

# HEINL RADIO BUSINESS LETTER

2400 CALIFORNIA STREET

WASHINGTON, D. C.

**CONFIDENTIAL — Not for Publication**

RECEIVED  
OCT 13 1938  
LEGAL DEPARTMENT  
BROADCASTING CO. INC.

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October 11, 1938

McNINCH CIVIL SERVICE LETTER IS BARED

Copies of the letter written by Chairman Frank R. McNinch, of the Federal Communications Commission, to the Civil Service Commission were being circulated among members of the Commission and FCC staff last week as the Commission awaited Mr. McNinch's return before taking further action.

With an intra-Commission fight in prospect, the reasons advanced by Chairman McNinch for wishing to exempt a half-dozen groups of employees from Civil Service were being studied and assailed.

The letter listed the following positions which the FCC Chairman asked to be exempted from Civil Service:

Chief Examiner and all trial examiners, all attorneys, one confidential clerk for each member of the Commission, one secretary each to the General Counsel, Chief Engineer, Chief Accountant, Chief Examiner and Secretary, the Director of the Division of Information, and a general group of "experts".

The correspondence, including an accompanying memorandum to the Commissioners, disclosed that Chairman McNinch had sent the letter to the Civil Service Commission without consulting his colleagues. He explained that his illness had prevented his taking the matter up at a regular meeting.

"Under the new regulations", he said in the memorandum, "the Commission will have the option, assuming the request in the letter is complied with, of either filling these positions through non-competitive or competitive examinations. For this reason, it seems desirable to leave the Commission free to exercise that option with respect to these positions rather than foreclose us from so doing by failure to make an appropriate request of the Civil Service Commission."

Seeking to justify the request to the Civil Service Commission, the FCC Chairman said in his letter:

"The position of Chief Examiner is recommended for exception for the reason that the incumbent thereof heads a department of the Commission to which is committed the task of presiding over a large majority of the hearings ordered by the Commission to determine the merits of applications and complaints filed with the Commission, and to prepare reports of the facts therein presented, and to make recommendations concerning the final disposition of such applications and complaints. The Chief Examiner is called upon to

advise the Commission with reference to the formulation of Commission policy, practice, and procedure; and to see that such policies, practices, and procedures as are formulated by the Commission are carried out in the hearings before Examiners and in the Examiners' reports and recommendations. The performance of such duties by the Chief Examiner creates a highly confidential relationship between the incumbent of that position and the members of the Commission, and the proper filling of such a position requires a high degree of latitude for selection of a person who will personally merit and receive the confidence of the members of the Commission. Such a question of personal fitness cannot be resolved by a system of competitive examinations.

"The positions of trial examiners are recommended for exception on grounds directly related to reasons given above in support of excepting the position of Chief Examiner. The incumbents of these positions literally sit in place of the Commissioners in presiding over public hearings and their conduct therein directly reflects upon the Commission and its work. In addition to being learned in the law and all aspects of the Commission's regulatory activities, an examiner must have a personality and character which will conduce to the creation of a fair, unbiased, and judicial atmosphere. These essential prerequisites are difficult, if not impossible, to determine by any system of competitive examinations.

"The positions of attorneys are recommended for exception for the reason that the incumbents of these positions have the duty of rendering legal counsel and advice to the Commissioners, collectively and individually, on the many confidential and important matters pending before the Commission - matters which often directly concern and affect Commission policy. The highly confidential relationship that has always been considered to exist between attorney and client, exists here to the fullest extent. For instance, the attorneys are used by the Commissioners to assist them in writing decisions on cases pending before the Commission, during the course of which the attorney and Commissioner must engage in a full and frank discussion of the merits of the case. It would be a source of embarrassment to the Commission should the matters discussed and opinions expressed in these confidential conferences be related to outsiders. Whether such confidences should or should not be placed in any particular person is a question which cannot be resolved by an objective examination on the person's knowledge of the law, graded by an examiner who cannot possibly judge for the Commission the personal fitness of the person for the trust that must be reposed in him.

"The reasons for excepting the positions of confidential clerk to each Commissioner and a secretary to the head of each department are likewise grounded on the extremely confidential nature of the duties of each. The success they attain in performing these duties rests in a large measure upon their ability to occupy such positions of trust to the satisfaction of their principals. Each Commissioner occupies a policy-making position and is aided and counseled therein by the heads of the departments.



One of the most vital and confidential duties of a Commissioner concerns the establishment and maintenance of communications in such a manner as to adequately meet the needs of national defense. Clerical, stenographic and related tasks concerning national defense matters must be delegated to the Commissioner's confidential clerk, who must be trusted to keep such matters in strictest secrecy. It would seem imperative that the employment of confidential clerks and secretaries to these officials should not be limited by the competitive examination system. Often a newly appointed official will be enabled to assume and fulfill his new duties with greater ease and effectiveness if he is permitted to bring with him a confidential clerk or secretary who has been previously retained by him in that capacity, but who could not be appointed under the competitive examination system.

"The reason for excepting the position of Director of the Division of Information lies in the fact that the incumbent of this position is entrusted with the duty of releasing information concerning Commission matters, the proper performance of which requires that the Director be fully informed of all Commission matters. Having been so informed, it is essential that the Director exercise a great amount of discretion and judgment in releasing information to the press and the general public, and he must at the same time guard all confidential information carefully. Whether or not a person is competent to accept such a position of trust depends upon personal characteristics not capable of determination through a system of competitive examination.

"The recommendation for the exception of experts merely proposes the extension of a practice permitted in the past of employing various experts to temporarily assist and advise the Commission. These experts are generally required on such short notice and must possess such special qualifications as to make appointment through a system of competitive examinations wholly impracticable. The requirements of such a system would often stand as a bar to the fulfillment of an urgent need for expert aid and advice.

"In making the above recommendation of positions to be excepted from the competitive classified Civil Service, the Commission considers that the proper performance of the duties assigned to each requires freedom of removal of any incumbent who should become unsatisfactory for any reason, even though such reason might not support removal from a competitive classified Civil Service position."

(See follow-up two or three pages further on in this issue)

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Broadcast licenses in Eire increased during 1937 by 13,240, or 13.4 percent, bringing the total up to 112,192, or one license to every twenty-seven of the population, as shown in a report just issued by Radio Eireann.

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## NAB VIEWS WTCN CASE WITH ALARM

As the Federal Communications Commission delayed action on the WTCN "censorship" case, the National Association of Broadcasters viewed the matter with alarm in its weekly bulletin.

"The threat of government censorship put in a surprise re-appearance last week when the Federal Communications Commission cited WTCN for hearing because of its broadcast of the Eugene O'Neill play, 'Beyond the Horizon'", NAB said.

"And though the concern first spread throughout the radio industry has somewhat lessened because of the Commission vote to reconsider the case, the spectre of a governmental control of radio program material enforceable with the six months licensing power in the hands of the FCC, continues to spread alarm throughout many areas of important American public opinion.

"Editorials and press comment, from both the conservative and liberal press, vigorously opposing any type of government censorship, have been received at headquarters. In Houston, Matthew Woll, veteran labor leader, openly stated that labor was opposed to any government muzzling and asserted that freedom of radio 'is something worth any struggle to protect and maintain.'

"NAB headquarters is keeping in direct touch with the situation for such action as may be needed.

"This is in line with the attitude expressed by President Neville Miller in his first public address delivered shortly after he took office:

"Any threat to gather the freedom of radio unto the bosom of a government, of a bureaucracy, or of a monopoly must be resisted. . . . Any invasion of our free competitive system of American broadcasting from any quarter whatsoever will meet with all the resistance at my command, and I believe as well with the determined resistance of the people who own and use the thirty million radio sets operative throughout America."

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## SUPREME COURT TO REVIEW RCA-MACKAY SUIT

The U. S. Supreme Court agreed yesterday (Monday) to review a lower court decision that the Mackay Radio & Telegraph Co. had infringed radio antenna patents held by the Radio Corporation of America. The Mackay firm, contending it constitutes the only competition to the world-wide communications operations of RCA, appealed from the second Circuit Court.

As a result of the decision, said Mackay, the Radio Corporation "becomes vested with a complete monopoly in public service radio telegraph communication."

The firm contended its antennas "differ radically" from those used by RCA.

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## HEARST SELLS WINS TO BLOW BROADCASTING CO.

Climaxing the disposal of his radio properties, William Randolph Hearst has sold Station WINS, of New York, to Milton H. Biow, New York advertising man and President of the Biow Broadcasting Co., which operates WAAM, Newark, it was disclosed this week.

The price in the deal, which is subject to approval of the Federal Communications Commission, was not revealed. Previously, however, it was reported that Col. Arthur O'Brien, of Seattle and Washington, D. C., was going to buy the station for \$250,000.

E. N. Stoer, Comptroller of Hearst Radio, Inc., said that all but two of the Hearst radio properties were to be sold to perpetuate the Hearst publishing interests.

Just what effect this will have on the highly-paid job of Elliott Roosevelt, who is President of Hearst Radio, Inc., was not known immediately. It is believed, however, that he will withdraw to manage his own and his wife's radio interests.

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## WFIL SUIT MAY PROVE TEST CASE FOR POLITICS

A libel suit filed last week in Philadelphia against Station WFIL and its president, Samuel R. Rosenbaum, may prove a test case of what constitutes libel in political speeches made over the air.

The suit, one of six, was filed by M. L. Annenberg, publisher of the Philadelphia Inquirer, as an outgrowth of Pennsylvania's turbulent campaign. The immediate complaint was an address made over WFIL by Senator Joseph F. Guffey (D.), of Pennsylvania.

Before the speech, over radio station WFIL, attorneys for Mr. Annenberg advised the station they believed the speech libelous.

Mr. Rosenbaum replied, offering Mr. Annenberg "the facilities of this station and network on equal terms."

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10/11/38

PAYNE, CRAVEN RAP McNINCH CIVIL SERVICE REQUEST

Culminating an intra-Commission fight over the letter Chairman Frank R. McNinch, of the Federal Communications Commission, sent to the Civil Service Commission (see lead story), two FCC members this week urged the latter body not to grant the request for exemption of some 75 FCC jobs from the merit system.

The letter was written by Commissioners T.A.M. Craven and Gecrge Henry Fayne. It follows in full:

"Please be referred to a letter of Chairman Frank R. McNinch, addressed to your Commission under date of September 23, 1938, in the matter of certain exemptions from the Civil Service provisions recommended by him.

"Please be informed that up to September 30, 1938, the undersigned members of this Commission were not aware that this letter had been sent and that at no time had they been consulted as to its contents.

"It is noted that the Chairman recommends for exemption under Section 2 of Executive Order Number 7915 about sixty positions on the staff of the Federal Communications Commission now under Civil Service. We have studied this matter very carefully and our deliberate opinion is that these positions should not be so exempted. None of the positions listed is either policy-making or any more confidential than other positions on the staff.

"Under Section 4 (f) of the Communications Act of 1934, Congress has specifically exempted a number of positions which are policy-making or confidential, and the judgment of our legislators at the time seems to hold good today. All other positions were expressly made subject to the Civil Service provisions and it is likely that your Commission is without power to exempt them.

"We want to say further that the wholesale exemption of positions like these seems to be entirely contrary to the spirit of the Presidential Order and not in keeping with the President's policies as to Civil Service matters.

"In any event, this subject has not been up for discussion before the Commission and we have not had an opportunity of examining it before the letter was sent.

"We therefore strongly recommend that no action whatever be taken in the matter before this Commission has had an opportunity to make a deliberate decision."

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## CHURCH COUNCIL OPPOSES CENSORSHIP OF RADIO

While having no bearing on the current WTCN case, the Federal Council of the Churches of Christ in America this week warned against any form of censorship of radio programs by the Federal Communications Commission.

Releasing a report entitled "Broadcasting and the Public", the Council sought to point out the difficulty "of building up social controls in the form of law and usage for the governance of a private enterprise which seeks to utilize discoveries and inventions in which the community has much at stake".

As reported in the New York Times, the Council had this to say about government censorship:

"No administrative government agency is wise enough to be entrusted with power to determine what people shall hear. Freedom of radio is almost if not quite as important as freedom of the press. If either is curtailed, our political and religious liberties are imperiled. For this reason we believe any attempt to regulate utterances over the radio by an administrative government agency, except within canons of decency, propriety and public safety clearly defined by statute, is dangerous and contrary to public policy."

Since the Council recognizes that radio channels "constitute a natural monopoly", it is suggested that ways should be found to keep wavelengths in the hands of broadcasters who serve the public "interest, convenience and necessity".

To accomplish this it is proposed that the Federal Communications Commission, which is charged by law with the responsibility of assigning frequencies, should be responsive to community opinion concerning the merits of past services rendered by applicants for the use of wave-lengths.

To guard against political interference and undue influence by self-appointed critics, the survey recommends that permanent, voluntary associations representing the cultural interests of the community accept responsibility for appraising radio programs. Such groups would include educational associations, chambers of commerce, labor unions, medical societies, religious bodies and other permanent cultural associations which represent a valid community interest.

To avoid an increased centralization of cultural activities under the government, voluntary associations must function more vigorously and conscientiously in the development of standards to govern broadcasting as a public service, the survey contends.

"We cannot fairly demand", it says, "that the industry be responsive to public need without making provision for the intelligent and considered expression of that need."

Of the process of democratic control the report declares:

"The continual evolution of standards that reflect the intellectual, esthetic and moral judgment of the community and bear testimony to a will on the part of the industry to be responsive to the demands of the community - this is the heart of the problem of social control in a nation which deliberately rejects an unlimited concentration of power in the hands of government."

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### RADIO WAR NEWS BOOSTED PRESS SALES, SAYS WRITER

Instead of curtailing newspaper sales, radio's coverage of the European war scare actually boosted them, in the opinion of Leland Stowe, Paris correspondent of the New York Herald-Tribune, who was in New York at the time.

Acting both as interpretative writer for the Herald-Tribune and radio commentator for NBC, Mr. Stowe was in a position to see both services in action. Writing in Editor & Publisher last week, he said:

"Did NBC's radio news beat detract from public interest in the next morning's newspapers? I doubt very much that this was the case. Although I was in the radio news room when Max Jordan's voice throbbed dramatically into our ears with the biggest news in many years; although I was as much on the inside as anyone could be on this side of the Atlantic, I was more anxious than ever to read every word out of Munich, and all European capitals, in the metropolitan morning press. I wanted all the little details. I wanted to know what correspondents on the spot wrote and thought. I wanted to see this epochal news and weigh it in cold print. I believe most people felt the same way.

"In fact, it seems apparent that newspaper sales remained abnormally high throughout the long and dramatic crisis over Czechoslovakia. It would appear that radio, far from displacing the daily press, actually supplemented the newspapers and whetted public appetite for the complete story in printed form.

"In this respect another factor may be mentioned. People like to get the considered opinion of qualified experts on a world-stirring event like the Munich Four-Power agreement. To get this they read their own newspaper's editorial columns and they read their favorite columnists.

"In the field of radio it is unfortunately still true that there are lamentably few commentators who have studied foreign politics at first hand and are thoroughly familiar with international affairs. Columbia's H. V. Kaltenborn is a noteworthy exception to the general rule as his remarkable broadcasts through-



out the Czech crisis clearly demonstrated. But it remains true, in the realm of interpretation of European affairs and events abroad in general, that the American radio systems have not yet equipped themselves to compete with the newspaper columnist or editorial writer. Even if they should do so in the future it seems highly probable that the radio foreign news commentator's conclusions, more often than not, would excite speculation as to how these opinions would jibe with those of our most famous newspaper columnists. Once again radio might well whet the public's curiosity about tomorrow morning's newspaper.

"These conjectures are all raised by the recent experience in which radio had the world by the ears for almost three weeks on end. As a newspaperman I do not yet see any serious cause for alarm in this phenomenon, although others may view things in that light. But the fact remains that once the world's ears are opened it simply will not close them.

"With radio news dissemination unquestionably reaching maturity in the crisis, even though it is still in its early twenties, perhaps this foreshadows gradual but important changes in our newspapers' make-up and technique. Perhaps eventually it will mean that newspaper headlines will become less important, and what's underneath them will become increasingly more important. Based upon a rather limited experience in one field and a fairly long experience in the other, I would be inclined to believe that radio and the daily press - for a considerable period yet to come - will continue to be a counter-balancing and supplementary agency, one to the other.

"If radio news coverage has suddenly grown up, this momentous event need not imply that American journalism is in its dotage. To be reasonably well-informed in this complex and maddening world undoubtedly we shall greatly need the intelligent services of both radio and the press. A writing man, who also likes to speak occasionally, would ardently hope so!"

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#### NEW RADIO DEVICE ADDS TO SAFETY OF FLYING

Long an aid to fliers, radio has again contributed to the safety of flying with a new instrument that will register for a flier at all times his height in the air over land or water. The instrument is an "absolute" altimeter which will tell pilots the plane's exact distance above ground.

The new instrument was developed by the Western Electric Co. and United Air Lines. It uses the shortest radio wave ever employed in aviation, officials said.

Members of the Civil Aeronautics Authority, the Air Safety Board and United States Army and Navy officials viewed the new altimeter yesterday (Monday) at Washington Airport.

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 ::: TRADE NOTES :::  
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The Federal Communications Commission last week set for further hearing before an Examiner the case involving the license agreement between the Radio Corporation of America and the Globe Wireless, Let., in which other telegraph companies are involved. The date for the rehearing is November 23rd.

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Misrepresentation of the quality and effectiveness of certain cosmetics and preparations for the hair is alleged by the Federal Trade Commission, in a complaint issued against J.W. Marrow Manufacturing Co., 3037 N. Clark St., Chicago, a radio advertiser.

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For outstanding contributions to the advancement of fine music in America, Dr. Franklin Dunham, NBC Educational Director, has been made an honorary fellow in Trinity College of London. The award, voted to Dr. Dunham at a meeting of the Board in London last Monday, will probably be bestowed in New York early next Spring.

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A hearing has been scheduled by the Federal Communications Commission for December 12th before an Examiner on the Telegraph Division Order No. 12 dealing with "the justness and reasonableness of the ratio between the charges for ordinary and urgent messages (except press urgent messages) as prescribed in the tariffs of respondent carriers; and the existence of discriminations, prejudices, or disadvantages resulting from such ratio."

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Larry Elliott, Washington radio announcer, has left Station WJSV to join the announcing staff of the Columbia Broadcasting System's parent station, WABC, in New York City. Mr. Elliott has been with Station WJSV since October 26, 1925, when the station went on the air for the first time. He had experience as an announcer at other local stations.

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The Pittsburgh Sun-Telegraph dropped its radio comment column October 3rd. The Sun-Telegraph station, WCAE, advertised its detailed program in the Sun-Telegraph.

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The Metropolitan Police Department, of Washington, will ask the Federal Communications Commission soon for licenses to operate a two-way short-wave radio system in eight police cars, Maj. Ernest W. Brown, Police Superintendent, said. He explained that the system will be installed car by car as contingency funds permit until the eight cars are equipped. They will be operated on an experimental basis, and if the system proves successful, Congress will be asked for funds for general installation.

10/11/38

CREDIT FOR PEACE DUE RADIO, SAYS NEWSPAPER MAN

"Much of the credit" for averting another European war "will have to be given the radio", Howard Vincent O'Brien wrote in the Chicago Daily News last week.

"Never before has public opinion been so promptly and so thoroughly mobilized. It has been thrilling to think that as I sat listening to the words of a statesman, spoken by himself, millions of people, from Dan to Bersheeba, were also hearing them", he said.

"It was thrilling, too, to listen to short-wave broadcasts from the various nations of the world, each one reeking with propaganda, each one whining like a peddler for my approval. It made me feel immensely important - and a little dangerous! I, an obscure individual, was being asked to cast my vote, for or against. The lords of the world were on their knees to me, a person of no consequence on the face of it, yet by this solicitation given to understand that he was very consequential indeed.

"In those thrilling moments all the nonsense that has been uttered about 'propaganda' was blown away. Propaganda ceased to be the insidious peril we have been assured that it was. It became simply ridiculous. . . .

"No longer are we obliged to take what somebody says about somebody else and swallow it as gospel. It is one thing to read or hear that Hitler is crazy; and it is very much another to hear Hitler.

"The idea grows on me that if the dictator disappears from our earthly stage it will be because of the radio. One may read of Mussolini addressing an ecstatic throng at Vicenza and be impressed. His reaction is different when he hears that funny little man screaming nonsense like a barker on the tailboard of a patent-medicine wagon.

"Stalin, alone, has kept his head. He remains awesome and mysterious; but one of these days he will make the mistake of going on the air. Then he will be just another little man, trying to sell me a bill of goods.

"It all makes me think of those splendid words of John Milton:

"'Though all the winds of doctrine were let loose to play upon the earth, so Truth be in the field, we do ingloriously, by licensing and prohibiting, to misdoubt her strength. Let her and Falsehood grapple; who ever knew Truth put to the worse in a free and open encounter?'

"That is what the radio is doing. It is giving us a free and open forum for the exploitation of the ideas which affect our destinies."

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