

# HEINL RADIO BUSINESS LETTER

2400 CALIFORNIA STREET

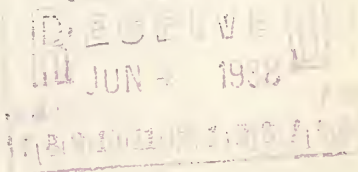
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No. 1130



## FCC ANNOUNCES PROCEDURE FOR POWER HEARING

The Federal Communications Commission this week announced its procedure and the order of appearance of witnesses at the hearing on its new rules and regulations which will begin next Monday and run for possibly a month. More than 100 broadcasters and organizations will be heard.

With broadcasters divided on issues of super-power, use of clear channels, and other technical questions, the hearings promise to produce considerable fireworks.

Commissioners T.A.M. Craven, Norman Case and George Henry Payne will preside at the inquiry and afterward report their findings and recommendations to the entire Commission for action. Although the hearings will be open to any testimony regarding any of the new rules, the two major issues are expected to be:

Whether the FCC will change its present rule limiting regular broadcast stations to 50 KW. power, and

Whether clear channels are to be opened further for regional station operation.

Immediately after the hearing on the rules the FCC committee will delve into the WLW case, which while involving only a single station is likely to produce as many sensations in view of the past scraps between Commissioner Payne and Powel Crosley, Jr., owner of WLW.

On the outcome of this hearing will depend whether WLW, now the nation's most powerful station will continue to operate experimentally with 500 KW.

Commissioner Case, though a Republican, will preside at the hearings. Chairman Frank R. McNinch, of the FCC, is an ex-officio member of the super-power committee and is expected to attend the hearing irregularly.

George Porter, Assistant General Counsel, will be in charge of the case for the Commission, whereas the stations and organizations will be represented by a score of lawyers.

The clear channel issue is to be injected into the inquiry by the recently organized National Association of Regional Broadcast Stations. The Clear Channel Group, on the other hand, will defend the exclusive use of the frequencies for high power and at the same time will make a fight for super-power.

The first major witness scheduled is the National Committee on Education by Radio. Following will be the American Civil Liberties Union and the National Association of Broadcasters. All other witnesses are direct station operators or networks.

In connection with the hearing the FCC said:

"All testimony received in the hearing will be under oath but a reasonable departure from the strict rules of evidence will be permitted. A witness may give testimony on behalf of groups of stations or parties. The use of prepared statements in question and answer form will be permitted provided a copy thereof is furnished to counsel for each party at the time of hearing. Cross-examination of witnesses generally will be by the Commission and its staff. Cross-examination of Commission's witnesses will be permitted. Requests for cross-examination of other than Commission witnesses will be considered at the time of hearing.

"It is contemplated that at the beginning of the hearing certain factual data compiled by the Commission from questionnaires will be submitted for the record in order that the various parties in interest may have ample time to examine it."

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#### EX-LOUISVILLE MAYOR TO BE PRESIDENT OF NAB

The search of the National Association of Broadcasters for a paid president who will defend the interests of the industry before the Federal Communications Commission, Congress, and critics apparently has ended.

Neville Miller, former Mayor of Louisville, Kentucky, and now Assistant to the President of Princeton University, has been selected by the NAB Executive Committee. Formal ratification of the choice is expected next Monday at a meeting of the Board of Directors in Washington. He probably will take office July 15th.

The salary of the "radio czar" will be \$25,000 a year with \$5,000 allowed for expenses.

While not carrying a big name such as broadcasters were reported to be looking for early this year, Mr. Miller achieved a national reputation as Mayor of Louisville during the flood of 1937. He is an intimate friend of Mark F. Ethridge, who has been acting head of the NAB since its reorganization. Mr. Ethridge will return to his post as General Manager of the Louisville Courier-Journal and Times and Station WHAS.

Ulric Bell, Louisville newspaper correspondent, described the prospective NAB President for Broadcasting Magazine as follows, in part:



"He is the last man in the world one would take for a 'czar'. Yet Nevill Miller was in supreme command of a great American city under catastrophic conditions, and emerged not to be damned but to be lionized.

"His manner, in some degree, is that of a schoolboy. But his record is that of a man who once routed the whole United States Army, overwhelming red tape, gold braid and brass hats by knowing what he wanted and feeling that he was right.

"Neville Miller was not taken too seriously as Mayor of Louisville by two great corporations of the country when he set out to obtain what he deemed were just utility rate reductions. But their lawyers and statisticians discovered that he could compete with them on their own ground because he set for himself the task of learning their business.

"He is not a great orator or a professional politician. But his administration as Mayor was called so pronounced a success that he could have commanded bi-partisan backing for higher office had he chosen. One office which beckoned to him was the Governorship of Kentucky.

"He is a student, a scholar, a Bible teacher, a lawyer, a little bit of a recluse, a soft-spoken, gentlemanly fellow who has a ready smile and nothing of the 'iron man' about him. But watch out if he is pitted against you.

"Tall, a little stooped but with an energetic stride, Neville Miller at 44 has had experiences of such diversity that his mildness of manner is probably only a manifestation of inner assurance."

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C O R R E C T I O N:    BEG YOUR PARDON!

Several statistical mistakes occurred in the story carried in last week's news release on a Commerce Department report on the radio industry. The mistakes resulted from the inadvertent confusion of figures on tubes and on receivers in a table covering sales from 1922 to 1937, inclusive.

The correct figures on sales of receivers in 1937 are 7,631,267 and the gross return \$404,457,150. For the year 1929 the sales were 4,428,000 with a gross of \$592,068,000. The greatest sales, however, did not occur in 1929 but in 1936, when 8,158,290 were sold for \$464,007,000.

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## PAYNE ACCUSES COLLEAGUES AT HOUSE HEARING

Commissioner George Henry Payne accused his colleagues on the Federal Communications Commission of "yielding too greatly" to the influence of "radio lobbyists" on Thursday during an open hearing of members of the FCC by the House Rules Committee.

The Committee, which is considering demands for a Congressional investigation of the radio industry and the Communications Commission, summoned Mr. Payne to return next Tuesday, when he will amplify his charges in a closed session of the Committee.

Chairman Frank R. McNinch told the Committee that the FCC is preparing to make its own investigation of charges of monopoly and other unlawful practices and implied, without saying so, that a Congressional probe is unnecessary.

Commissioner Payne charged that "free competition" is rapidly disappearing in broadcasting and that the industry has exchanged its social consciousness for "spoils".

Questioned by Representative Eugene E. Cox (D.), of Georgia, Commissioner Payne admitted that he was accusing his colleagues of "yielding too greatly" to the influence of a group of powerful lobbyists. He refused, however, to accede to Representative Cox's request that he back up the charges immediately. "At an investigation, I should be glad to take an oath and testify", Mr. Payne said.

His stand was defended by Committee Chairman John J. O'Connor (D.), of New York, who said the meeting would be turned into an investigation if Commissioner Payne were to answer such questions.

The Commissioner charged that several of the lawyers practicing regularly before the FCC have become "arrogant and are in the habit of commanding, rather than of asking or pleading."

"Not long ago one of these lawyers actually doctored the records of the Commission in a case in which he was interested, and, in addition, violated two stringent rules", he said.

"The tendency in the broadcast industry is to strengthen and perpetuate two or three powerful chains", he continued. "In fact, at the present time, the National Broadcasting Company, the Columbia Broadcasting System and the Mutual Broadcasting System own or control most of the best facilities on the airwaves. Huge profits have been made by many broadcast stations to the detriment of the public."

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"The tendency in programming is to establish a dead level of mediocrity in order to please the greatest number of people. In the attempt of the stations to reach the lowest common denominator, radio is driving intelligent people away from their receiving sets."

Commissioner McNinch told the Rules Committee that the FCC is prepared to start its own investigation, in accordance with a resolution adopted March 18th, to determine whether monopolistic relationships exist between the three large broadcasting chains and stations using their programs.

He said that the legal staff already has completed a two-volume analysis of radio contracts. Commissioner Payne contended, however, that the FCC has neither the facilities nor the time to conduct such an inquiry.

Chairman McNinch testified that since he had been appointed Chairman by President Roosevelt last Fall, the FCC's docket had become "practically current" and that transfer applications which had lain untouched for months were disposed of "some favorably, some unfavorably."

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#### DEALER RESPONSE POINTS TO INCREASED RADIO SALES

Dealer response to the 1939 radio models shown by leading companies for the first time last week was considerably better than had been expected, sales managers of the various companies reported, according to the New York Times. In one instance the week's quota for a large company was reached on Tuesday and other organizations reported that the orders placed by dealers were greater than they had anticipated.

"Among the companies introducing new models", the Times said, "were General Electric, RCA-Victor and Philco. Dealers were said to be enthusiastic, because of the strengthening of the price structure through fair trade contracts, and bought their initial requirements liberally."

"Manufacturers admitted that the season just closed was a bad one, with several changes made in the standing of the various companies in sales volume. Over-production and price-cutting among dealers were demoralizing factors. Output this season, however, will be watched carefully, and price wars are expected to be reduced to a minimum."

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## STATION COMPETITION HELD ESSENTIAL BY COMMISSION

Competition in the broadcasting field was held essential under the Communications Act by the Federal Communications Commission in two decisions involving newspapers, announced this week.

The Louisville Times Co., which operates WHAS, was refused a construction permit to build and operate a 100-watt station as well on the ground that it would have an advantage over Station WAVE, also of Louisville.

At the same time the FCC refused to sanction the purchase of Station WREN, Lawrence, Kans., by the Kansas City Star Company, of Kansas City, Mo., which now operates WDAF. The Kansas City Star had agreed to purchase the station for \$295,000.

Regarding the Louisville Times application, the Commission said:

"The underlying principle of the provisions of the Communications Act of 1934 relating to radiobroadcasting is that radio facilities must be licensed by the Commission to the end that the public will be best served. In effecting this requirement of the Act the Commission must consider many elements, one of which, in this case, becomes of particular importance, namely, the furtherance of competition in program service to a community to the end that the best service will be made available.

"It is true that in this instance the applicant is the licensee of a cleared channel station, and the application herein is for a local station, and it may be argued that the element of competition is not present as the services are different. But the cleared channel station serves all of the area which the proposed local station would cover, and as the people residing in that area may listen to only one station at one time, it is manifest that they would have to choose between the two. It is clear, therefore, that the two stations must necessarily compete for public reception.

"At the present time Stations WHAS and WAVE are in a position to compete for both commercial support and public reception. Granting a local station to WHAS would unbalance this competitive situation as it would place in the hands of the latter (which also has a monopoly on daily newspaper expression in the community) an outlet for local programs and commercial advertising.

"The Commission has heretofore pointed out that the available frequencies in the broadcast band are limited, and the Commission is loathe to grant facilities for an additional broadcast station to one who already holds a license for a

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station in the same community unless it is clearly shown that the public convenience, interest, or necessity would be served thereby. Other things being equal, it would appear that if there were a need for an additional local broadcast station in a community and if there were a frequency available for this service, the facilities should be granted to someone who does not already hold a broadcast license for an unlimited time station in that community. Experience shows that where a real need exists for radio service in a populous area, applications to establish service are readily forthcoming.

"In order to assure a substantial equality of service to all interests in a community, to assure diversification of service and advancements in quality and effectiveness of service, the Commission will grant additional facilities to identical interest only in cases where it clearly appears that the facility, apart from any benefit to the business interests of the applicant, is for the benefit of the community, fulfilling a need which cannot otherwise be fulfilled. The applicant, in this case, has failed to show that, in the operation of two stations, the program service of each would afford the greatest benefit to the community, and therefore the public interest, convenience and necessity will not be served by granting the application."

As to the Kansas City Star's application, the Commission said:

"Station WREN, Station WDAF, and Station KMBC, which serve substantially the same area, now compete on equal terms, each having the same day and night power. If the transfer were to be approved by the Commission, Stations WREN and WDAF would be owned and controlled by the same interests and would compete with Station KMBC, thus creating a situation in the service area of these stations in which, instead of three equally powerful mutually competitive stations, there would be one station having as a competitor the owner and operator of two equally powerful stations. This would obviously place Station KMBC at a serious competitive disadvantage as well as materially reduce competition in the area."

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Which radio programs are most popular with WLW listeners will be determined in the coming two weeks during a letter-writing contest being conducted by the Nation's station in cooperation with the Cuban National Tourist Commission, according to James D. Shouse, Vice-President of the Crosley Radio Corporation in Charge of Broadcasting.

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## RADIO MONOPOLY BAN PROPOSED BY SHAPPARD

Senator Sheppard (D.), of Texas, who has had little to say regarding the suggestions for a radio investigation, has introduced in the Senate a bill to amend the Communications Act so as to prevent monopolies and to prohibit excessive duplication of broadcasting programs in any area.

The bill seeks to amend Section 307 and to be known as Section 307½ and would read as follows:

"Sec. 307½ (a) For the purpose of this section a network program is defined as any program lasting five minutes or longer which is broadcast simultaneously from two or more broadcasting stations, whether by wire, aerial reception, electrical transcriptions, recordings, film, or otherwise, or which being broadcast over any broadcasting station is recorded and thereafter rebroadcast or repeated from another such station.

"(b) The Commission is directed to refuse licenses and renewals of licenses to any broadcasting station having an authorized operating power in excess of fifty kilowatts over which there shall be broadcast any network programs as defined in this section.

"(c) Upon formal advance application therefor the Commission may from time to time authorize any station having authorized power in excess of fifty kilowatts to broadcast network programs when the public interest will be served thereby but in no calendar month shall such authority cover an aggregate period of more than one hour.

"(d) The Commission shall publish in the Federal Register appropriate regulations for the enforcement of this section."

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## FCC TO PROBE NBC-WESTINGHOUSE CONTRACT

The Federal Communications Commission this week ordered that a hearing be held with regard to the contract between Westinghouse Electric & Manufacturing Company and the National Broadcasting Company, dated November 21, 1932, to determine whether any provision of the Communications Act is violated thereby and whether the agreement is in fact or in law a lease. Such hearing is to be conducted by the Special Committee investigating chain broadcasting, the Special Committee to fix the date and have authority to correlate this matter with other phases of its investigation.

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### THREE STATIONS DELETED; TWO NEW ONES ORDERED

The score was 3 to 2 this week as the Federal Communications Commission deleted three existing stations by refusing to renew their licenses and granted construction permits for new stations to two applicants.

Stations which were ordered off the air are:

WMBQ, of Brooklyn, N. Y., operated by the Metropolitan Broadcasting Corp., on 1500 kc.; KWTN, Watertown, S. D., operated by the Greater Kampeska Radio Corporation, on 1210 kc.; and KGDY, Huron, S. D., operated by the Voice of South Dakota, on 1340 kc.

New stations to be set up are:

Carl Latenser, Atchison, Kans., using 1420 kc., 100 watts power, daytime.

Dorrance D. Roderick, El Paso, Texas, using 1500 kc., 100 watts power, unlimited time.

In deleting the Brooklyn station the Communications Commission settled a row that has been going on for several years and granted WMBQ's facilities to Station WWRL, New York, with which it had shared time. The Commission charged WMBQ with broadcasting "information pertaining to a lottery" and failing to "exercise proper control over the broadcasting of foreign commercial announcements."

The two South Dakota stations were charged with operating contrary to the Commission's technical rules. Station KGDY, it was said, has been silent more than a year because of defective equipment.

The FCC granted a license for a new station at El Paso although El Paso has two stations, KTSM and WDAH, which share time on 1310 kc. The latter case has been pending before the Commission for two years and heard by the U. S. Court of Appeals.

The Court this Spring remanded the case to the FCC for further hearing on appeal of the Tri-State Broadcasting Company, which operates Stations WDAH-KTSM. The FCC, however, has again granted the application, though apparently in accord with the Court's rulings.

"The presence and operation of an additional radio station in El Paso", the Commission said, "will result in the creation of a competitive situation between the applicant and the licensee of KTSM-WDAH. However, in view of the fact that for the years 1934 and 1935 the existing licensee made a profit which is about 19 percent in 1934 and about 28 percent in 1935



on its investment, in addition to paying a substantial bonus to its manager, and which operated during the years 1929-33 without losing money, although operating in a manner which was admittedly antagonistic to the people in El Paso, and still having had but a small part of the potential business of the City of El Paso, it does not appear that the expected competition will immediately or ultimately result in such a reduction in income to Tri-State Broadcasting Company (KTSM-WDAH) as to require deterioration of its service to the listening public. Such competitive condition may reasonably be expected to insure an improved broadcasting service to the City of El Paso."

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### G.E. DEVELOPS RADIO WITH A MEMORY

Radio engineers of the General Electric Company this week demonstrated in Bridgeport, Conn., an "electrical memory", which they described as "time-tuning". The development means that the performance of a radio receiver during every 15-minute interval of a full 24-hour day can be predetermined.

"The effect of time-tuning is that of adding a silent master of ceremonies to the household", declared P. F. Hadlock, G.E. engineer. "This ghostly individual will awaken the family by turning on the radio in the morning, and will remember to shut off the power at the appointed time at night, even if everybody has fallen asleep. Selected programs will automatically be tuned in at their scheduled time during any 24-hour period and in between times the radio will shut itself off if it has not previously been directed to continue. Lacking the human frailty of the average listener, who often intends to tune in a specific broadcast, but doesn't, the electrical memory device is infallible - it can't forget."

The new development consists of a simple but ingenious radio time control unit which permits the preselection of favorite programs, throughout the entire day and night, on five different stations. The preselector is divided into ninety-six 15-minute time intervals. In practice a user consults radio programs for the ensuing 24 hours, moves the correct slider-contacts into position - and the automatic control takes complete charge. The cycle will be repeated each day unless further changes are made in the setting. A self-starting electric clock in the center of the control panel maintains absolute accuracy in automatic operation once it has been set and an electrical connection made.

The pretimer does not interfere at any time with the normal operation of the radio receiver, and stations may be manually tuned if desired. Afterwards the receiver will revert to the schedule which has been laid out for it.

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HEARING ON SHIP RADIO POWER ORDERED

The Federal Communications Commission, upon its own motion, this week ordered an investigation of the facts, circumstances and conditions affecting the determination of power required for ship transmitters in order to comply with the terms of treaty and statute. The Commission scheduled this matter for hearing on September 12, 1938, at 10 A.M., in the offices of the Commission in Washington, D.C., before a Commissioner, to be designated by order of the Commission at a later date.

"Any person who desires to present evidence bearing on this rule at the hearing scheduled shall file notice of intention thereof at least 10 days in advance of the date set for such hearing", a FCC statement said.

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TRADE NOTES

Station WRVA's new transmitter of 50,000 watts is due to go on the air about October 1st. CBS has just announced new rates for the station, which will have the strongest signal in the area between Philadelphia and Charlotte, N. C.

Following receipt of a report by the Federal Communications Commission to the House and Senate regarding interference from apparatus using radio frequency electrical interference, Chairman Wheeler, of the Senate Interstate Commerce Committee, introduced S.4074 giving the Commission authority to prescribe such restrictions and conditions as are necessary to prevent interference from medical apparatus and similar devices employing radio frequencies.

David Sarnoff, President of the Radio Corporation of America, was awarded the degree of Doctor of Commercial Science this week by Oglethorpe University at Atlanta, Ga.

The United States Court of Appeals for the District of Columbia last week, in effect, affirmed the granting by the Federal Communications Commission to Station WATR, Waterbury, Conn., of a change in frequency to 1290 kc., an increase to 250 watts power and unlimited hours of operation, by dismissing the appeals of Stations WJAS, Pittsburgh, Pa., KDYL, Salt Lake City, Utah and WEBC, Duluth, Minn., on the ground that none of the three stations had an appealable interest.

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