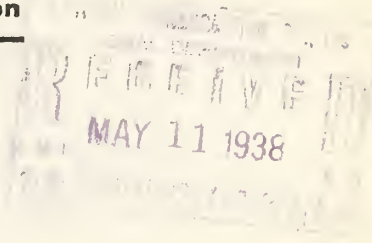


HEINL RADIO BUSINESS LETTER

2400 CALIFORNIA STREET

WASHINGTON, D. C.

CONFIDENTIAL — Not for Publication



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No. 1124

[Handwritten signatures and initials]

May 10, 1938.

WHITE RADIO INQUIRY RESOLUTION IS REPORTED

The Senate Audit and Control Committee reported without recommendation Tuesday the White resolution authorizing the Senate Interstate and Commerce Committee to make an investigation of the broadcasting industry and the FCC.

This action places the question of whether a Senate probe is to be conducted squarely up to the Senate itself. Senator White (Republican), of Maine, is expected to take the floor within a few days and make an appeal for approval of the resolution.

Should an inquiry be ordered, it is unlikely that it would get under way until after Congress adjourns if present plans for a June 1st adjournment materialize.

The White resolution directs the Senate Interstate Commerce, which has previously approved the resolution, to make a special study of the report on the following subjects:

"(1) The cases if any in which the Commission has departed from or has modified the application of its regulations and the engineering and other standards generally observed by it, together with the reasons for each such departure or modification;

"(2) All acts by the Commission which recognize or seem to recognize the right of a licensee to a license or a frequency other than as specified in the terms, conditions, and time of the license;

"(3) Whether the acts and decisions of the Commission in broadcasting cases have been influenced by matters not apparent in the public records;

"(4) The geographical distribution of broadcasting facilities and whether there is an equitable distribution of broadcast service to all parts of the country and, if not, what steps should be taken to provide fair and equitable service throughout the United States.

"(5) The extent to which broadcast stations have been concentrated in the larger communities of the country by transfer of stations from smaller communities to such centers or otherwise;

"(6) The extent to which and the circumstances under which the ownership, control, management, or interest in more than a single broadcast station has passed into the hands of any person or group of persons;

"(7) The circumstances surrounding and the considerations for the voluntary transfer of station licenses or construction permits;

"(8) Instances of the transfer of minority interests in broadcasting-station licenses, and all transactions directly or indirectly affecting the control of such licensees, and whether said transfers have or have not been submitted to the Commission for approval and have received Commission approval or acquiescence;

"(9) The sale price of any broadcasting station in any manner sold and transferred, together with a statement of the fair value of the physical assets and of other property, rights, contracts, and licenses involved in said sales, and in particular the value placed by the parties to the transaction upon the frequency licensed to be used;

"(10) The sale of stock or other securities of any broadcasting stations, of any licensees, or of any person or persons directly or indirectly controlling such licensees, and the valuation put by the person transferring the same upon the station license or the frequency, the power or the hours of operation fixed in the station license, and the circumstances surrounding and the consideration for such sales and transfers and as to the participation in the negotiations for such sales and transfers by any person other than the seller and purchaser, the transferor and the transferee;

"(11) The licensing of broadcast stations to persons other than the owners of the physical equipment, and in particular all cases involving the leasing of transmitting equipment;

"(12) The surrender of control of facilities by licensees, including all agreements to accept proffered programs with or without supervision by the licensee;

"(13) All acts or assertions by broadcast-station licensees which involve the claim to any right or interest beyond the terms, conditions, and periods of the license;

"(14) Whether considerations have been paid or promised to any licensee or permittee for not interposing objection to an application for all or a part of his facilities or for other facilities which could not be granted without disregard for the Commission's rules or its standards except with the consent of such licensee or permittee;

"(15) All cases in which persons, whose applications for the renewal of a broadcasting license have been refused by the Commission, have received from persons licensed to use the facilities for which renewal of license has been refused money or other consideration in excess of the value of the physical equipment taken off the air and sold to the new licensee;

"(16) Cases in which the real parties in interest in any application for broadcast facilities have not been disclosed to the Commission;

"(17) The extent to which holding or other intermediate companies or persons have been employed in the ownership or control of broadcast stations and the effect of such intermediate ownership or control upon the effective regulation of broadcasting;

"(18) The investments by licensees in the stations authorized to be operated by them, including the investment in equipment and in other items of cost;

"(19) The charges for the use of station facilities and the profit or loss resulting therefrom;

"(20) The extent to which broadcast stations are used to build up other businesses or enterprises in which the station licensees or persons financially interested in the licensees are engaged, the extent to which the facilities of broadcast stations are refused or are granted conditionally to competitors of such other businesses or enterprises, and the effect of the ownership and use of such radio facilities upon the businesses of those in competition with the businesses of those having the radio facilities;

"(21) The extent to which broadcast stations are owned or controlled by or are affiliated with newspapers or other media of information or entertainment, and the effect of such ownership, control, or affiliation upon competing newspapers not possessing such facilities and upon the public interest;

"(22) The development and present facts concerning broadcasting networks or chains, including the effects of chain association upon the licensee's control over his station;

"(23) The effect of chain operations upon the financial results and status of chain affiliated stations and independent stations, the ability of the chain owned or affiliated station to render a local service, both sustaining and commercial and the duplication of broadcast programs; and the desirability of special regulations governing chains and stations engaged in chain broadcasting;

"(24) The extent to which licensees of broadcast stations censor or refuse programs offered to them for transmission and the reasons for and the effects of such censorship or refusal;

"(25) The extent to which, the basis upon which, and the times at which broadcast stations carry programs relating to public affairs, education, religion, labor agriculture, charity, and public service generally;

"(26) The extent to which and basis upon which broadcast stations carry programs offered by or on behalf of candidates for public office or programs relating to controversial subjects in the field of national, State, or local politics; and

"(27) The extent to which, the basis upon which, the manner in which, and the times at which broadcast stations are used for commercial programs including programs advertising products claimed to have medicinal or therapeutic value and programs relating to products or services, the sale or use of which may be illegal in any State in which the programs of the station carrying such programs may be received, the time given by the several classes of stations to commercial advertising or sales talk in the programs broadcast and whether there should be control or regulation of advertising by radio and the character and extent thereof."

The committee is further authorized and directed to make and report to the Senate the facts with respect to:

"(1) Competition between wire companies in communication between the United States and foreign countries, between radio companies in such foreign communication, and between wire and radio companies in this field of foreign communication.

"(2) Instances in which the Commission has granted licenses for transmission in foreign communication or has refused or withheld action upon applications for licenses and frequencies in this field of communication, and whether such action by the Commission or its nonaction, has been with the purpose or has had the effect of aiding one company in this branch of communications or of destroying or lessening competition between American companies in foreign communication.

"(3) The extent to which companies engaged in radio communication between the United States and any foreign country have entered into exclusive traffic arrangements or other agreements with the purpose or effect of securing a monopoly in such communication or of lessening competition therein and the effect of such arrangements or agreements upon competing American companies."

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SARNOFF ASKS U.S. RADIO POLICY, RAPS WHEELER BILL

The need for a "basic communications policy" for the United States was set forth by David Sarnoff, President of the Radio Corporation of America, this week in a statement opposing the Wheeler bill before the Senate Interstate Commerce Committee.

The Wheeler bill would require the FCC as a fixed policy of law to foster competition in foreign communications. The measure is an outgrowth of the fight between RCA and the Mackay Radio & Telegraph Company in which the latter has lost decisions before the Commission and in the courts.

"The communication facilities of the United States are essential to its safety, to the freedom of its international relations, and to the promotion of its commerce", Mr. Sarnoff said. "There can be no doubt about your desire to protect them jealously against any attack upon their independence or their opportunity to develop.

"All communication companies face the fact that the United States needs a basic communications policy. That need has been urged by many persons and on many occasions. The present hearing emphasizes that need anew. Congress has not yet established such a fundamental policy. It has, however, set up a Federal Communications Commission and has given to that body certain duties and powers concerning domestic and foreign communications.

"Now there is before you a bill to change the present law by a brief amendment which would not establish a national communications policy but would prevent the Commission from acting upon its own findings concerning public interest, convenience and necessity.

"This bill would require the Federal Communications Commission to decree that duplicate radio telegraph circuits should be established in international communications, without inquiring whether either the new competitor or the old could survive, regardless of whether the rate-paying public would be helped or harmed by this rivalry; regardless of whether the new art of radio might thus be put in jeopardy by the power of its wire and cable competitors.

"Under the existing law, it is the duty of the Commission to decide whether public interest, convenience, or necessity would be served by authorizing the duplication of facilities. The proposed law would change all that. It would tell the Commission that regardless of existing competition, direct or indirect, by other American carriers operating to any foreign country, licenses must be issued for duplicate radio services even though the applicant for a license is, in fact, a cable competitor already well entrenched in the field.

"By all means let us have competition where it will serve the public interest, convenience, and necessity. But let us not try to force competition in international communications where it cannot serve and may even injure the national public interest.

"We now have keen competition between radio and cables. The bill before you, if enacted into law, would seriously weaken radio in that competition, and would transfer the control of our international radio communications from Americans to foreigners.

"The company I represent is not seeking to avoid competition. We are merely trying to avoid wasteful duplication of facilities that would benefit no American user."

"There can only be true competition when there are independent and competing foreigners, each of whom can establish a circuit with an independent and competing American. In such a case there would be genuine competition. But no such competition will result if the proposed amendment is carried into the law.

"The enactment of the present proposal would place American communication agencies at the mercy of foreigners. It would require additional facilities regardless of existing facilities and the adequacy of traffic to support them. It would constitute a handicap to the development of radio communication in the United States and would not serve the interests of the American public.

"I respectfully recommend that Congress take steps to formulate a National Communications Policy, based on a careful study of the vital national questions involved. Such a study may well be made by a Committee of the Congress or by the Federal Communications Commission.

"Those undertaking this study should also consider the new situation created for those outside the British Empire by the changes announced only two weeks ago, under which the British Government has become the principal stockholder in the British Cable and Wireless Company. That company has a monopoly of the British international communications, both by cable and radio. It announced a sweeping reduction of rates within the Empire effective April 25, 1938. The new British plans and rates may have a profound effect upon American communications and American commerce.

"On every hand we have new evidence of the pressing need for an American communications policy. The new developments in the radio art, as well as the fast-changing political conditions throughout the world - new alignments - new conflicts - new trade policies - new military agreements - all make the independence of American communications essential to our peace and our prosperity."

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NEWSPAPERS SELL AD MENTIONS IN PROGRAMS

More than a hundred newspapers in cities of 100,000 population or more have already agreed to a plan of selling advertising mentions in their radio programs, the Lahey-Daly Company, New York advertising concern, has announced, according to Editor & Publisher.

The plan calls for continuing the program as an editorial feature, but including in parenthesis the name of the advertiser or product when ordered. An asterisk beside the trade name would refer to the word "Advertisement" below. A sample program looks like this:

1:00

WEAF - Weather reports.
 WOR - Health talk. (*Borden's Milk)
 WJZ - Farm and home hour.
 WABC - Betty and Bob, sketch; Betty Crocker,
 "Cooking" (*Crisco)
WHN - Singin' Sam. *Oxydol)
 *Advertisement.

Thomas F. Daly, partner in the firm, said the first order for insertion had already been received, for a West Coast program. He is suggesting to advertisers that they set aside 2% of their radio program costs for newspaper advertising of this kind, using all newspapers available in their broadcast territory, and repeating for each broadcast. Since network time is sold for at least 13 weeks at a time, the newspaper advertising would run at least that long. In addition, he predicted that newspapers would be able to sell local advertisers on the plan.

Lahey-Daly Company, acting as publishers' representative for this type of advertising, would collect a commission of 10% on billings. Rates set by newspapers thus far range from \$1.00 to \$3.50.

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RADIO TRADE STATISTICS NEARING COMPLETION

The fourth annual statistical number of "Electrical and Radio World Trade News" is now nearing completion and will be sent to all subscribers when issued, the Bureau of Foreign and Domestic Commerce announces. It contains statistical tabulations of electrical appliances and radio sales for the year 1937 - statistics of the electric power industry in the United States - statistics of the electric power industry in all foreign countries - details of the broadcasting industry - statistics showing U.S. exports of electrical and radio goods for 1937 and prior years. Single copies may be purchased for ten cents each.

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5/10/38

NEW LOUISVILLE STATION GETS EXAMINER APPROVAL

Construction of a new broadcasting station in Louisville, to operate purely as a local outlet, was recommended this week by Examiner John P. Bramhall in a report to the Federal Communications Commission on the application of the Kentucky Broadcasting Corporation.

The requested assignment is 1210 kc., with 100-250 watts power, unlimited time.

Stations now operating in Louisville are WHAS, a CBS outlet, and WAVE, an NBC outlet.

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CUBAN DECREE REGULATES RADIO NEWS BROADCASTS

A decree recently promulgated by the Cuban Government places radio news broadcasts and commentators under governmental supervision. The principal provisions of the decree follow:

"The transmission of information of a political, social, economic or other character, as also commentaries of all kinds by radio, may be made only by so-called 'periodicos aeros' (radio newspapers) duly registered in the Department of Communications.

"Before making a broadcast the operator of the station must obtain from the person making the broadcast an exact copy of the text of the material to be transmitted. This copy must be submitted to the Direccion de Radio (Radio Bureau) within 24 hours after the broadcast. An exception is made in the case of speeches pronounced before public reunions.

"The operator of a broadcasting station must suspend the broadcast whenever it is observed that the matter being broadcast differs from the text of the aforementioned copy.

"The Department of Communications will maintain a Registro de Periodicos Aereos y Programas Informativas (Register of Radio Newspapers and Informative Programs) in which must be noted the names, musical themes or designations used to identify these radio newspapers, etc. with schedules of broadcast hours. Applicants for registry must give information on the organization of the radio newspaper showing that this is the same in each case as that of the respective printed newspaper."

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5/10/38

CURB ON RADIO REGULATION URGED BY HETTINGER

The Federal Communications Commission should not seek to control either programs or rates of broadcasting stations in the opinion of Dr. Herman S. Hettinger, of the University of Pennsylvania, who was hired by the FCC two years ago to make a study of the economic factors of radio regulation.

Dr. Hettinger's report was never made public by the Commission, and it is understood that some of its conclusions were rejected by Commdr. T.A.M. Craven, then Chief Engineer, in drafting his report on the same subject.

The views of Dr. Hettinger, who has been associated with radio matters for several years, are set forth in an article in the April issue of "Air Law Review", which is edited by Alison Reppy, Professor of Law at New York University.

His conclusions on the subjects of program and rate control are summarized in the following statements:

"Avoiding entirely the question of how far program control can be carried before it becomes de facto censorship, one observation is a propos. Art thrives upon competition and spontaneity of ideas. One cannot regulate mediocrity out of existence. At best one can supplant one mediocrity with another. The mediocrity of the school-room is as deadly as that of the entertainment field, if of a different sort, and both fields are in equal need of brains and enterprise. All that regulatory authority can do to assist radio as an art is (1) to safeguard the public with regard to freedom of speech, and from indecent and obscene language and material, and (2) to maintain the competitive vitality of broadcasting as a whole so that the best possible program service will result."

"One is therefore forced to the following conclusions: (1) rates exert no important effect upon quality of service rendered the public, since competition with other media affords a corrective; (2) attempts at rate regulation would tend to give rise to greater problems with respect to the public interest than those which they would solve; and (3) since the interest of government is merely to ensure a quality of program and technical service in the public interest, it is more important to determine how the returns from the economic operation of broadcasting are applied than what they are."

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NON-RESIDENCE NO BAR TO RADIO APPLICATION

The Federal Communications Commission received a major set-back this week in the form of an opinion by the United States Court of Appeals, which instructed the Commission to consider factors that were rejected in a hearing on an application to establish a radio broadcasting company in Pennsylvania.

The Pottsville Broadcasting Co. was denied its application to establish a station in Pottsville, Pa. though an Examiner had approved it. According to the opinion, the Commission rejected the application on the grounds that Charles B. Drayton, local attorney and a majority stockholder, was not a resident of the Pottsville District and did not know the needs of the area, and, secondly, that Drayton testified that subscription for the stock of the corporation was contingent upon approval of the Pennsylvania Securities Commission.

The Appellate Court said that the corporation was chartered in Maryland and did not need Pennsylvania approval and secondly that in the past the FCC had not laid down a hard-and-fast rule as to the rights of non-residents who sought radio rights.

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CHINESE BROADCASTING STATIONS AT SHANGHAI CLOSE

Fourteen privately owned Chinese commercial broadcasting stations at Shanghai voluntarily suspended operations on April 28, according to a radiogram to the Regional Information Division, Bureau of Foreign and Domestic Commerce from the office of the American Commercial Attache at Shanghai.

The stations, which were located in the International Settlement, declared their action as a protest against the registration and censorship requirements of the Japanese authorities, the report stated. However the broadcasters claim that they have voluntarily filed with the Shanghai Municipal Council, information which is desired by the authorities and negotiations are still pending for the restoration of the service.

Foreign broadcasting stations have been unaffected so far, but one Chinese-American owned station has been leased to an American newspaper, it was reported.

Shanghai tramways are now running at 65 percent normal, although resumption of passenger service through the North and East areas of the International Settlement has not yet been arranged with the Japanese authorities, according to the report.

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