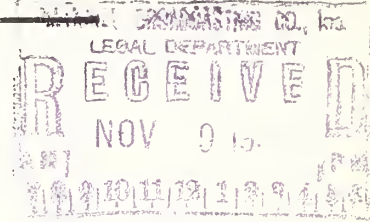


# HEINL RADIO BUSINESS LETTER

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No. 1173

November 8, 1938

## VACILLATING POLICY OF FCC HIT BY CRAVEN IN WTIC CASE

Commissioner T.A.M. Craven last week-end lashed out at the vacillating policies of the Federal Communications Commission after it had established a new precedent by applying a common carrier label to broadcasting stations, thus putting into effect one of the theories of Chairman Frank R. McNinch.

The action in question was the denial of an application of a subsidiary of the Travelers Insurance Co., of Hartford, Conn., for authority to transfer the pioneer station WTIC and four short-wave outlets to another subsidiary. The majority opinion was based chiefly on court decisions dealing with common carriers and the fact that the new subsidiary proposed to absorb a debt of \$1,500,000, which represented part of the cost of radio pioneering incurred by Travelers in developing WTIC.

Three other Commissioners - Sykes, Walker and Payne - supported Chairman McNinch, while Commissioner Thad Brown voted with Commander Craven.

Pointing out that the Commission in the past had repeatedly approved station transfers in which profits above the cost of the actual radio plant were allowed, Commissioner Craven said:

"It is regrettable that the Commission has not yet found it possible to adopt a policy of which it can uniformly apply and to which parties may look for guidance for entering upon such transactions. Businesses under private ownership necessarily change hands from time to time, either directly or through transfer of stock in corporations. In this respect broadcasting is like any other business. I do not think I am over-stating the matter when I say that the basis on which a business, or an interest therein, may be disposed of is of tremendous importance to the investor, and the Commission's policy on this subject will have a lot to do with attracting or driving away capital and the pioneering spirit in the various fields of radio communication. Whatever policy is adopted with respect to broadcast licenses should likewise be applied to licenses for public correspondence by radio because if it is wrong in one case to pay more than the value of the tangible property, then it is wrong in the other."

Commissioner Craven called attention to the pioneer work of WTIC, stating that it had "not only contributed to scientific development of radio but also has rendered a meritorious public service to the citizens of Connecticut by maintaining a high standard of program quality through the development and employment of local talent".

He also pointed out that the corporation's accumulated losses actually amounted to \$2,000,000 but that it proposed to pass along only \$1,500,000.

"With reference to the right to recover losses", he said, "I know of no law or philosophy of regulation in which it is a good public policy to deprive a pioneer of the opportunity to regain the moneys expended for development, when such development has resulted in benefit to the public.

"As to pioneering expenses, the United States has prospered as a result of the encouragement of pioneering, particularly in the fields of science such as are involved in communications. For this Commission to adopt a policy for broadcasting which does not recognize that those who pioneer are entitled to the fruits of their pioneering, will so discourage honest business enterprise that there will result a deterioration of broadcasting service to the public.

"I am aware that there has been developed a doctrine of public utility regulation which does not recognize the right of public utilities to recover pioneering losses. This doctrine has been sustained by the courts in cases involving public utilities having the characteristics of common carriers. However, the Communications Act of 1934 specifies in effect that broadcasting is not a common carrier service. While it is true that the courts have recognized broadcasting stations as being public utilities, I know of no instance in which the courts have inferred that broadcasting stations may be classified as public utilities in the same sense as are railroads, power and light companies or gas companies. Therefore court decisions involving public utilities having the characteristics of common carriers are not necessarily applicable to broadcasting stations, even though the courts have inferred that the latter may be classified as public utilities. A broadcasting station is not necessarily a natural monopoly as are gas companies, power and light companies or city traction companies. Broadcasting stations should be operated in competition, not only locally but also on a regional or national basis. Furthermore, broadcasting stations do not cater directly to the general public as do common carriers. The listening public pays no money to the broadcasting stations which transmit to them radio programs of news, culture and entertainment, and broadcasting station licensees not only are not compelled to sell service to any purchaser, but are required to use discerning judgment in rendering a well-balanced program service to the public.

"Furthermore, in my opinion Congress, when specifying in 1934 that broadcasting was not a common carrier service, recognized that broadcasting was in the stages of early development, not only from a scientific standpoint but also from an allocation and service standpoint. At that time Congress further prohibited a long-term license. In my opinion Congress, in 1934, recognized that further development and pioneering was necessary in broadcasting. While four years have elapsed since this action



by Congress, it is my opinion that the time has not yet arrived where the development of broadcasting justifies the application of common carrier doctrines of rate regulation, either by inference or by direct action. Furthermore, such a policy appears to be illogical because the situation in broadcasting differs so greatly from the situation of common carriers that the same principles of regulation could not be applied with a logical expectancy of successful operation of the broadcasting service.

"A possible further reason for not imposing the doctrines of common carrier regulation upon broadcasting is that Congress clearly intended that while it desired to exercise a control of the application of broadcasting to the service of the public during the early development stages of this new art, it did not desire the administrative branches of the Government to so exercise control as to endanger freedom of speech and the use of radio as a media for public expression of various schools of thought on a fair and equitable basis. Therefore the Commission should proceed with caution in exercising its powers under the guise of public utility doctrines of regulation."

The majority opinion pointed out that in such transfers the Commission must in each instance determine "primarily whether or not a grant thereof would serve public interest, but it is not bound by strict principles of accounting such as would be applicable in rate-making proceedings governing common carriers".

The opinion then cited a number of court opinions, dealing entirely with public utilities, and commented that it is well settled that past losses in operation may not be capitalized in the valuation of property for rate-making purposes. The Commission then called attention to the provision in the Act which holds that radio broadcast media are not common carriers, but adds that the principle expressed in the decisions "is one which the Commission recognizes to be in accordance with sound public policy".

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## TWO NEW STATIONS AUTHORIZED BY FCC

New broadcasting stations for Idaho and Texas were authorized last week by the Federal Communications Commission. Construction permits were granted to:

Chester Howarth and Clarence Berger, of Wallace, to use 1420 kc. with 100-250 watts power, unlimited time; Amarillo Broadcasting Co., Amarillo, Texas, to use 1500 kc. with 100 watts power, unlimited time.

In denying a construction permit to the Pacific Radio Corporation of Grants Pass, Ore., the FCC said:

"It is not in accordance with good engineering practice and it is poor allocation to assign a regional frequency to a station to serve a city with a population of but 5,000 with a sparsely settled rural district contiguous thereto."

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11/8/38

## ARNOLD DEMANDS HEARING; FCC HIT BY REFORM GROUP

As Chairman Frank R. McNinch again took time out in his "purge" of FCC personnel, due to the exposure of his demand for the resignation of Davis G. Arnold, Chief Examiner, the latter seized the opportunity to demand a complete hearing before the full Commission.

Almost simultaneously the National Civil Service Reform League cited "public distrust" of the FCC and other Federal agencies in support of its plea for an extension of the merit system to all U.S. and State employees.

Mr. Arnold, a Civil Service employee of 17 years, in a memorandum to the Commission said:

"On November 2, the Chairman advised me that it was his desire as well as the desire of the Commission that my services be terminated as soon as possible. I respectfully request that before the Commission acts upon this matter I be given an opportunity to appear before the Commission."

Commenting editorially on the latest "purge" move, the Washington Post said:

"Reports that Chairman Frank R. McNinch of the Federal Communications Commission has demanded the resignation of Davis G. Arnold, Chief Examiner, raises two vital issues. The first concerns the dismissal of Civil Service Employees of long standing without a hearing of specific charges against them. And the second concerns the sloppy methods of selecting personnel which seems to underlie much of the FCC's difficulty.

"Mr. Arnols is a Civil Service Employee of 17 years' standing. If he can be suddenly ousted from his post in the FCC, without a hearing, the protection which the merit system is supposed to afford will mean very little. Presumably Mr. McNinch has positive reasons for wishing to replace a number of FCC employees. Perhaps these changes would enhance the efficiency of the Commission. On the other hand, arbitrary dismissal of Civil Service employees would certainly have a demoralizing effect upon the entire personnel of the Federal Government."

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The Vancouver Radio Corp., Vancouver, Wash., last week was granted a construction permit to build a broadcasting station for operation on 880 kc., with 250 watts power, daytime only.

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11/8/38

## MILWAUKEE JOURNAL ASKS TELEVISION PERMIT

The Journal Company, which publishes the Milwaukee Journal and operates Station WTMJ, Saturday filed with the Federal Communications Commission the first application for a license to operate a television station for the purpose of transmitting a regular schedule of programs since the announcement of the Radio Manufacturers' Association that television receivers will be put on the market next Spring.

With the filing of this application, Harry J. Grant, Chairman of the Board of the Journal, made the following statement:

"This step is in line with the long established policy of the Journal Company to at all times give to the people of Wisconsin the benefits of the latest developments in newspaper and radio services as soon as they become available.

"Just as the Journal was one of the first newspapers in Wisconsin to give its readers rotogravure, color gravure and wire photo, likewise WTMJ leads the radio stations of the United States with crystal control and high fidelity. We take pride in being the first individual operator to introduce this new service."

"It is planned to thoroughly study television and its synchronized sound, program technique by telecasting program of every conceivable type and kind through the use of studio talent, film and remote control from the scene of action, and to determine the degree of service which television has to offer to the public.

"We shall distribute, at our expense, at least fifty television sets of various types in homes and public places where the programs may be viewed.

"Program plans will be aimed at developing a schedule agreeable to the people in the greater Milwaukee area with a full realization that the problem of talent is greater in Milwaukee than in such centers as New York, Chicago and Hollywood, and while the proposed station will use film and live talent and remote control direct from the scene of action, particular emphasis will be placed upon the use of Milwaukee and Wisconsin news in pictures by developing the station's own newsreel."

Plans of the Journal Company call for two 1000 watt ultra high frequency transmitters, one for the picture signal and one for the accompanying sound, cameras for both films and studio, and a complete system of amplifiers and control panels permitting an instant switching from one to the other without breaks in the program.

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## McNINCH CONFERS ON "MARS" AS NATION RELAXES

Chairman Frank R. McNinch of the Federal Communications Commission this week held a column conference with heads of the three major radio networks on the significance of the CBS broadcast of "The War of Worlds" while the nation relaxed from its fright of ten days ago and began to laugh at itself.

Chairman McNinch personally invited the network officials to Washington to discuss the use of the terms "flash" and "bulletin" in fictional dramas on the air. He pointedly failed to ask his colleagues to sit in on the conference.

Several hours after the conference, he issued a mimeographed release through his own office, ignoring the FCC Press Division, stating in two full pages that the matter had been discussed amicably but that no drastic changes were planned. Mr. McNinch pointed out that the parley was strictly informal and that he was making no effort to exert any form of censorship on radio programs.

Meanwhile, newspaper columnists and cartoonists and even the movies began to kid the public for its outburst following the imaginary Martian invasion via the Mercury Theater, and Orson Welles began to cash in on the publicity he received. He got a sponsor.

Only Editor & Publisher persisted in viewing the CBS broadcast with alarm, contending that it showed up the weakness of radio as a communications medium and the danger of dramatizing news events.

"Broadcasting learned an important lesson last Sunday evening", it said in an editorial. "It learned that news is dynamic, explosive, immediate. The near panic that swept the East as the result of the Columbia-Wells-Welles fantasy on a quiet Sunday evening will not be repeated. News is out as an element of dramatic broadcasts.

"Mr. Orson Welles put his finger on the weakness of radio as a communications medium, a weakness that Editor & Publisher and other newspapers have often mentioned. That is the fragmentary nature of radio intelligence and the fragmentary attention it gets from the audience. To get news intelligibly from the air waves, the listener has to be tuned to the right spot from beginning to end and he has to give to the receiver a degree of attention that few Americans devote to anything.

"The public radio habits which this incident indicate warn that radio is not a reliable means of communicating important news. The inherent human tendency to misunderstand, to see what isn't visible and to hear what isn't spoken, is intensified by the feverish, almost hysterical tempo of radio's urgent bulletins. The fact that they are bulletined gives them an importance that they often do not possess, an importance that is cooled down to



normal in a city room accustomed to emergencies. By the time the reader gets a newspaper bulletin, it is usually explained and qualified to its proper importance. Radio, so far, has expected its untrained listening audience to do that for itself. One result, we judge from newspaper circulations, has been to increase the public's dependence upon newspapers for reliable information."

Because many newspaper men failed to hear the original broadcast, CBS repeated the performance at the National Press Club on Tuesday night via an electrical recording.

President at the McNinch conference Monday were Lenox R. Lohr, President of the National Broadcasting Company; William S. Paley, President of the Columbia Broadcasting System, and Alfred J. McCosker, Chairman of the Board of the Mutual Broadcasting System.

In his invitation, Mr. McNinch said that he wanted the informal discussion to center around "the use of the terms 'flash' and 'bulletin' in news broadcasts, dramatic programs and in advertising messages" because he felt that there might be developing an indiscriminate use of these words which could result in misleading or confusion to the public.

The three network heads were in agreement that the word "flash" is now rarely used by any network, he said after the conference and Messrs. Lohr and Paley agreed that it should be restricted to items of unusual importance or interest.

Mr. McCosker also agreed, for his Station WOR, that "flash" should be restricted to items of unusual importance or interest and that he would submit this matter to the members of the Mutual Broadcasting System for their consideration. This, he explained, was necessary because of the autonomous character of the Mutual network, and he had no authority to speak for the members of that network.

The three network heads saw no reason to alter the present practice in broadcasting news labelled as "bulletins".

"The network heads agreed that the words 'flash' and 'bulletin' should be used with great discretion in the dramatization of fictional events", Mr. McNinch said, "with a view never to using them where they might cause general alarm. It was believed that this could be accomplished without greatly weakening the value of the dramatic technique as such."

Chairman McNinch said that he would hold similar informal discussions with other representatives of the industry.

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## PRESS WIRELESS DENIED RADIO-TELEPHONE PERMIT

The Federal Communications Commission this week flatly denied an application of Press Wireless, Inc., for authority to conduct a radio-telephone service in addition to radio-telegraph transmission.

Press Wireless sought to modify the license of Station WCA, Hicksville, N. Y., to provide for the rapid transmission of important events of outstanding news value simultaneously with its happening.

Press Wireless, Inc., is a corporation organized under the laws of the State of Delaware for the primary purpose of rendering radio communication service to newspaper owners, publishers, and the press generally. Its stockholders are the Christian Science Monitor, New York Times, The New York Herald Tribune, The Chicago Tribune, The Chicago Daily News, The Los Angeles Times and the San Francisco Chronicle.

It is the licensee of a number of stations in addition to Station WCA, through which it conducts a world-wide radio-telegraph communication system in the service of the press for which purpose some thirty-nine frequencies are assigned to it. Service rendered by it consists of the transmission of point-to-point press traffic and multiple address press traffic on a secondary basis to various points in the United States, Canada, Europe, The West Indies, Africa, Central and South America, The Pacific Islands and the Far East. A reception service is also provided by applicant through which programs transmitted from foreign countries are received principally for rebroadcast purposes within the United States.

"As developed by the evidence", the FCC stated, "the proposal emerges as the initiation of a general expansion into the radiotelephone field. Applicant would employ this medium to render point-to-point press service, through which a subscriber would be enabled to talk directly to his correspondent for the exchange of textual news; multiple address service; the transmission of Addressed Press Program Material for rebroadcasting, publication in newspapers, or other means of public dissemination; and for control purposes in connection with the reception of incoming programs. Points of communication to which, according to the evidence, it is desired to establish the services initially are Paris, Rio de Janeiro, Montevideo, Buenos Aires, Guayaquil, Panama, Havana, San Juan, Honolulu, Manila and Tokyo. A tentative plan for ultimate extension to other foreign points is disclosed in the record. Applicant's definition of Addressed Press Program Material would include speeches, music, sports, and patriotic events, and sponsored programs which may include advertising. Much of that which is included is classified as entertainment material and intended for the use of broadcasting stations.



"Applicant has available four radiotelephone transmitters, one of which is complete and ready for service. Consequently, the cost of inaugurating radio-telephone service on Station WCA would be incidental and applicant is amply financed to engage upon such operation.

"There is available at the present time through the various facilities of the American Telephone and Telegraph Company and connecting land-line facilities point-to-point radio-telephone communication from the United States to all points proposed to be served by the applicant save Guyaquil. This company and RCA Communications, Inc., Inc., both provide high-quality radiotelephone program service, a wide selective range of frequencies, and their services represent the results of considerable research and experience in the field. Several international broadcast stations render a service, without charge, which is similar in many respects to applicant's proposed program service. For example, National Broadcasting Company's Station W3XAL at the present time transmits United States programs suitable for rebroadcasting abroad from 8 A.M. until midnight. While it is recognized that general broadcasts to foreign countries do not have the coverage of those handled locally or regionally, the international broadcasts may be retransmitted abroad in the manner proposed by applicant and in such case the services are comparable save for the degree of program selection possible in applicant's proposed service.

"Applicant expects through the offering of low cost radiotelephone transmission to produce expansion in the marketing of news and broadcasting programs from the United States to the South American countries, in furtherance of American ideals and interests. It alleges that there are being directed to this region from abroad free transmission of news, political broadcasts and similar material and it urges that its proposal is calculated to aid the American users of its service in meeting this situation. Applicant justifies the inclusion of entertainment and other supporting services to its press traffic on the ground of a claimed need of its customers for rounded programs which will be sufficiently attractive to hold the interest of the listening public. The handling of broadcast programs would also permit utilization of its circuits during news lulls. It is also urged that the technical and administrative details involved in the communication of news to and from certain countries are less complex if radiotelephone methods are used. The foregoing factors might be entitled to some weight if it were otherwise satisfactorily established that the granting of A-3 emission as here applied for would provide a solution for the problems presented. However, the inference which may be drawn from this record is that such need as may be found to exist can only be met by a complete, high-quality and comprehensive service and the showing made is insufficient in this regard."

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11/8/38

TRADE NOTES

A Washington, D.C., concern selling a correspondence course of instruction in servicing radios has entered into stipulations with the Federal Trade Commission to discontinue certain misleading representations concerning their courses. It is the Sprayberry Academy of Radio, 2548 Universith Place, N.W., Among other things it will discontinue representing that the diploma issued to students covers all matters relating to technical radio theory or practice.

The proposed institutional radio program for retail stores throughout the country which was to feature the New York Philharmonic Symphony Orchestra and which is being promoted by the Columbia Broadcasting System appeared doomed to failure last week since that night was set (Thursday night) as a deadline on the program, according to Editor & Publisher. Late reports were that CBS had struck several snags in promoting the program to local retail stores throughout the nation at a cost to be in the neighborhood of \$1,000,000.

The NBC Transcription Service has undertaken waxing of thirteen 15-minute programs for the use of banks throughout the country, the result of a contract signed with the American Bankers' Association. Banks buying the programs will get the transcriptions from the Association at cost and pay for their own station time. The Association also will attempt to interest the banks through the 600 clearing house associations in the United States.

E. H. Vogel, Manager of the Radio Division of the General Electric Co., sailed for Europe on November 1st for the purpose of studying television facilities, developments, and experience abroad, particularly in England, France and Germany. He expects to be gone six weeks, and in the interval will not only investigate transmitting and receiving equipment but will discuss commercial television experience and plans with various European agencies and G-E affiliated companies.

Edward R. Murrow, European Director of the Columbia Broadcasting System, will be the guest of the National Press Club at luncheon, Thursday, November 10, at 12:30 o'clock. As Columbia's key-figure in Europe, it was his task to direct the CBS network's coverage of the recent crisis in that continent.

The British United Press, working in cooperation with United Press, opened a new leased wire circuit in Canada Nov. 1. Offices were opened in Winnipeg to handle the new service, while an agreement has been reached with the Provincial Telephone System of the Provinces of Manitoba, Saskatchewan and Alberta to provide teletype service of news to radio stations in that area. Nine stations already have been signed.

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John J. Karol, CBS Director of Market Research, will leave New York headquarters Thursday, November 10, for a speaking trip to Ohio. Friday, November 11, he will address the Columbus Advertising Club and early the following week he will speak before the Cincinnati Marketing Association. His general topic on both occasions will be research in radio advertising.

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"The cut in radio space among the major United States newspapers totals 542 columns, averaging 20 inches to the column per week," according to a survey completed last week by Variety magazine. The average daily ABC circulation of these newspapers aggregates 16,945,950, according to the study. Cities that suffered most severely in the radio publicity cut by newspapers are Washington, Detroit, Chicago, San Francisco, Los Angeles and Seattle.

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An experimental television broadcast of an automobile show has been arranged by the National Broadcasting Company for Thursday, November 10, in cooperation with leading automobile manufacturers. Executives of seven manufacturing firms will see and hear a demonstration of their cars through the RCA television system at the NBC headquarters in the FCA Building.

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The responsibility of a radio station or broadcasting system for remarks during broadcasts was placed in the same category as that of newspapers for the material they publish, in a \$15,000 verdict returned recently in Pittsburgh, Pa., against the National Broadcasting Co. The verdict was given to the Summit Hotel, of Uniontown, Pa., for an imprompty remark allegedly made by Al Jolson in a broadcast from Radio City three years ago. The hotel had asked \$100,000 damages, claiming that its business was damaged seriously by the remark.

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Over-riding the report of its Examiner, the Federal Communications Commission this week approved the sale of Station WCLS, Joliet, Ill., from R. W. Hoffman to L. W. Wood and Walter Ashe for \$30,000. The decision, somewhat at variance with the ruling on the Travelers Insurance Co. case, was favorable despite the fact that evidence introduced showed the replacement value of the station to be \$12,606.21 and the station's balance sheet indicated a net worth of \$13,809.53.

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