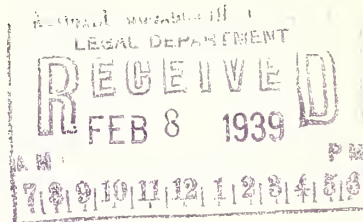


HEINL RADIO BUSINESS LETTER

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INDEX TO ISSUE OF FEBRUARY 7, 1939.

House Withholds FCC Funds Pending Shake-Up.....	2
WLW Loses Super-Power Permit; Appeal Expected.....	3
FCC Chairman Suffers From Case Of Bad Memory.....	4
MBS Takes Stand In FCC Chain-Monopoly Probe.....	5
Senate Confirms Case; But For How Long?.....	5
Radio Commentator Appeals To Rules Committees.....	5
Wigglesworth Assails McNinch In House Address.....	6
What-Is-A-Monopoly Question Baffles Committee.....	8
Caldwell Sees Censorship In FCC Control.....	9
Mutual's January Billings Total \$315,078.....	9
Trade Notes.....	10
Networks Reply To NAB On Deal With Union.....	11
January Bad For Ads, Including Radio.....	11
Caution Urged In FCC Reorganization.....	12

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February 7, 1939.

HOUSE WITHHOLDS FCC FUNDS PENDING SHAKE-UP

The House Appropriations Committee this week reported the Independent Offices Supply Bill without any funds recommended for continuation of the Federal Communications Commission. The Committee explained that the money could be appropriated later after the reorganization of the FCC.

The House action came as a distinct blow to the plans of Chairman Frank R. McNinch, who had asked for a \$700,000 increase and had been allowed \$300,000 more than last year to pay for expansions in the Publicity Division and other units of the FCC.

At the same time Chairman Lea, of the House Interstate and Foreign Commerce Committee, which handles radio legislation, said that he doubted whether his Committee could give proper consideration to a measure abolishing the FCC in favor of a three-man agency before April.

Chairman McNinch and Senator Wheeler, Chairman of the Senate Committee on Interstate Commerce, were still conferring regarding the new legislation, but the bill has not yet been introduced in the Senate or made public.

Senator Wheeler, while still agreeing with Mr. McNinch that a three-man agency might be more efficient than the seven-man body, emphasized that this view was dependent upon the type of appointees put on the new Commission.

"Political quacks" must be kept off the Commission if it is to be successful, regardless of the number of members, Senator Wheeler said.

Meanwhile Senator White (R.), of Maine, who has been consulted regarding the new legislation, indicated he may sponsor a reorganization bill of his own if he is not satisfied with the measure offered by Senator Wheeler.

Published hearings on the FCC budget meanwhile provided good reading for members of the House and material for the first blast against Chairman McNinch and the reorganization plan on the House floor. The blast came from Representative Wigglesworth (R.), of Massachusetts, a member of the sub-committee which rejected the FCC appropriation estimate of \$2,000,000.

Other attacks on the Commission were expected before the House passes upon the Independent Offices Supply Bill.

The general consensus of members who read the testimony and cross-examination of Chairman McNinch was that he had made a poor showing and that his explanation of the "purge" and the failure of the FCC to adopt any definite policies was unsatisfactory.

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WLW LOSES SUPER-POWER PERMIT; APPEAL EXPECTED

With surprising alacrity, the Federal Communications Commission this week adopted the recommendation of its three-man committee that the experimental super-power license of Station WLW, Cincinnati, not be extended.

Unless a court order intervenes meanwhile, Station WLW shortly will return to its 50 KW. power and "the Nation's Most Powerful Station" will conclude, temporarily at least, its super-power broadcasts that have been heard throughout the United States since the Spring of 1934.

The FCC will issue an order within a few days, explaining its decision and stipulating the time that the super-power broadcasts must cease.

The decision was unanimous. Commissioner George Henry Payne did not participate in the voting because of the controversial part he has played in the matter. Mr. Payne had fought to have this experimental license revoked. For that reason, although he was present at the meeting, Mr. Payne said he did not consider it the proper thing for him to vote. When asked what he thought might be the attitude of the Commission if an appeal were made by WLW, Mr. Payne said it was a question in his mind if it were an appealable matter. Mr. Payne declined to comment further saying, "After my having fought for two and a half years to have the WLW experimental license revoked and then having been backed up by a unanimous vote of the Commission, I believe the public can draw its own conclusions."

While no announcement was made by WLW counsel immediately, it is expected that the Crosley Corporation nevertheless will carry its fight to retain the 500 KW. experimental license to the courts on the ground that it has a substantial monetary investment in the equipment.

The prompt action of the FCC in the WLW case apparently was prompted by the move for a reorganization of the Communications Commission. It was believed significant that Chairman Wheeler, of the Senate Interstate Commerce Committee, is an outspoken foe of super-power and introduced a resolution, which the Senate adopted last session, denouncing it. At that time, however, he explained in answer to a question on the Senate floor that the resolution did not refer to existing stations. The question, asked by Senator Bulkley, of Ohio, referred to WLW as the Cincinnati station was the only super-power station on the air.

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FCC CHAIRMAN SUFFERS FROM CASE OF BAD MEMORY

Members of the House and the press this week were commenting on the apparent poor memory of Chairman Frank R. McNinch as disclosed in the transcript of House hearings on the Federal Communications Commission's budget estimates.

There were three outstanding examples of the loss of memory although a number more of minor lapses.

No. 1 - When Representative Wigglesworth (R.), of Massachusetts, asked him about the accuracy of a story carried by the Washington Post on December 7th regarding a move under way by Thomas G. Corcoran, with Commissioner McNinch's approval, to abolish the FCC in favor of a three-man agency, the Chairman said:

"I do not know anything about the article from which you are reading, for I have not read it."

Members of the press recalled that he issued a mimeographed statement on December 8th denying the story.

No. 2 - Congressman Wigglesworth, in questioning Chairman McNinch about the "purge", asked him whether he had received any reply to his letter to the Civil Service Commission which requested exemption of sixty odd FCC employees.

Chairman McNinch said he had received no reply. Later, however, he inserted a footnote in the transcript recalling a letter from Harry B. Mitchell, Chairman of the Civil Service Commission.

"This letter had entirely slipped my recollection when Congressman Wigglesworth asked the question at the hearing", he said.

No. 3 - Representative Wigglesworth also asked regarding the KSFO case in which the Commission had found that the lease agreement exceeded in its authority the bounds of Sections 301 and 310 of the Communications Act.

"If I recall the case, and I believe I do", said Mr. McNinch, "that is the only case that presented the situation prevalent in that case."

Pressed as to whether or not the Commission had not had similar cases, Chairman McNinch said:

"Well, I do not recall any other, but that does not really mean that there may not have been some others."

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MBS TAKES STAND IN FCC CHAIN-MONOPOLY PROBE

With the Federal Communications Commission's chain-monopoly investigation going into the fourth month without producing any sensational disclosures, the Mutual Broadcasting System this week replaced the Columbia Broadcasting System on the witness stand.

Among those present for the opening testimony today (Tuesday) were W. E. Macfarlane, President; Alfred J. McCosker, Chairman of the Board; T. C. Streibert, Vice-President; E. M. Antrim, Executive Secretary-Treasurer; Fred Weber, General Manager; Miles E. Lamphier, Auditor; Andrew L. Poole, Traffic Manager; and Adolph Opfinger, Program Service Manager.

CBS concluded its four weeks of testimony last week. Among the final witnesses were William B. Lodge, engineer in charge of the radio frequency division, and Frank Stanton, Director of Research.

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SENATE CONFIRMS CASE; BUT FOR HOW LONG?

The Senate on Monday confirmed the renomination of Norman S. Case, as a Republican member of the Federal Communications Commission for a seven-year term.

Since his name was sent to the Senate, however, the President has asked that the whole FCC be reorganized. As new appointees will be necessary on whatever new agency is approved by Congress, Commissioner Case's seven-year term may not last even seven months.

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RADIO COMMENTATOR APPEALS TO RULES COMMITTEES

Denied admission to the Congressional Press Galleries, Fulton Lewis, Jr., news commentator on the Mutual Broadcasting System, last week appealed to the Senate and House Rules Committees. The Standing Committee for the Press Galleries ruled that radio news commentators are not eligible for admission as the galleries are reserved exclusively for members of the press.

Mr. Lewis, in his petition, stated "in all fairness and sincerity, I do believe that those representatives or radio who, like the news correspondents and reporters, gather their own news and prepare it for delivery to the public, are entitled to the same facilities as those correspondents and reporters." Rejection of his application, Mr. Lewis argued, means that gallery privileges are "an exclusive charter to the printing business, to forever hold a monopoly on the dissemination of news which transpires in the Senate and House of Representatives."

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WIGGLESWORTH ASSAILS McNINCH IN HOUSE ADDRESS

Chairman Frank R. McNinch, of the Federal Communications Commission, was charged with trying to set up a centralized administration of the radio industry and to evade a Congressional investigation by Representative Wigglesworth (R.), of Massachusetts, on the House floor Monday.

Congressman Wigglesworth, who is author of a resolution calling for an investigation of the FCC by a seven-man House committee, renewed his plea for a thorough inquiry before any reorganization plan is approved.

"For years on the floor of this House and elsewhere I have joined with other Members of the House on both sides of the aisle in advocating a thorough-going investigation of radio broadcasting and its regulation under the Federal Communications Commission", he said. "I have done so because it has seemed to me that such an investigation was absolutely essential if we are to have proper regulation of this activity which has come to play such a tremendous part in our national life.

"No man, Mr. Chairman, can read the Federal Radio Act or the Federal Communications Act without realizing that Congress sought in those acts certain very definite objectives. Among these objectives was the elimination of monopoly or the evils of monopoly, the elimination of private ownership or the equivalent in radio frequency, and the elimination of undesirable trafficking in licenses. And yet, Mr. Chairman, during recent years there has been continually increasing evidence indicating that no one of these objectives or other objectives sought by the Congress have been realized. On the contrary, there has been increasing evidence indicating a virtual monopoly in this field by the three big broadcasting chains - Columbia, Mutual, and National.

"There has been mounting evidence also of practices growing up with the approval of the Commission such as that whereby radio stations and facilities are transferred from one party to another for an approved consideration far in excess of the replacement value of the assets transferred, a practice carrying with it all the possibilities for the capitalization of Government franchises to the detriment of the people as a whole, with which we have been familiar in other fields in the past.

"Mr. Chairman, the hearings before your committee show no decrease in these tendencies during the past fiscal year. On the contrary, they furnish further evidence of monopoly and further evidence of transfers of facilities for considerations in excess of their physical value. If you want an example of increasing monopoly I refer you to the transfer of WNAX, as a result of which during the last campaign an Iowa newspaper already controlling three frequencies was awarded a fourth frequency, with substantially blanket control over the State of Iowa. If you want further evidence of the transfer of facilities for apparently excessive consideration, you will find it on the table filed by the Communications Commission in connection with these hearings.

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"The record also indicates, Mr. Chairman, an absolute failure by the Communications Commission to formulate major policies, which, in my judgment, are fundamental to the proper regulation of radio broadcasting. We have no national communications policy today. Chairman McNinch has so testified. We have no standards of program service, despite the hundreds of complaints received in each and every year. No policy has been formulated as to the issue or transfer of radio licenses. No policy has been defined in respect to experimental licenses, in respect to the possible payment of license fees, in respect to many other important matters within the field of radio regulation. In fact, Mr. Chairman, I believe it is fair to state that regulation to date has proceeded in large measure in the absence of any well-defined policies under frequent charges of favoritism, politics, and worse.

"Incidentally, Mr. Chairman, I should like to call the attention of the members of this committee to that portion of the hearings which refers to the recent telephone investigation by the Communications Commission. I assume that every Member of this House desires proper regulation of all means of communication. I assume also that every Member of the House has anticipated a report within the terms of the resolution authorizing the investigation, giving accurate and comprehensive information with respect to the field investigation. I submit, however, Mr. Chairman, that the record before your committee raises very definitely the question whether it is not a practical impossibility for the Commission to comply with its mandate to furnish this Congress with information which may fairly be said to be 'comprehensive and accurate'.

"If you will note the testimony in the hearings you will observe that the methods employed in the investigation were such as to deny to those investigated the right to produce their own witnesses, the right to cross-examine Government witnesses, and, until recently, the right to consideration of, some 40 volumes of criticism and comment filed with respect to the testimony included in the record of the investigation. I am frank to state, Mr. Chairman, that in my judgment the testimony before your committee lends real foundation for the charges which have been made that the methods pursued in the investigation were both unworthy of a Federal commission and un-American."

Congressman Wigglesworth, after reviewing the McNinch "purge" of last Fall, and the procedure set up by the Chairman following the abolition of the Examining Division, called attention to the reports of increasing influence being exercised over the FCC by Thomas G. Corcoran.

"The steps taken by the FCC to which I have referred, look very much to me like steps along the course outlined in the newspaper articles to which I have referred, taken in conjunction with the proposed three-man set-up; they look to me very much like an attempt to wipe out the Commission as we have known it in the past and to substitute a more centralized administration", he continued. "They look further very much like an attempt to bring this quasi judicial agency under the domination of the executive branch of the Government, in line with the proposal embodied in the original reorganization bill a year ago which excited such condemnation from those primarily affected."

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WHAT-IS-A-MONOPOLY QUESTION BAFFLES COMMITTEE

The question of what constitutes a monopoly in the radio industry was asked but not answered during the House subcommittee hearings on the budget estimates for the Federal Communications Commission.

Representative Dirksen (R.), of Illinois, questioned Chairman McNinch about the FCC chain-monopoly investigation, after which the following colloquy occurred:

Mr. Dirksen. Now, in view of the fact that the authority to grant licenses is vested exclusively in the Federal Communications Commission, it certainly is a fair inference that if a monopoly exists it exists because of the action of the Federal Communications Commission?

Mr. McNinch. Well, sir, I would not say that was a completely fair inference to draw.

Mr. Dirksen. Well how else could it exist?

Mr. McNinch. Well, it could exist by undisclosed interlocking directorates and interests which we are rather anticipating we may discover.

Mr. Dirksen. Well, if you admit there are undisclosed evidences of one kind and another, or undisclosed facts, would not you be confessing at the same time that in the renewal of licenses you did not get all of the facts relative to affiliations, and so forth?

Mr. McNinch. I have no hesitancy in confessing at all, if that is the way you want to put it, that I do not believe the Commission has, heretofore, had all of the facts, and I am not certain we will get all of the facts now through this investigation; but we are trying to find out every ramification, holding company, subsidiary, affiliation, interlocking directorates, or what not; because through this means we will ascertain if there is control which does not appear in the papers directly when the report is submitted to the Commission.

Mr. Dirksen. But irrespective of their failure to disclose material evidence or information before the Commission monopoly is possible, or was possible, or does exist by virtue of the initial action of the Commission?

Mr. McNinch. Congressman Dirksen, since I have never been able to clarify my own thought particularly about it, I would be very grateful for a definition of what a monopoly in radio is.

Mr. Dirksen. I do not want to encumber the hearing with that right now. We might get into a great metaphysical field of discussion.

Mr. McNinch. But you are asking me to encumber the hearing by answering that.

Mr. Dirksen. Not necessarily, but what I want to say now, and all this merely leads up to it, is that if a monopoly does exist and exist by virtue of the action of the Commission in the past, this monopoly investigation amounts, in substances, to an investigation of the Commission by itself?

Mr. McNinch. No, sir; I do not so interpret it.

Mr. Dirksen. How can it be otherwise interpreted?

2/7/39

Mr. McNinch. Because it is an investigation of what may have been done - I do not know whether it has been done - without authorization, without knowledge, or consent of the Commission.
Mr. Woodrum (The Chairman) - I hope we won't pursue the monopoly question any further.

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CALDWELL SEES CENSORSHIP IN FCC CONTROL

Charges that the licensing system as applied by the Federal Communications Commission goes counter to the intention of Congress by effecting censorship over the radio, were made last Saturday by Louis G. Caldwell, former General Counsel for the Federal Radio Commission.

He spoke at the concluding session of a two-day conference on administrative law held by the George Washington University Law School in the United States Chamber of Commerce hall. It was attended by nearly 500 lawyers and law students.

Mr. Caldwell called the numerous licensing systems "the greatest threat to liberty and due process yet to appear on the horizon of Anglo-Saxon jurisprudence."

He especially ridiculed the purpose he ascribed to the FCC to "protect the public from Mae West, the Martians, and the profanity of a Pulitzer prize play".

William J. Dempsey, present General Counsel for the FCC, whose address followed Mr. Caldwell's, promptly labeled the latter's reference to the prosecutor-judge relationship in the Commission's procedure, as "picturesque rather than accurate", and proceeded to demonstrate the statutory and practical necessity of some of the matters to which Mr. Caldwell had taken exception.

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MUTUAL'S JANUARY BILLINGS TOTAL \$315,078

Total billings of the Mutual Broadcasting System for January were \$315,078, it was announced this week. This represents an increase of 16.7 percent over January, 1938, when billings totalled \$269,894.

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TRADE NOTES

Station WMCA, New York, was picketed again Sunday by 1,600 persons in protest against the station's refusal to broadcast the radio addresses of the Rev. Charles E. Coughlin. The demonstrators marched back and forth on Broadway from 51st to 52nd Sts., carrying placards which denounced radio "censorship", Loyalist Spain and employment of refugees.

WBRK, Pittsfield, Mass., will become the 110th affiliate of the Mutual Broadcasting System when it joins the network on March 1, 1939. On that date radio station WBRK also becomes affiliated with the regional Yankee and Colonial networks. The station operates on 250 watts power days, and 100 watts power nights on 1,310 kilocycles.

Gross billings by the Columbia Broadcasting System for time sold during January, 1939, totaled \$2,674,057 - a gain of 5.7% over December, 1938, when the figure was \$2,529,060. January sales a year ago were \$2,879,945, representing the largest gross for that month ever scored by CBS.

Tightening of the net on criminals was disclosed this week by the International Association of Chiefs of Police through the inter-zone radio system, started a year ago and now linking sixty-seven Police Departments in twenty-two States. Relaying messages by code on a higher frequency than that of local police radio communication by voice, it does not interfere with the latter.

The Governor General of French West Africa has announced that construction work is to begin at once on a new high power radio station at Dakai. It will be the third big French station in Africa and will be a link in the chain designed to offset Arabic broadcasts made by other powers.

The use of phonographs, loud speakers, pianos, organs, etc., for advertising is prohibited, with certain exceptions in the case of commercial houses when the instruments are enclosed in noise-absorbing cabinets. Cafes, bars, restaurants, hotels, etc., may employ musical instruments and radios only between 11 A.M. and 1 P.M., and 6 to 11 P.M.; with exception made for radio receiving sets, limited to 60 decibels, during the transmission hours of Peruvian broadcasting stations.

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NETWORKS REPLY TO NAB ON DEAL WITH UNION

The reply of the National Broadcasting Company and the Columbia Broadcasting System to Neville Miller, President of the National Association of Broadcasters, who last week appealed for a stay in the negotiations of the American Association of Advertising Agencies and the American Federation of Radio Artists, was made public this week.

Signed by Edward Klauber, of CBS, and Niles Trammel, of NBC, the letter said:

"Answering your identic telegrams to our respective companies, we wish to advise you that the present negotiations grow out of a widely publicized situation which culminated in representation by AFRA that they were about to strike. This apparent rupture led advertisers and their agencies to renewed efforts to work out a commercial network scale with AFRA. This development also has been known to everyone in broadcasting. NBC and Columbia's part has been solely to advise with both sides in an effort to make contract as favorable to advertisers as possible and we are not directly involved except in respect to the few network commercial shows we broadcast ourselves. Any effort to delay matters now within a few hours of AFRA's deadline would inevitably precipitate chaos and we believe our affiliates would resent such action on our part besides which we would be guilty of bad faith towards our advertisers, their agencies and the union. The agreement reached by the parties involved before your telegram was received does not affect the affiliated stations."

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JANUARY BAD FOR ADS, INCLUDING RADIO

January was a disappointing month for advertising, particularly from the standpoint of national copy, according to compilations by the New York Times. Various reasons, such as the stock market slump, the foreign crisis and numerous charges about the adverse effect on business of the WPA slash, were given as chief reasons for the backward showing.

Even radio, which forged ahead last year against the tide, barely managed to register an increase of slightly more than 1 percent for the three major networks, the Times pointed out. Magazines were down about 17 percent, a somewhat better showing than they had been making. Complete newspaper figures are not available yet, but the drop, based on the New York City experience, probably ranged around 8 to 10 percent, as against a December decline of only 3 percent.

"The outlook for February is still uncertain", the article continued, "and even though the economic horizon appears to be clearing, national advertisers will not have time to put through enough additional copy to make any appreciable difference. Starting in March, however, the prospects appear to be brighter."

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CAUTION URGED IN FCC REORGANIZATION

The following editorial appeared recently in the Washington Evening Star:

"The development of radio broadcasting regulation has reached a critical stage, and the proposal to reduce the Federal Communications Commission from a seven to a three-man body should command the fullest attention of Congress.

"It is quite apparent that the present Commission of seven members has not been functioning satisfactorily, but there is also no assurance that it would function any better if there were but three members. In fact, there is a widely held belief that the conditions which should be remedied would become worse instead of better if the reduction in size of the Commission should be authorized. This feeling grows out of the suspicion that the real reason underlying the proposal is to 'liquidate' those minority members who have made no secret of their dissatisfaction with the manner in which the majority have been conducting the business of the Commission.

"The principal complaint of the radio broadcasters is that the Commission has not laid down adequate rules, or enunciated any policy, which could serve as a guide to them in their efforts to comply with the Federal Communications Act. It is contended the Act is broad enough to empower the Commission to make such rules, and it is understood the minority members have tried unsuccessfully to have some such action taken.

"It is obvious, of course, that dissension within the Commission, and the existence of a minority which believes the public should be kept informed of what goes on within the agency, is not conducive to orderly administration. The wisdom of arbitrarily eliminating such a minority may well be questioned, however, particularly when there is some evidence to indicate that its policies may be more in the public interest than those of the majority.

"The Commission, after all, is an agency of the Congress and the successful conduct of its affairs is the direct responsibility of Congress. The elimination of minority groups on regulatory bodies is always hazardous, and that is particularly true in the case of this Commission, which has the potential power to exercise an enormous influence on the people of the country.

"Instead of authorizing a reduction in the size of the Commission, Congress should consider whether it cannot improve conditions in the radio industry by depriving the regulatory agency of some of its discretionary powers, substituting therefor some definite legislative standards of conduct for the broadcasters to follow."

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