

HEINL RADIO BUSINESS LETTER

2400 CALIFORNIA STREET

WASHINGTON, D. C.

CONFIDENTIAL — Not for Publication

INDEX TO ISSUE OF DECEMBER 6, 1938

FCC Changes Censorship Policy In "Mars" Case.....	2
Lawyers Consider Rules On Court Broadcasts.....	3
Voluminous NBC Exhibit Fails To Satisfy FCC.....	4
Italy Plans Television Service Next Year.....	4
A. T. & T. Attacks Walker's Telephone Report.....	5
"Dead Spots" Hamper D.C. Police Radio.....	6
Soviets Copy Patents, U. S. Radio Review States.....	7
New FCC Counsel Named In Reorganization.....	8
Sarnoff To Get "Poor Richard" Award.....	8
CBS Billings For November Gain 2.8%.....	9
NBC Billings Up 15.3%; Red, 2.7%, Blue, 5.4%.....	9
Trade Notes.....	10
MBS November Billings Set New Mark.....	11
NBC Rate Card 25 Reflects Net Expansion.....	11

No. 1180

December 6, 1938

FCC CHANGES CENSORSHIP POLICY IN "MARS" CASE

Apparently convinced that the public is opposed even to an indirect censorship of radio programs by a governmental agency, the Federal Communications Commission this week decided to take no action as a result of the "Men From Mars" broadcast over the CBS network October 30th.

The Commission announced that it believed the steps already taken by the Columbia Broadcasting System to prevent a repetition of the incident were sufficient to protect public interest.

Hence the CBS stations who carried the program will not be held to account when they ask for license renewals as were National Broadcasting Company stations following the broadcast of the "Adam and Eve" episode with Mae West and Charlie McCarthy.

The FCC disclosed that it had received 372 protests against the Orson Welles dramatization of H. G. Wells' 30-year-old novel and 255 letters approving it. The Commissioners who failed to hear the original broadcast listened to a transcription of the program.

Twice before the Commission has called radio stations to account for broadcasting programs about which there had been complaints, although it pointed out that the Communications Act specifically bars it from exercising censorship over what it carried over the air.

In the Mae West case, Chairman Frank R. McNinch sent a formal rebuke to Lenox Lohr, President of NBC, and announced that the program would be taken into account when the network stations applied for license renewals. No station was punished, however, by having its license revoked.

Following the receipt of a complaint that profanity was broadcast in connection with a radio presentation of Eugene O'Neill's "Beyond the Horizon", the Commission first called the NBC stations involved to account and set their licenses for hearing.

When public reaction proved unfavorable, however, the Commission reversed its action and renewed all licenses without a hearing.

Explaining its decision in the Orson Welles case, the FCC said:

12/6/38

"While it is regrettable that the broadcast alarmed a substantial number of people, there appeared to be no likelihood of a repetition of the incident and no occasion for action by the Commission.

"In reaching this determination, the Commission had before it a statement by W. B. Lewis, Vice President in Charge of Programs, of the Columbia Broadcasting System, expressing regret that some listeners 'mistook fantasy for fact', and saying in part, 'In order that this may not happen again, the Program Department hereafter will not use the technique of a simulated news broadcast within a dramatization when the circumstances of the broadcast could cause immediate alarm to numbers of listeners.'

"The Commission had also heard a transcript of the program and had been informed regarding a number of communications concerning it."

Immediately after the broadcast Chairman McNinch summoned the heads of the three major networks to Washington for an informal conference on the use of such terms as "flash" and "bulletin" in radio dramatic broadcasts.

A general agreement was reached that the terms should be used with discretion.

Other members of the Commission, who had their fingers burned by the "Beyond the Horizon" incident, favored a complete hands-off policy.

X X X X X X X X

LAWYERS CONSIDER RULES ON COURT BROADCASTS

A joint committee of lawyers, broadcasters and newspaper publishers trying to formulate a code for court room reporting met this week in Washington and discussed the whole problem at length.

The NAB committee, headed by Neville Miller, President of the National Association of Broadcasters, agreed to study the (Newton D.) Baker report, already adopted by the American Bar Association and the American Newspaper Publishers' Association, and to report the broadcasting industry's reaction at the next committee meeting.

Philip G. Loucks, Louis Caldwell, Frank M Russell, of NBC, and Harry C. Butcher, of CBS, were appointed with Mr. Miller on the NAB committee.

X X X X X X X X

12/6/38

VOLUMINOUS NBC EXHIBIT FAILS TO SATISFY FCC

After the greater part of three days had been consumed in explaining a 317-page exhibit of the National Broadcasting Company in the chain-monopoly investigation, counsel for the Federal Communications Commission stated that the information was of little value in showing the extent of duplication of programs.

The Special Committee and FCC attorneys asked Philip J. Hennessey, NBC counsel, to furnish additional data as to what NBC stations carry the major NBC programs between 6 and 11 P.M. during the week. The Chase & Sanborn program was mentioned specifically in the discussion.

Mr. Hennessey previously had explained that 45 persons worked 12,000 man-hours preparing the exhibit. He promised to provide the additional information, however.

W. C. Lent, NBC engineer, explained the exhibit and how the information was obtained. He said NBC has about 100 supplemental stations which may be added to either one of the major basic networks if the advertiser wishes to expand his coverage.

With the Congressional monopoly hearing under way on Capitol Hill, the FCC inquiry was practically ignored by the press, except for special writers of trade magazines.

Chairman Frank R. McNinch popped in and out and provided the press with a few quotes as he rapped NBC exhibits or prepared statements, prior to their abolition, and then left Commissioners Sykes and Brown to carry on as the hearing reached the drab stages.

X X X X X X X X

ITALY PLANS TELEVISION SERVICE NEXT YEAR

A regular service of television is promised early in 1939 from Rome and Milan, according to World-Radio. It will later be extended to other Italian cities. The ultra-short-wave station on Monte Mario, the hill to the north-west of Rome, was built to transmit television as well as telephony.

The principal manufacturers of radio apparatus are engaged in experimenting with a moderate-priced set for television and sound broadcasts, which, according to the press, it is hoped to put on the market for about \$110.

X X X X X X X X

A. T. & T. ATTACKS WALKER'S TELEPHONE REPORT

The long dormant "proposed report" of the Federal Communications Commission on the telephone industry was revived this week as the American Telephone & Telegraph Company filed its answer and Chairman Frank R. McNinch stated that the Commission will make a new report to the next Congress.

The investigation conducted by Commissioner Paul A. Walker, the A. T. & T. charged in 280-pages of denial and protest, was "unfair, incorrect, and unsound".

The Commission is known to be split on the Walker report and several times Chairman McNinch has explained that it was only a "proposed report" and consequently did not represent the views of the full Commission.

Commissioner T.A.M. Craven has been one of the most outspoken critics of the report of the FCC. He stated at the time the preliminary draft was submitted to Congress, last April, that he did not concur in many of the recommendations and disapproved of the manner in which the inquiry was conducted.

"The Walker report is full of errors of fact, misstatements of fact and unjustified inferences and unsupported conclusions", A. T. & T. declared in entering what amounts to a blanket denial of the charges made by Mr. Walker and the efficacy of his suggested program "for effective and progressive regulation of the telephone industry".

Renewing its protest on the ruling by which American Telephone was not permitted to cross examine witnesses or introduce rebuttal testimony during the hearings the Company's reply asserts that, as a result, the investigation was "incapable of producing reliable conclusions".

Based on an FCC inquiry into the structure, operations and management of the A. T. & T. ordered by Congress and conducted over three years at an estimated cost of \$1,500,000, the "proposed report" prepared by Mr. Walker was submitted last March to Chairman McNinch and by him transmitted on April 1st to the Interstate Commerce Committee of the Senate and to the Interstate and Foreign Commerce Committee of the House of Representatives for their information.

The "proposed report" maintained that telephone rates could be and should be reduced 25 per cent, and to that end recommended amendment of the Communications Act to give to the FCC jurisdiction and authority to "review, approve and disapprove" all Bell System policies, to permit regulation of the Western Electric Company by the FCC as a public utility "for the purpose of regulating the costs and prices of telephone apparatus and equipment", to fix temporary rates and to provide for the assessment of the costs of regulation against the industry.

12/6/38

According to the Walker report, American Telephone utilized the connections of its \$4,000,000,000 corporation and its highly organized public relations system to maintain a "monopolistic" position in the telephone field, and through the Western Electric, a subsidiary, to establish "artificial" prices for equipment, and base thereon needlessly high rates to the public for telephone service.

These conclusions were protested at the time and the feasibility of a 25 per cent rate cut denounced as "absurd" by Walter S. Gifford, President of the A. T. & T.

X X X X X X X X

"DEAD SPOTS" HAMPER D.C. POLICE RADIO

Elimination of "dead spots" hampering Washington police radio reception is essential to use of a two-way radio system, Maj. Ernest W. Brown, Superintendent of Police, said this week after the Federal Communications Commission's decision granting eight permits to the Department to install two-way radio units in its police cars.

"In every section of the city there are points where reception of messages by scout cars is either very weak or almost dies down completely", Major Brown said. "These sections include the Federal Triangle area, points under viaducts and on parts of certain bridges. Building construction and electrical apparatus in the downtown area are also partially responsible. Hence a two-way set must be developed through experimentation that will transmit and receive messages in spite of these difficulties."

Major Brown said the Police Department had been experimenting with two-way radio operation for two years, attempting both to eliminate "dead spots" and to determine whether it would be cheaper to construct the sets or to purchase them from commercial organizations. He said the purchase price of such a radio is about \$500.

"When we feel that these two problems have been overcome, we shall probably start out on a modest scale, installing one of these sets in a car which will cover the whole city. If the tests prove successful, I hope ultimately to have a car for each precinct."

Major Brown indicated that if the two-way system is found practical, and the need warrants the step, sets may eventually be installed in all police cars.

X X X X X X X X

SOVIETS COPY PATENTS, U. S. RADIO REVIEW STATES

While Soviet Russia would appear to offer a large potential market to American radio manufacturers, actually it imports very little radio equipment and its industries copy patents of other nations, according to Loy W. Henderson, U. S. Charge d'Affaires, at Moscow.

In a review of the radio industry in Russia, just issued by the Bureau of Foreign and Domestic Commerce, Mr. Henderson says:

"Radio equipment on the market is almost exclusively of domestic manufacture. Although in most items the industry is incapable of supplying the existing demand, the importation of additional supplies is kept at the lowest limit maintainable.

"Soviet industry produces almost all kinds of radio equipment and parts. The output is not known, but that the factories are unable to keep up with demand and that the general development is limited, indicates that the total cannot be large.

"Soviet industry is engaged in copying on an extensive scale machinery and other articles which have been invented and patented in other countries, samples or descriptions of which it has obtained by purchase or otherwise. This practice has been facilitated by the fact that it is not illegal in the Soviet Union to copy articles or processes not patented in that country and that relatively few Soviet patents have been granted to persons or firms resident abroad. The Soviet Government is not a party to the Convention for the Protection of Industrial Property (Paris 1888) or to any of its revisions.

"Certain patents have been granted to foreign nationals, but the extent to which the holders have benefitted is not known. In a number of cases the patents were granted under contract whereby technical assistance would be given the Soviet industries in making use of the inventions.

"It would appear that two factors are primarily responsible for the relatively small number of Soviet patents granted to persons and firms resident abroad: (a) the policies of the Soviet Government which result in a curtailment of the number of patents thus granted; (b) a reluctance on the part of foreign inventors to apply for Soviet patents since they feel that even if following protracted and expensive proceedings, they are successful in obtaining patents, they may be unable, in view of the peculiar economic structure of the Soviet Union, to derive any material benefit therefrom."

X X X X X X X X X X

12/6/38

NEW FCC COUNSEL NAMED IN REORGANIZATION

The Federal Communications Commission today (Tuesday) announced the appointment of William C. Koplovitz, of St. Louis, as Assistant General Counsel. His appointment was the first in an expected shake-up of the legal staff as a result of the displacement of Hampson Gary as Chief Counsel by William J. Dempsey.

Mr. Koplovitz is a graduate of Washington University, St. Louis, and the Harvard Law School. He was on the legal staff of the Public Works Administration from 1933 to 1937 when he became associated with the Federal Power Commission, where Mr. Dempsey formerly was employed. Last January Mr. Koplovitz was made Assistant General Counsel of the Power Commission. For the last few months he has been Acting General Counsel of the Commission.

Mr. Koplovitz does not replace anyone, it was said, but fills a vacancy. There are three positions of Assistant General Counsel.

S. King Funkhouser, of Roanoke, Virginia, was appointed temporary Special Counsel to Assist Acting General Counsel William J. Dempsey in the investigation of chain and network broadcasting and monopoly. Mr. Funkhouser is a graduate of the law school of Ohio State University. He has been engaged in general practice for many years, and has also practiced extensively before Government Departments. Mr. Funkhouser was at one time in the Legal Department of the National Recovery Administration.

X X X X X X X X X X

SARNOFF TO GET "POOR RICHARD" AWARD

The Poor Richard Club, of Philadelphia, announced on Sunday last that David Sarnoff, President of the Radio Corporation of America and Chairman of the Board of the National Broadcasting Company, would receive its 1938 gold medal of achievement.

Mr. Sarnoff will be honored at the Club's annual banquet January 17th, birthday of Benjamin Franklin.

The award is made annually to a person whose accomplishments "have materially helped advance American civilization and raised the standards of living of Americans".

X X X X X X X X X X

12/6/38

CBS BILLINGS FOR NOVEMBER GAIN 2.8%

The Columbia Broadcasting System this week reported gross revenue from time sales for November, totaling \$2,453,410. This represents a gain of 2.8% over October, when the figure was \$2,387,395. Cumulative total for the 11 months of 1938 now stands at \$24,816,337. Comparisons with 1937 records are as follows:

	<u>1937</u>	<u>1938</u>
November	\$2,654,473	\$2,453,410
First 11 Months	25,935,500	24,816,337

X X X X X X X X

NBC BILLINGS UP 15.3%; RED, 2.7%, BLUE, 5.4%

Gross client expenditures for NBC facilities hit another all-time high last month as they continued their climb for the twelfth successive month. Registering a rise of 15.3 percent over November, 1938, the total for this November was \$3,899,915. Previous highs were reported for October, 1936, when the gross total was \$3,696,489, and for October, 1938, with a total of \$3,773,964. The eleven months cumulative total was \$37,576,603, a rise over the same period last year of +7.3 percent. The percentage change from October, 1938, was +3.3 percent.

As announced last week, NBC is releasing separate revenue totals for its Red and Blue networks. The Red-Blue breakdown is calculated on the new basis of complete separation of those supplementary groups regularly affiliated with the Red and Blue basic networks. Revenue on supplementaries available to both the Red and Blue networks is divided according to the network on which each program originates.

Stimulated by the current sales drive, the Blue network showed an increase of 5.4 percent for November, 1938, over October. The Red increase for the same period was +2.7 percent.

X X X X X X X X X

A new radio station at Emporia, Kansas, was authorized last week by the Federal Communications Commission. The applicant, Emporia Broadcasting Co., will use 1370 kc. with 100 watts power, daytime only. There is no station in Emporia now.

X X X X X X X X X X

12/6/38

TRADE NOTES

An explanation of the procedure practiced before the Federal Communications Commission is contained in a report on "Admission to and Control over Practice Before Federal Administrative Agencies" recently prepared by a Committee of the District Bar Association headed by Louis G. Caldwell.

Lenox R. Lohr, President of the National Broadcasting Company, will address delegates to the biennial meeting of the Federal Council of Churches of Christ in America in the ballroom of the Hotel Statler, Buffalo, N. Y., on December 7th. Mr. Lohr will be the second lay person ever to have addressed the conference in the Council's history, the other having been President Roosevelt. Mr. Lohr and Dr. Ralph W. Sockman will be featured speakers on a special program broadcast from 4:00 to 4:45 P.M., EST, over the NBC Blue-Network. Mr. Lohr's subject will be "Radio and Religion".

The first short-wave radio transmitter in the United States west of the Mississippi River will be erected on Treasure Island, site of San Francisco's World's Fair, and will be in readiness for operation with the opening of the Fair the middle of February. This announcement was made this week by Chester H. Lang, Manager of broadcasting for the General Electric Company, upon receipt of word from the Federal Communications Commission that it had approved the building of this station at the Fair instead of at Belmont, as asked in the original application.

An official of the American Defense Society declared Sunday in New York that six radio stations had refused to broadcast a speech before the Society by Representative Martin Dies, (D.), of Texas, Chairman of the House Committee on Un-American Activities. Officials of three stations (WMCA, WOR, WHN) declared, however, that to their knowledge no request was made for radio time. The National Broadcasting Co. (WEAF, WJZ), which said it attempted to select the most important and appealing programs from the many offered it, stated that the Society requested radio time, but Mr. Dies had not. It added that Mr. Dies "has been heard over NBC networks on seven occasions since last April". Columbia Broadcasting System (WABC) made no comment.

John F. Foyal, Vice-President in Charge of Programs of the National Broadcasting Company, is now en route by airplane to attend the Eighth International Conference of American States at Lima, Peru, as an unofficial observer for the Radio Corporation of America and the National Broadcasting Company.

X X X X X X X X X X X

12/6/38

MBS NOVEMBER BILLINGS SET NEW MARK

A 39.7 percent increase in time billings for November is reported for the Mutual Broadcasting System in comparison with the same month in 1937.

Total billings for last month were \$360,928.80, marking the largest individual month's billings in the history of the network. 1938's October figure of \$347,770.61 was the previous all time high. November, 1937, billings totalled \$258,356.87.

A 29.6 percent increase in time billings for the eleven months of 1938 is also reported at this time. Total billings for this period in 1938 were \$2,582,954.82. For the first eleven months of 1937 they were \$1,993,612.50.

X X X X X X X X X

NBC RATE CARD 25 REFLECTS NET EXPANSION

The National Broadcasting Company last week mailed NBC Network Rate Card No. 25, effective December 1, to advertising agencies and clients with an explanatory letter signed by Roy C. Witmer, Vice-President in Charge of Sales.

"The NBC Network Rate Card, No. 25, incorporates several changes of detail involving the rearrangement of some groups and the addition of 15 new affiliated stations", Mr. Witmer explained. "There is no change in the basic rate structure, except that the new Blue network discounts announced on October 21st are now incorporated in the rate card.

"The Northcentral group (WTMJ, Milwaukee and WIBA, Madison) has been eliminated. WTMJ is now a basic Red network station, while WIBA is listed as a basic supplementary station available with either the basic Red or the basic Blue. KTMS, Santa Barbara and KFSD, San Diego are now listed on the Pacific Coast Blue network, while WTAR, Norfolk is now a basic supplementary station available to Red or Blue.

"From now on, certain supplementary groups will be specifically identified with either the Red or the Blue network, and these are clearly indicated on the new card. However, when available, these groups may still be used on the opposite network. All other supplementary facilities continue to be available to either basic network."

The new stations added to NBC networks since the last rate card was published are: WEEU, Reading; WRAW, Reading; WNBC, New Britain; WMFF, Plattsburgh; KMA, Shenandoah, WFDF, Flint; WJIM, Lansing; WIBM, Jackson; WELL, Battle Creek; KUTA, Salt Lake City; WLBZ, Bangor, Maine; WRDO, Augusta, Maine; WGAL, Lancaster; WLAK, Lakeland; WAPO, Chattanooga.

X X X X X X X X X X