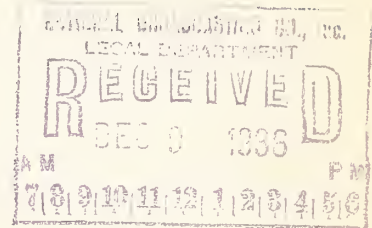


HEINL RADIO BUSINESS LETTER

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December 8, 1936

FTC REPORT SHOWS IMPROVEMENT IN RADIO ADVERTISING

Substantial improvement in radio advertising has been brought about during the past year, according to the annual report of the Federal Trade Commission, just released this week.

Out of 299,334 commercial broadcasts by individual stations and 38,109 by networks, only 19,572 were marked as containing representations that appeared to be false or misleading. This, of course, does not mean that all of these continuities were finally disapproved or led to stipulations.

This proportion of commercial programs questioned by the FTC represents about 6 percent of the whole and is 4 percent under the percentage of continuities marked during the previous year.

It proves a better record than that of the newspapers and magazines; for of 96,939 advertisements examined by the FTC, 9,074, or more than 9 percent, were noted as "containing statements that appeared to be false or misleading."

"The Commission is receiving the helpful cooperation of the nearly 600 active commercial and radio stations and of newspaper and magazine publishers generally", the report stated, "and notes a desire on the part of these broadcasters and publishers to aid the Commission in the elimination of false and misleading advertising."

The FTC's complete review of radio advertising follows:

"The Commission began the review of advertising copy broadcast over the radio at the beginning of the fiscal year 1934-35. At the outset, the Commission, through the Special Board of Investigation, made a survey of all commercial continuities, covering the broadcasts of all radio stations during July, 1934. The volume of returns received and the character of the announcements indicated that a satisfactory continuous scrutiny of current broadcasts could be maintained with a limited force and at small expense, by adopting a plan of grouping the stations for certain specific periods.

"Consequently, beginning with September, 1934, quarterly calls have been issued to individual radio stations according to their licensed power and location in the five radio zones established by the Federal Communications Commission. These returns cover specified 15-day periods.

"National and regional networks, however, respond on a continuous weekly basis, submitting copies of commercial

continuities for all programs wherein linked hook-ups are used involving two or more affiliated or member stations.

"Producers of electrical-transcription recordings submit regular weekly and monthly returns of typed copies of the commercial portions of all recordings manufactured by them for radio broadcast. As the actual broadcast of a commercial recording is not always known to the manufacturer of a commodity being advertised, the Commission's knowledge of current transcription programs is supplemented by special reports from individual stations from time to time, listing the programs of recorded transcriptions with essential data as to the names of the advertisers, and the articles sponsored.

"The combined material received from the individual stations for specified periods, from the weekly returns on regional and national network broadcasts, and from the special transcription reports, furnishes the Commission with representatives and specific data on the character of radio advertising which has proven of great value in its efforts to curb false and misleading trade representations.

"During the last fiscal year, the special board received copies of 299,334 commercial broadcasts by individual radio stations and 38,109 commercial broadcasts by networks, or chain originating key stations. The broadcasts from the independent stations averaged $1\frac{1}{2}$ pages each and from the networks 10 pages each.

"The special board and its staff read and marked about 947,000 pages of typewritten copies during the year, an average of 3,105 pages every working day. Of these, 19,572 commercial broadcasts were marked as containing representations that appeared to be false or misleading. These broadcasts were assembled in 1,314 prospective cases for further review and procedure in instances that appeared to require it.

"In its examination of advertising, the Commission's purpose is to prevent false and misleading representations. It does not undertake to dictate what an advertiser shall say, but rather indicates what he may not say. Jurisdiction is limited to cases which have a public interest as distinguished from a mere private controversy, and which involve practices held to be unfair to competitors in interstate commerce."

Stipulation procedures were instituted in only 823 cases for both printed and broadcast advertising. The FTC negotiated 247 stipulations, and settled and closed by its various methods of procedure a total of 883 cases. The special board recommended that complaints be issued in 35 cases for failure to execute stipulations and in 9 cases for violating stipulations. In eight cases the board recommended that complaints be issued without giving the advertisers an opportunity to stipulate because of gross deception or danger to the public involved in the practices in which they were engaged.

In 584 cases the board recommended filing the assembled data and closing the cases without prejudice to the right of the Commission to reopen them at any time the facts warranted. A few of these cases were closed because the Post Office Department had issued fraud orders against the respondents concerned. Others were closed because the parties respondent had discontinued advertising or selling without intent to resume, and others because the advertisers were able to justify their claims.

At the beginning of the fiscal year 344 cases were pending before the special board, and at the end of the year 284 cases were pending.

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CRUSE STILL NOT RELEASED BY COMMERCE DEPARTMENT

Despite the fact that the Federal Communications Commission has indicated to Secretary Roper that it desires to appoint Andrew W. Cruse, Chief of the Electrical Division of the Bureau of Foreign and Domestic Commerce, Assistant Chief Engineer of the Communications Commission, Mr. Cruse has not as yet been released by the Commerce Department. There is a rule that one department must consult another government department before taking an employee away from the latter.

Mr. Cruse refused to comment upon the matter but it was learned from another source that Secretary Roper evidently highly pleased with the work of Mr. Cruse had demurred at the suggestion of losing him and was not apparently trying to work out some plan whereby he could be kept by the Commerce Department. The present salary of Mr. Cruse is \$5,800 a year, whereas at the Communications Commission it would be \$7,500.

"Andy" Cruse, although only 38 years old, has had about as wide experience in that length of time as anyone could well imagine. For instance, there are many who didn't seem to know that he was an engineer. As a matter of fact, Mr. Cruse, after taking a course in Electrical Engineering in the Carnegie Institute of Technology, graduated from the United States Naval Academy at Annapolis, resigning two years later to go with the Bell Telephone Company of Pennsylvania as Toll Development Engineer. He then accepted the position as Commercial Engineer with the International Telephone & Telegraph Corporation and was in charge of the inauguration of international telephone service between Cuba and Mexico, Mexico and Canada, and Sandiego and Buenos Aires and Montevideo.

Mr. Cruse was Commercial Engineer for the Cuban Telephone Co. at Habana, General Manager of Station CMC in Habana; General Sales Manager of the Mexican Telephone Co. in Mexico City. He was subsequently General Sales Manager for the Postal Telegraph Co. in New York City and subsequently became Assistant to Vice-President to the International System. He resigned in 1933 to accept his present position with the Department of Commerce.

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12/8/36

PAYNE SUES BROADCASTING FOR \$100,000 ON LIBEL CHARGE

Federal Communications Commissioner George Henry Payne this week filed a suit for \$100,000 damages against Martin Codel, publisher, Sol Taishoff, editor, and Broadcasting magazine in the U. S. Court for the District of Columbia. The Commissioner alleged that he was libelled in the magazine in an editorial published on October 15, 1936.

While attention was called to frequent and previous attacks on Commissioner Payne in a memorandum, the editorial "Strange Interlude", concerning the Commissioner's questioning of Powel Crosley, Jr., owner of WLW, Cincinnati, at the October broadcast hearing, was the only instance of alleged libel cited in the suit.

The suit recites the Crosley incident and states that Mr. Payne questioned the WLW owner "with reference to various criticisms and complaints which had been officially received by the plaintiff as a member of the said Commission".

The interrogations were "in connection with and for the purpose of effectuating the business and purpose of said hearing, and were confined and germane to the statement made by said Mr. Crosley and to the said complaints and criticisms aforesaid, and was in every way proper, lawful, and relevant to said proceedings and said hearing before the Commissions."

The complaint then states:

"That the said defendants on October 15, 1936, with malicious intent to injure this plaintiff in his good name, fame and credit, both as a private citizen and as an employee and official of the United States, published and caused to be published on page 50 of the issue of October 15, 1936, of the said 'Broadcasting and Broadcast Advertising', a false, malicious, scandalous, defamatory and libelous publication concerning this plaintiff and his work and duties as a Commissioner upon the Federal Communications Commission, particularly with reference to the statement and interrogation of the said Crosley, under the circumstances and occasion, and at the time and place, hereinbefore set forth, a true copy of which said publication is in matter and form as follows, to wit:

STRANGE INTERLUDE

We would be remiss in our editorial obligation if we did not take notice of perhaps the most brazen piece of political demagoguery we have ever seen perpetrated at a public hearing on radio. We refer to the baiting of Powel Crosley, Jr., WLW head, by Telegraph Commissioner George H. Payne, publicity-seeking New York politician, during the FCC allocation hearing. We are not trying to defend Mr. Crosley, for he demonstrated he did not need it. But we do like to see fair play.

First, be it known, Telegraph Commissioner Payne had the bureaus of Washington newspapers and press associations notified that he was going to put on a show with Mr. Crosley on the stand and that front page news would follow. He has done that before.

The issues raised by the politico-commissioner (meaning this plaintiff) had not the remotest connection with the subject of allocations or super-power. (See report elsewhere in this issue). It was simply an attempt to throw mud for the purpose of getting newspaper headlines. It was bureaucracy at its worst, perpetrated by a member of the FCC (meaning plaintiff) who has nothing to do with broadcasting. Nominally his duty is that of a member of the Telegraph Division (meaning plaintiff), but apparently he prefers to meddle in broadcasting because of its greater publicity possibilities.

In justice to the other members of the FCC, we trust that it will not be judged too harshly for the outlandish, utterly uncalled for performances of a member (meaning plaintiff) who evidently has forgotten not only his function of public office, but, judging from the sharp temper of his remarks, also the behavior of a gentleman. For the broadcasting industry, we can only bow in gratitude that this man (meaning plaintiff) does not serve on the Broadcast Division.

"That the said publication of the said Broadcasting Publications, Inc., the issue of October 15, 1936, was published, mailed and circulated by the defendants in great numbers throughout various states in the United States and to various persons in the District of Columbia, by mail and otherwise, for the express purpose of wilfully, wrongfully, maliciously and unlawfully attacking, impugning and defaming the character and reputation of the plaintiff, and bringing him into public and private contempt, ridicule and disrepute, both as a private citizen and a public official, and particularly with respect to the work and duties of plaintiff as an official and employee of the United States, as aforesaid.

"That by reason of the foregoing having been done and committed by the said defendants as aforesaid, the plaintiff in his good name, character and reputation as a citizen and as an official and employee of the United States, and as a member of the said Federal Communications Commission as aforesaid, has been greatly and permanently injured by the acts of the said defendants as aforesaid, and by reason of the allegations herein contained is entitled to punitive as well as compensatory damages; and the plaintiff has been damaged thereby in the sum of Fifth Thousand Dollars (\$50,000.00) damages, compensatory, and Fifth Thousand Dollars (\$50,000.00) as punitive damages, or a total of One Hundred Thousand Dollars (\$100,000.00).

"Wherefore plaintiff brings this suit and claims of the defendants the sum of One Hundred Thousand Dollars (\$100,000), besides his costs."

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ORAL ARGUMENT HEARD IN MACKAY-RCA OSLO FIGHT

The Federal Communications Commission on Monday, December 7, heard oral arguments in a rehearing of the petition of the Mackay Radio & Telegraph Company, to open a radio communication circuit to Oslo, Norway, where R.C.A. Communications, In., already has an office.

The rehearing was before the full Commission and constituted an appeal from the FCC's ruling of last Summer denying the Mackay application.

Attorneys for the Mackay company, headed by Howard Kern, general counsel, contended that the Commission's decision would establish a precedent as to whether the Radio Corporation of America was to maintain the only direct radio-telegraph service with Norway and several other European countries.

The telegraph traffic between the United States and Norway is divided among R.C.A. Communications, Western Union, Commercial Cables, French Cable and Mackay Radio (via Denmark) and the Mackay company is applying for permission to duplicate the radio-telegraph service of R.C.A. Communications with Norway.

On behalf of R.C.A. Communications, it was protested by Frank W. Wozencraft, General Solicitor, that the Mackay company, in return for the proposed grant, was offering no cheaper, faster, more accurate or more dependable service; that any traffic which Mackay might obtain would be only by diversion from the present carriers, and that its application "simply constitutes a step in the program through which the International System seeks to increase its already large volume of business by the destruction of its smaller radio competitor, even at the cost of jeopardizing America's control over the foreign radio-telegraph service."

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PUBLISHERS WORRIED BY RADIO LEGISLATION THREAT

A dual threat of legislation being enacted in the coming Congress to prevent newspapers from gaining a dominant hold on the broadcasting facilities of the country is causing the publishers a great deal of alarm but is meeting with favorable comments from most broadcasters.

Senator Burton K. Wheeler (D.), of Montana, Chairman of the Senate Interstate Commerce Committee, is the sponsor of the latest threat, but Representative Wright Patman (D.), of Texas, stated last Spring that he was studying such restrictive legislation.

Whoever introduces the first bill, it is likely that the legislation will arouse a storm of controversy on both sides of Capitol Hill. Public hearings would certainly be held before an attempt is made to enact the proposal into law.

Senator Wheeler holds that the legislation is necessary to prevent the rise of a gigantic monopoly in the dissemination of news in the United States.

"Radio and the newspapers should be divorced", Wheeler declared. "Each is a popular and valuable agency for informing the public and molding opinion. For that very reason they should not be controlled by identical interests.

"There is a growing tendency for newspapers to own and operate radio stations. In hundreds of communities all the information the public gets, either in its newspapers or from its radio broadcasts, reflects the opinion of a single owner.

"This is patently unfair both to the public and to the advertisers, and creates a very ominous situation. Not infrequently the single owner does not serve the public interest. He should have competition. Monopoly of the two most important channels of information is not healthy."

Senator Wheeler said he was still undecided whether he or some one else would introduce the proposed legislation. Regardless of who sponsors it, however, he made it clear the measure will have strong backing both in the House and Senate.

"If Congress or some other Federal agency fails to take steps to halt the monopolistic tendencies of the radio", Mr. Wheeler said, "the people eventually will demand full Government control of the air. I am in favor of doing something immediately to avoid both private and public monopoly."

Mr. Wheeler said he had no doubt about the constitutional right of Congress to keep newspaper publishers out of the broadcasting field, although this has been questioned by private interests.

The Montana Senator explained that he considers special legislation necessary because the Communications Commission will never, on its own initiative, halt the growth of newspaper control over the air waves. More than 180 stations already are owned in whole or in part by daily newspapers. Some 670 stations now hold Federal broadcasting licenses.

Editor & Publisher in an editorial this week charges that "emotion rather than information" has dominated the discussion of the subject.

"The fear of monopoly, for instance, would seem to be purely emotional, for the fact is that less than 30 percent of the existing broadcast facilities are under newspaper control, and not a single charge or a spark of evidence has been brought forward to show monopolistic abuse where such control exists. The media are natural adjuncts. They are not natural competitors, and regulation that essays to make the broadcasting station a means of communication on a par with the printed word does a disservice to the national welfare.

"Considered as a means of news communication, radio is essentially dependent upon newspapers and newspaper-maintained services for the intelligence it broadcasts. Individual local units, barred from newspaper relationships or from networks, as Senator Wheeler seems to intend, are physically incapable of adequate news service. If the great networks are broken up, the broadcasting structure seems destined to become an impotent public nuisance, providing mediocre entertainment, supported by worse than mediocre advertising.

"The outcome of that situation would be a demand for creation of a new relationship, monopolistic, but under government auspices, for broadcasting has become too important an element of communications to permit its decay under unnatural and artificial restrictions.

"Support of radio by advertising has its obvious defects, but the results of the American system are incomparably superior to anything so far developed under foreign government monopolies. The non-network stations, with weak power, small audiences, and a limited field from which to solicit advertising, are more preponderantly commercial than the major chain stations. Many small stations, competing with the local daily and weekly newspapers, deprive the press of vital revenues and weaken its public service ability without offering anything of equal value.

"Monopoly there is, and it might operate against the public welfare, if all newspapers and all radio facilities of a community are in one hand - but we know of no such situation. The FCC has all the power it needs to prevent abuses through this or other causes, and Congress has the power to see that the FCC exercises its authority fairly, fully and without political bias.

"Legislation which would supplant mature discretion in the award of radio privileges, and bar newspapers from acquiring an addition to their facilities, is unnecessary, and probably unconstitutional."

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"BILL" HEDGES TAKES CHARGE OF CROSLY BROADCASTING

William S. Hedges, formerly manager of NBC's operated stations, has been appointed Vice-President in Charge of Broadcasting of The Crosley Radio Corporation, it was announced last week by Powel Crosley, Jr., President. The appointment is effective January 1, 1937.

The appointment of "Bill" Hedges brings together two of the founders of the National Association of Broadcasters which was established in 1923. At the original meeting Mr. Crosley represented station WLW and Mr. Hedges represented the Chicago Daily News station WMAQ, of which he later became president when that station was separately incorporated. Mr. Hedges has been with the National Broadcasting Company for the past five years, joining the company when WMAQ was purchased in November 1931 by NBC. During the five years he has been manager of WMAQ and WENR, manager of KDKA, and has held the position of General Manager of all stations operated by NBC, since April 1934.

Hr. Hedges has been active in the broadcasting industry, having served as President of the National Association of Broadcasters for two terms, as Chairman of its Executive Committee, Legislative Committees and Copyright Committees. In his new work, Mr. Hedges will have complete charge of stations WLW, WSAI, W8XAL and all of the broadcasting activities of The Crosley Radio Corporation. Mr. Hedges, through his constant activities in the industry, of which he is a pioneer having been in it since 1922, is one of the best known men in the industry and will have the best wishes of a great host of friends.

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NEWSPAPERS, NETWORK LINKED IN CALIFORNIA NET

Cooperative operation of a network of radio stations in California owned by Hearst Radio and the McClatchy Newspapers will begin Dec. 29. Six stations will be operated jointly under the plan. The network will be known as the California Radio System.

Stations affected are KYA, San Francisco, and KEHE, Los Angeles, operated by the Hearst organization; and KFBK, Sacramento; KMJ, Fresno; KWG, Stockton, and KERN, Bakersfield owned by McClatchy Newspapers.

In addition, the McClatchy stations will become affiliated with the National Broadcasting Company on the same date. McClatchy Newspapers publish the Sacramento Bee, Fresno Bee, and Modesto Bee.

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12/8/36

FCC ORDER ON PHONE ACCOUNTING SUSTAINED

The "original cost" provisions of the Federal Communications Commission's order for a uniform system of accounting by telephone companies were unanimously upheld by the U. S. Supreme Court on December 7th in an opinion presented by Justice Cardozo.

The "original cost" order, together with one stipulation that certain charges shall be "just and reasonable" and another dividing plants in present use from those held for future use, both likewise sustained, had been fought by the American Telephone and Telegraph Company, thirty-six other companies under the Bell System and seven independents.

They had complained that the orders were "harsh and arbitrary", but Justice Cardozo, in his opinion, denied the allegations as applied to the three rules laid down. Victorious in the suit along with the Communications Commission was the National Association of Railroad and Utilities Commissioners, intervening as representatives of forty-six State regulatory bodies.

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RCA WINS RULING IN TUBE SUIT

The Appellate Division of the New York Supreme Court by unanimous decision denied on Friday last the application of the National Union Radio Corporation, maker of radio tubes, to restrain the Radio Corporation of America from terminating National Union's license to manufacture the tubes.

National Union declared that refusal to grant it the temporary injunction, pending trial of a suit for permanent injunction, would "mean that the National Union would be put out of business without having its day in court." The RCA replied that "the nub of the case is that National Union is not able to do business and pay its debts", and asserted that granting the injunction would cause "irreparable injury" to RCA and to the industry. The Appellate Division rendered no opinion but upheld a previous ruling of Supreme Court Justice Charles B. McLaughlin.

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12/8/36

WOR GIVES EXTRA WEEK'S SALARY TO EMPLOYEES

Alfred J. McCosker, President of the Bamberger Broadcasting Service, Inc., announces that about 150 of the present employees of WOR who have been employed continuously since July 31, 1936, or before, will receive one week's basic salary as a bonus. Those present employees who were employed after July 31, 1936, will receive approximately one-half day's pay for each month worked between August and December 1936. Payments are to be made Thursday of this week.

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RADIO RATES TO HONOLULU, MANILA CUT

A substantial reduction in radio and cable rates between the United States and Honolulu and Manila, together with the introduction of a new Day Letter service between the same points, is announced to take effect on January 7th next, by Mackay Radio, R.C.A. Communications, Commercial Pacific Cable Company, Postal Telegraph-Cable Company and Western Union Telegraph Company.

The new rate for the regular fast service between San Francisco and Honolulu will be 15 cents a word as against the present rate of 20 cents a word, while the new schedule provides a rate of 39 cents a word between San Francisco and Manila compared with 53 cents a word now being charged and proportionate reductions will be made in the code (CDE) and deferred (LC) messages. Corresponding reductions will be put into effect in the other zones in the United States.

The new Day Letter service, which is being instituted in place of the present night letter service now to be discontinued, will offer a much faster service than the night letter and at a very considerable reduction in cost to the public. The rate on this service starts at 4 cents a word between San Francisco and Honolulu and 6 cents a word between San Francisco and Manila, and advances as the zones progress eastward to the Atlantic Coast where new low rates of 8 cents and 10 cents a word, respectively, will be in effect. In all zones there is a minimum charge for Day Letters of \$1.00 to Honolulu and \$1.50 to Manila.

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