable by fine or imprisonment, and not as a cause for deprivation of license."

"The cause of justice would be substantially advanced if the term of license for broadcast stations were increased to the full maximum of three years now permitted by the law (and this term might well be further increased by Congress); and if the Commission, in its discipline of stations, would employ revocation proceedings (instead of confining its actions to renewal applications), so that the Government would have to sustain the burden of alleging and proving specific misconduct, and would relieve the citizen of the burden of proving himself innocent.

"There are, however, deeper roots than any of these remedies will reach. The phrase 'public interest, convenience or necessity' has proved to be the Achilles' heel by which a serious wound has been inflicted on the First Amendment to the Constitution. But the type of legal machinery employed in radio regulation, like the type employed in the dispensing of second-class mail privileges, is such as to strip away almost all armor of defense against the nullification of constitutional guaranties. In explaining this, let me again make it clear that I am discussing the power, and not any actual conduct, of the Commission.

"The Commission involves so complete an amalgam of executive, legislative, and judicial powers, is so little subject to judicial control, and, as the dispenser of licenses, wields so powerful a weapon to gain its ends, that inevitably there is free play for the achievement of arbitrary and unauthorized purposes. The safeguards of judicial independence and isolation from extraneous influences, which centuries of experience have thrown around our courts, are lacking in such a combination. The license system is the machinery of government thrown into reverse gear; the servant becomes the master."

"The license system seems necessary on the technical side of radio regulation; in any event, it is not likely to be abandoned. But it is not necessary that the government agency, which as legislator make the rules and as prosecutor attempts to secure a conviction, should also sit as judge. Cases involving the rights of radio licensees, and particularly cases of discipline, should be heard and decided by an independent tribunal such as was intended under the Radio Act of 1927 as originally enacted."

"The undeniable advantages of administrative machinery in certain fields of regulation (including radio) where the continuous supervision of experts with regulation-making power is of value, should not blind us to the ever present necessity for proper checks and restraints on governmental authority. We may not fear (and I do not) that, on the plea of national emergency, our present President would in time of peace close down any broadcast station. Yet, there are other persons who, if they succeeded to the office, might not justify the same confidence. Similarly we may not fear the conduct of the present members of the Federal Communications Commission, but we have a right to be concerned over their possible successors."

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BILBO'S SYKES DEPTH BOMB PROVES DUD

Senator Bilbo, of Mississippi, heralded as "one who would raise more hell in the Senate than Huey", and who has repeatedly said that he would spend his entire time in the Senate in an effort to oust Judge E. O. Sykes from the Communications Commission cooled off to such an extent when the matter actually came up in the Senate that all he did was to have some correspondence pertaining to the case inserted in the Congressional Record presumably for "home consumption".

"I most respectfully request that the Record show that I registered my vote against the confirmation of Judge Sykes", Senator Bilbo said mildly. "I am willing to concede that with the facts and evidence before the committee possibly this was the only course the committee could pursue, but I am forced to entertain the strong belief that if the committee could have made a thorough investigation of all the acts of the old Radio Commission, and could have known how the gentleman in question has discharged the duties of his office in every respect, there would be a different story to tell.

"In explanation and justification of my action and vote in this matter, I respectfully ask unanimous consent to have printed in the Record at this point my formal and written statement presented before the committee."

As a result, the statement which Senator Bilbo made to the Interstate Commerce Committee making various charges against Judge Sykes, a fellow Mississippian, the main allegation of which was that the latter had worked against his election, a telegram to President Roosevelt from a former employee of the Radio Commission who credited his discharge to Sykes, and other correspondence were printed in the Congressional Record covering about 2½ pages, agate type.

Following this, Judge Sykes was confirmed by the Senate for a 7-year term, dating from last July, without even taking a record vote.

Previously the other five Commissioners had been confirmed the only debate being occasioned by the clerk leaving out the middle initials of Commissioners Case and Walker.

"His full name is Norman S. Case", said Senator Metcalf, of Rhode Island. "Through the Secretary of the Senate I have received from the President permission to have that mistake corrected. I ask to have the mistake corrected and the letter 'S' incorporated in the name."

"There is also a mistake in the name of the nominee just read", Senator Wheeler echoed. "The full name should be Paul A. Walker. As in the previous case, in a communication received from the President of the United States through the Secretary of the Senate, I have received permission to have that mistake corrected. I ask to have the mistake corrected, and the initial 'A' incorporated in the name."

Commissioner Case was confirmed for a two-year term from last July, Commissioner Stewart for a three-year term, Commissioner Case a four-year term, Commissioner Walker a five-year term, and Commissioner Thad Brown, six years. Commissioner Prall had previously been confirmed in serving the unexpired term of Hampson Gary and will be up for reappointment next July.

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HOUSE COMMITTEE ALSO APPROVES A. T & T. INQUIRY

Following closely upon similar action by the Senate Interstate Commerce Committee, the House Committee on Interstate and Foreign Commerce approved a resolution authorizing an investigation of the American Telephone & Telegraph Company.

The measure, by Committee Chairman Rayburn, of Texas, would direct the Commission to look into reasons for what was termed the general failure to reduce telephone rates and charges during the years of declining prices. It also would investigate the effect of monopolistic control upon the reasonableness of telephone rates and charges, upon methods of competition with independent telephone companies, and upon the character of service given.

Of special interest to broadcasters will be that charges for telephone lines used in network programs and public address systems will be gone into.

Enabling legislation is expected to follow in both the Senate and the House at an early date.

YEAR'S RADIO ADVERTISING CLIMBS TO \$72,887,169

The total broadcast advertising in 1934, as estimated by the National Association of Broadcasters, amounted to \$72,887,169 and constituted a gain of 27.0% above the estimated gross time sales of the medium for the preceding year. Advertising revenues of the industry equalled, if they did not actually exceed the previous peak year of 1931, when, according to estimates by the Federal Radio Commission, corrected for duplications, the total gross revenues ranged between \$70,000,000 and \$73,000,000.

The 1934 report of broadcast advertising volume makes available for the first time comprehensive data regarding all forms of radio advertising for a full calendar year. Established in July, 1933, the statistical reports of the National Association of Broadcasters constitute the only source where information is available for national and local non-network and regional network advertising, in addition to the usual national network figures. The appreciation of the officers and board of the Association is extended to those stations whose cooperation has made possible the compilation and publication of these statistics.

National network advertising experienced the most rapid rise of any portion of the broadcasting structure. Gross time sales by national networks exceeded the 1933 level by 35.3%, and were 9.2% greater than the volume of advertising experienced during the previous peak year of 1932. Regional network volume declined slightly during the year.

Local broadcast advertising, on the other hand, failed to register any gains. Gross time sales of this class of business were 3.2% less during the last six months of 1934 than during the corresponding portion of 1933.

Total volume of broadcast advertising remained comparatively unchanged in December as compared with the preceding month. Gross time sales of the medium amounted to \$7,176,211, and were 8/10 of one per cent less than in November.

National network advertising continued to gain, rising 1.9% above the November level. National spot volume declined 6.0% as compared with the previous month, while local broadcast advertising decreased 1.9%. At least a portion of these declines was in the nature of a seasonal trend. There was a marked decline in regional network volume, due to a cessation of political advertising.

December broadcast advertising exhibited a marked improvement over that of the same month of 1933. Gross revenues of the medium were 16.6% greater than in December 1933. National spot volume registered the greatest increase, standing 30.3% above the level of the same period of the previous year. National network volume was 20.4% greater than during December 1933, while local broadcast advertising remained at practically the same level. Regional network advertising declined somewhat.

SHEPARD NEW NAB MASSACHUSETTS CHAIRMAN

At a meeting of Massachusetts radio executives recently held in Boston, the Massachusetts Committee of the National Association of Broadcasters was organized.

Officers of the Committee elected were John Shepard, 3rd, President of the Yankee Network, Chairman; J. J. Storey, Manager of WTAG, Worcester, Vice-Chairman; and A. S. Moffat, President of WMAS, Springfield, Secretary.

The purpose of the formation of the Massachusetts Committee is to cooperate with the National Association of Broadcasters in legislative and administrative matters that will affect the interests of the broadcasting industry in general and in Massachusetts in particular. The Committee's activities will also serve to bring the heads of the several Massachusetts radio stations together at frequent intervals for the discussion of important problems in the industry.

The organization of this State Committee is a part of the present trend in building separate departments of the N.A.B. in the several States. These sub-divisions are being formed with the assistance of Philip G. Loucks, Managing Director of the N.A.B., who was in Boston to attend the meeting. Committees have already been formed, or are in the process of organization, in about 10 other States, and others will follow shortly.

Aside from the officers enumerated above, the following Massachusetts radio executives, who constitute the Massachusetts Committee, were present at the organization meeting:

J. A. Holman, WBZ, Boston; Joseph Groce, WEEI, Boston; R. L. Harlow, WAAB, Boston; Al Pote, WMEX, Boston; Robert Donahue, WLLH, Lowell; E. E. Hill, WORC, Worcester; Irving Vermilya, WNBH, New Bedford; F. M. Maddix, WBSO, Wellesley; and W. T. Welch, WSAR, Fall River.

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CANADA'S HEALTH TALK POLICY

Radio Station CKUA, the University of Alberta, Edmonton, Alberta, presented last month, a program entitled, "Venereal Diseases - Prevention and Control." The speaker was Dr. Harold Orr, Director, Social Hygiene Division, Provincial Department of Health. The program was given at 2 P.M. and was presented not only by the University station, but by stations CFAC and CJOC.

"This action by the Canadian authorities is in strong contrast to that of the Columbia Broadcasting System", the National Committee on Education by Radio comments. "It will be recalled that on November 19, 1934, Columbia barred a similar broadcast which was to have been given by Dr. Thomas Parran, Jr., New York State Commissioner of Health. The details of this instance of censorship by CBS were related in the December 6, 1934, issue of Education by Radio."

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:::::BUSINESS LETTER NOTES:::::
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An amended public utility tax bill which would extend a 3 per cent city tax to radio broadcasting companies has been introduced in the Board of Alderman in New York City. The 3 per cent tax would apply to the gross profits of radio stations. Radio executives have always held that virtually all their business is interstate commerce, and therefore not liable to taxation by the city.

No time has as yet been set for the Government's anti-trust action against the American Society of Composers but it is believed the trial will not begin much before April.

The Federal Communications Commission has been notified that Station WLAC, of Nashville, has been sold by the Life and Casualty Company in that city to J. Truman Ward, formerly an officer in that company and now President of the National Association of Broadcasters.

Mr. Ward will serve as President and Treasurer of the new operating company, WLAC, Inc.; F. C. Lowell, Jr., will be Vice-President and Secretary, and W. F. Carpenter, General Counsel. Mr. Lowell has served for some time as Production Manager of the station. WLAC will continue to be a part of the Columbia network.

Mrs. A. Vic Donahey, wife of the Senator from Ohio, and Mrs. Frank E. Mason, of New York City, wife of Vice-President Mason of the National Broadcasting Company, were the guests of honor at a luncheon given in Washington by Mrs. Thad H. Brown, wife of the Federal Communications Commissioner, at the Shoreham Hotel. Mrs. Mason is visiting Mrs. Brown.

Other ranking guests included Mme. Alfaro, wife of the Minister of Panama; Mme. Djalal, wife of the Minister of Persia; Mrs. Charles L. McNary, wife of the Senator from Oregon; Mrs. Robert J. Bulkley, wife of the Senator from Ohio, and Mrs. James J. Davis, wife of the Senator from Pennsylvania.

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Drastic bills intended to wipe out public utility holding companies within five years were introduced in the House and Senate by Chairmen Rayburn and Wheeler, of the House and Senate Interstate Commerce Committees, respectively.

A special broadcast to Poland honoring the memories of Kosciuszko and Lincoln on their common birthday, Tuesday, February 12 (WEAF network 11:45 A.M., EST), will mark the opening of an exhibit of radio equipment donated by the Polskie Radjio and the Polish Government for display in the International Radio Fair now being staged in Radio City.

The Polish Ambassador, Stanislaw Patek, will speak and the broadcast will include a description of the exhibit, the first of a series of foreign displays at Radio City to which European countries will contribute broadcast equipment associated with each nation's radio history.

"Telephone men were not startled by the bill proposing an appropriation of \$750,000 for the FCC to permit an investigation of the A. T. & T. and other companies, regarding this simply as a means of restoring the funds of the Commission to the amount originally requested, which had been cut down", the New York Times comments. "A poverty-stricken Commission is generally unsatisfactory from every standpoint, since it must often exercise guesswork instead of ascertaining facts."

In the reports of their security holdings to the Federal Security and Exchange Commission, Powell Crosley, Jr. is listed as having \$2,000,000 in the Crosley Radio Corporation, and Gwendolyn A. Crosley, \$1,700,000.

Mr. Louis G. Caldwell's entire address on the subject "Freedom of Speech and Radio Broadcasting", from which excerpts were quoted on pages 2, 3 and 4 of this issue, has just been printed and comprises a 30-page booklet.

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FCC SEEKS TO KEEP INTERNATIONAL COMMUNICATIONS CONTROL

In the opinion of the Federal Communications Commission, legislation, such as it has suggested in its recommendations with regard to international communications, is essential if the control of these communications is not to pass out of American hands.

The Communications Commission recommends that new communication circuits between the United States and any foreign country shall be opened only after the Commission has found that American interests will be protected and served. The Commission would not approve the opening of any circuit upon terms which are less favorable to American interests than the most favorable terms upon which the same communication service is being rendered by an American company.

The Commission gives the following reasons for its recommendations:

"Competition has its worst effects in the field of foreign communication. Communications in most foreign countries are handled as a monopoly. Where the monopoly has two competing American companies offering to establish circuits, it can drive progressively harder bargains to the detriment of American interests. As existing contracts expire or are terminated, it will undoubtedly develop that those which replace them will be upon terms much more adverse to American interests.

"The proposed amendment would give the Commission some degree of control over this situation. Where one American company has an established circuit to a foreign country, a competing company wishing to establish a similar circuit will be tempted to take less favorable terms than the established company. If the establishment of the circuit is subject to the right of the Commission to see that American interests do not suffer, it will be possible for the Commission to keep this generosity to the foreign company from running riot.

"Some American communication companies are affiliated with manufacturing companies in the United States or abroad, and with operating companies abroad. It is thus at least theoretically possible for a contract made by a carrier subject to the Act to be fair on its face and yet have been induced by actions taken or terms made by American or foreign companies not subject to the Act, which are detrimental to American interests. For instance, an affiliated manufacturing company might give equipment free of charge, if the communication company were to receive the right to open a circuit. The Commission's jurisdiction to examine into all the phases of the transaction, therefore, must necessarily extend to persons not subject to its jurisdiction.

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"The proposed amendment will not operate to prevent a lowering of international rates. If an existing contract provides for an equal division of tolls between the American and the foreign company, a new contract providing for a lower rate with the same equal division of tolls would obviously not be contrary to American interests. In practice, the newer contracts have not provided for lower rates; rather they keep the same rates in effect, but they may have been induced by a surrender on the part of the American company of some of its proceeds under the contract."

This, according to an advocate of the recommendations would mean the elimination of toll reductions as an inducement to secure foreign business. If contracts could be secured through offering more efficient service O.K., but monetary splits would be out. The recommendations would also hold for cable.

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NBC HEADS JOIN IN SALUTE TO GOVERNOR COX'S STATION

Two special programs formally welcoming WHIO, Dayton, Ohio, as the 88th station on the coast-to-coast NBC networks, will be broadcast on Saturday evening, February 9. M. H. Aylesworth, President, and Richard C. Patterson, Jr., Executive Vice-President of NBC, will join Will Rogers, Amos 'n' Andy and other radio headliners in greetings to the Ohio station.

At 7:30 P.M., EST, NBC-WEAF network listeners will hear WHIO's formal dedicatory program. Patterson, who will be a guest at the WHIO studios, will extend his greetings to J. M. Cox, Jr., former Governor of Ohio, and owner of the station, who will speak briefly.

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PACIFIC RADIO UNITS ASKED BY AIRLINE

The Pan-American Airways has applied to the Federal Communications Commission for a point-to-point aeronautical broadcasting station to be established at Alameda, Calif., with other stations in Hawaii, Marietta Islands, The Midway Island and Wake Island. Each would have an 1,800-mile radius instead of 300 miles of land stations.

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DECISIONS OF THE BROADCAST DIVISION, FCC

KFIO, Spokane Broadcasting Corp., Spokane, Wash., C.P. to make changes in equipment and move studio and transmitter locally; WPHR, WLBG, Inc., Petersburg, Va., Modification of C.P. to move transmitter to a location $1\frac{1}{2}$ mile, NE of Petersburg, also to extend commencement date to 30 days from this date and completion date to 60 days hereafter; WSGN, R. R. Broyles Furniture Co., Birmingham, Ala., modification of C.P. extending completion date to Feb. 15, 1935; also license covering C.P., 1310 kc., 100 w. night, 250 w. day, unlimited time; WNBR, Memphis Broadcasting Co., Memphis, Tenn., authority to determine operating power by direct measurement of antenna; WHIS, Daily Telegraph Printing Co., Bluefield, W. Va., C.P. to make changes in equipment and increase day power from 250 w. to 500 w.; KMTR, KMTR Radio Corp., Los Angeles, Cal., C.P. to make changes in modulation system; WKRC, WKRC, Inc., Cincinnati, Ohio, modification of C.P. to extend commencement date to Jan. 29, 1935 and completion date to April 29, 1935; WSPA, Voice of S. Carolina, Spartanburg, S. C., modification of C.P. to make changes in equipment; KIT, Carl E. Raymond, Yakima, Wash., modification of C.P. to extend commencement date to Jan. 10, 1935 and completion date to April 11, 1935.

Also, WDAF, The Kansas City Star Co., Kansas City, Mo., authority to determine operating power by direct measurement of antenna; WCNW, Arthur Faske, Brooklyn, N. Y., license to cover C.P., 1500 kc., 100 watts night, 250 w. day, specified hours; WLBZ, Maine Broadcasting Co., Inc., Bangor, Me., license covering C.P. authorizing changes in equipment and increase in day power from 600 w. to 1 KW, 500 w. night, 620 kc., unlimited time; WADC, Allen T. Simmons, Tallmadge, Ohio, license to cover C.P., authorizing changes in equipment and increase in day power from 1 KW to $2\frac{1}{2}$ KW, 1 KW night, 1320 kc., unlimited time; WNBR, Memphis Broadcasting Co., Memphis, Tenn., modification of license to increase day power from 500 w. to 1 KW; WTAW, Agr. & Mech. College of Texas, College Station, Texas, modification of license to change hours of operation to specified hours; WIBW, Topeka Broadcasting Assn., Inc., Topeka, Kans., modification of license to use old 1 KW transmitter as auxiliary when licensed for $2\frac{1}{2}$ KW; KGCX, E.E. Krebsbach, Wolf Point, Mont., modification of license to make changes in specified hours.

Also, KGKO, Wichita Falls Broadcasting Co., Wichita Falls, Texas, special experimental authority to operate on 1240 kc., 1 KW power, from 1 to 6 A.M. CST, for period Feb. 11 to March 1, 1935; KTAT, KTAT Broadcast Co., Inc., Fort Worth, Tex., special experimental authority to operate on 570 kc., 500 w. from 1 to 6 A.M. CST, period Feb. 11, to March 1, 1935; W9XBY, First National Television, Inc., Kansas City, Mo., license to cover C.P. 1530 kc., 1 KW, unlimited time (Exp.-Exp. broadcast.); New - Midland Broadcasting Co., Inc., Kansas City, Mo., C.P. (Gen. Exp.) 31600, 35600, 38600, 41000, 86000-400000 kc., 50 watts; also for PortableOMobile, same; also same except $1\frac{1}{2}$ watts power.

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