

HEINL RADIO BUSINESS LETTER

2400 CALIFORNIA STREET

WASHINGTON, D. C.

INDEX TO ISSUE OF FEBRUARY 9, 1939

Dirksen Sees Need For Curbing President's Power.....	2
FCC Decision Raps Press Station, Monopoly.....	4
Walker Slapped As FCC Settled Oklahoma Case.....	5
Church Is Forgiven, Canadian Hook-Up O.K.'d.....	5
FCC Holds WLW Doesn't Need 500 KW. For Experiments.....	6
New Station Authorized For Louisville.....	7
Wheeler Bill Gives Chairman Autocratic Powers.....	8
Principal Provisions Of McNinch-Wheeler Bill.....	9
Placement Of Responsibility Key Of Plan, Says Wheeler.....	11

No. 1097

DIRKSEN SEES NEED FOR CURBING PRESIDENT'S POWER

Warning of the danger of Administration control of the air waves under a reorganized Federal Communications Commission or new three-man agency, Representative Dirksen (R.), of Illinois, this week said in a House address that he may sponsor a bill to repeal the provision in the Communications Act (Section 606(c)) which gives the President authority to take over control of all radio stations in time of national emergency.

Congressman Dirksen, a member of the House sub-committee that withheld the FCC appropriation pending a study of the reorganization plans, also raised a question as to what is behind the present reform move.

"What is this reorganization, and what is wrong down there?" he said. "Well, I do not know. I am not going to speak from hearsay, and I am not going to do anybody down there an injustice; but the dismissal of experienced and trusted employees, the complete revamping of the examining procedure, the effort of Chairman McNinch to secure exception from the Civil Service rules of 40 attorneys in the Commission, the quick rush of the Chairman of the Commission to the air waves to defend this action when the news broke in the press, the feeble and unconvincing justification of this whole action, and the speedy effort to invoke an investigation of radio monopoly by the Commission itself when it heard that Congress was contemplating such action are enough to justify the conclusion that all is not right. I am a little alarmed about it for the simple reason if they do send a message and they do ask for a three-man commission by new legislation, instead of a seven-man Commission, I am wondering how far the administration is going to go to dominate that Commission; and if you ever dominate the airways and give anybody absolute control, you have got control of the United States of America - make no mistake about it.

"There is a provision in this Radio Act that I do not like. I suspect I voted for it in 1934, not knowing, perhaps, what I was voting for at the time, because the matter had not gone to the degree that it has now; but if you ever examine that act and look at section 606, here is what it says:

"'606. (c) Upon proclamation by the President that there exists war or a threat of war or a state of public peril or disaster or other national emergency, or in order to preserve the neutrality of the United States, the President may suspend or amend for such time as he sees fit the rules and regulations applicable to any or all stations within the jurisdiction of the United States.'

"I am alluding to that this afternoon because that bill probably will be on the floor one of these days if it is ever reported out of the committee. Then we will have a chance to

ventilate our views and determine whether or not we want a small Commission that can be dominated, that may probably invoke censorship, that may probably keep people off the airways, that can determine how far you can go without comment and political commentary, or whether we are to have an independent Commission, sufficient in size to guarantee and to assure to the people of this country that there is going to be no domination of the air channels. If I had it to do over again, I would never vote for that proposition, and I am not sure but what I shall drop a bill into the hopper one of these days to repeal in whole or in part section 606, paragraph (c), because I would not like to see a situation such as prevailed only last week in the National Capital be made the vehicle for dominating the airways and controlling the things that might be said to the people of the country.

"I do not know why Mr. McNinch was sent to the Radio Commission. I do not know why he abolished the examiners, but there is now in effect an examining procedure down there that in my humble judgment is not as good or as efficient or as sound as the procedure in vogue before that change was made. It may be that it is all part and parcel of an effort to streamline this Commission, because of its importance in purveying sentiment and truth to the people everywhere in the country.

"This offers a good opportunity to make an observation on this and other commissions. The trouble is not in the law; it is not necessarily a great basic weakness in the radio law as such, but rather in the personnel. When you go back you will find that most of our troubles heretofore have been because of those who sat on the board, who probably have not administered the act as it should have been administered. They removed Mr. Humphrey from the Federal Trade Commission back in 1935. I thought he was a good man, and he should have stayed there, because he gave quite an efficient administration. Then there was the trouble and difficulty in the Tennessee Valley Authority when Mr. Arthur Morgan was removed. Now we have a situation in that a former Member of the House is before the Senate for confirmation of appointment to the Interstate Commerce Commission, and we have this same personal problem on the part of the Federal Communications Commission. I am not advising the President as to what he ought to do, but I do say that a lot of these things and lot of friction could have been eliminated if perhaps just a little more care had been exercised in getting administrators and key men who will administer and carry out the law that the people's representatives have enacted, without fear or favor, and without making an attempt to control an important agency of government. Instead of abolishing the examining procedure of the Commission, the Chairman might have given some time to the formulation of a radio policy which we do not have today, and to other basic needs that are so essential to the industry and to the public. Back in Civil War days, someone remarked, 'Let me write the songs of a nation and I care not who makes the laws.' That might today be paraphrased by saying, 'Give me the control of the Nation's air waves, and I care not who makes its laws.' This Congress must be on the alert when this matter comes on."

X X X X X X X

FCC DECISION RAPS PRESS STATION, MONOPOLY

With Congress turning its attention to radio policies and action of the Federal Communications Commission, the decision of the FCC this week in denying the applications of Station WSBT, South Bend, Ind., and of the King-Trendle Broadcasting Corp., of Grand Rapids, Mich., is significant.

The South Bend Tribune, which owns WSBT, had sought authority to shift its frequency and to increase its power and operating hours from sharing with WGES, Chicago, to unlimited. King-Trendle sought authority to build a new radio station at Grand Rapids to operate on 1010 kc. with 250 watts power, daytime. The applicant already holds licenses for Stations WXYZ, Detroit, and WOOD and WASH, Grand Rapids.

In denying the King-Trendle applications, the Commission said:

"The station proposed would have network affiliations and would devote but a small part of its time to programs of a local character.

"The proposed station would be under the same management and control as the two existing stations in Grand Rapids. The applicant has failed to show a public need for a new station to broadcast programs of the type and character proposed.

"The granting of this application would undoubtedly result in the financial advantage of the applicant and would make available an additional advertising medium for merchants in Grand Rapids. While the question of financial support is one feature considered in the granting or denial of an application for a broadcasting station, it is important only in so far as it affects the ability of the applicant to render satisfactory broadcast service.

"The proposed station would be limited to its 4.3 millivolt per meter nighttime contour. It is not in accordance with good engineering practice to license a station to operate on a regional frequency where the limitation will be to the extent shown to exist in the instant case. In the absence of a compelling need, which has not been shown to exist in the instant case, the Commission will not grant an application for a regional station where its nighttime service area will be limited to its 4.3 millivolt per meter contour.

"The King-Trendle Broadcasting Corporation, owning the Michigan Radio Network, also provides broadcast service to many stations in the State of Michigan. Should this application be granted, the applicant would be the licensee of all of the radio facilities in Grand Rapids. This Commission, on numerous occasions, has declined to grant new or additional facilities to one holding a license to render broadcast service in the same city or community to be served by the proposed station."

Regarding its denial of the South Bend Tribune's request, the FCC said:

"Station WSBT, operating as proposed, would be subject to severe interference during the greater part of its nighttime hours of operation. During the greater part of the time this interference would approximate the 5.1 millivolt per meter contour

"Should the Commission grant this application, the South Bend Tribune would be the publisher of one of two daily papers of general circulation to South Bend, the owner of a full-time broadcast station, WSBT, and the licensee of a time-sharing broadcast station, WFAM. The Commission, in numerous decisions, has held that in the absence of a compelling need, which has not been shown to exist in the instant case, the Commission would not grant new or additional facilities to one now operating a radiobroadcast station in the area proposed to be served."

X X X X X X X X

WALKER SLAPPED AS FCC SETTLED OKLAHOMA CASE

With Commissioner Paul Walker, of Oklahoma, dissenting, the Federal Communications Commission this week settled the three-year old Oklahoma telephone case in favor of the Southwestern Bell Telephone Company, of St. Louis.

The case involved the claim of the Oklahoma-Arkansas Telephone Co., of Poteau, Okla., for relief under the Communications Act from certain practices of the Southwestern Bell Company. Two separate investigations were made by former FCC Examiners, and both were adverse to the Oklahoma company. The inquiry began while Mr. Walker was a member of the Telephone Division, since abolished.

X X X X X X X X

CHURCH IS FORGIVEN, CANADIAN HOOK-UP O.K.'D

Although it had unwittingly violated a provision of the Communications Act requiring FCC approval for transmission of programs to a foreign studio, the Commission this week granted the application of the First Baptist Church, of Pontiac, Mich., for permission to transmit its programs via telephone lines to Station CKLW Windsor, Ontario, for rebroadcasting.

The Communications Commission pointed out that the church stopped the Canadian transmission upon being informed that it was in violation of the law and stated that the programs are meritorious and in the public interest.

X X X X X X X X

FCC HOLDS WLW DOESN'T NEED 500 KW. FOR EXPERIMENTS

Explaining its decision, announced earlier this week, in the WLW case, the Federal Communications Commission has issued a long statement of grounds for the ruling that the Cincinnati station should no longer be permitted to operate experimentally with 500 kw. power. The order, unless stayed by court injunction, will become effective March 1, the report revealed.

"To the extent that a power output of 500 kw. may be necessary to carry out the applicant's proposed program of experimentation, in so far as it contemplates further investigation into the technical aspects of transmitter equipment", the FCC stated, "the applicant has sufficient authority to experiment in this field under its experimental license for Station W8XO, and the extension of the special experimental authorization of Station WLW for this purpose is not justified.

"In so far as the proposed program of experimentation contemplates studies in the secondary service of Station WLW requiring a power output of 500 kw., the experimentation can be carried on only during the nighttime, and the extension of the special experimental authorization of Station WKW, permitting unlimited hours of operation on 500 kw. for this purpose is not justified.

"In so far as the proposed program of experimentation includes studies of daytime service, a power output of 500 kw for Station WLW is not necessary, and therefore the extension of the special experimental authorization of Station WLW for this purpose is not justified."

"The question before the Commission on the instant application", the report states, "is not whether Station WLW should be permitted to operate on the frequency 700 kc. with power output of 500 kw., unlimited time, as a standard commercial broadcast station rendering a regular service to the public. The latter question is before the Commission in connection with its consideration of the application of the Crosley Corporation for amendment of its standard broadcast license to permit an increase in power to 500 kw. The sole question before the Commission on the instant application is whether an extension of the special experimental authorization to operate Station WLW on 700 kc. with power output of 500 kw., unlimited time, should be granted to permit the applicant to carry out its proposed program of experimentation.

"Under Section 303(g) of the Communications Act of 1934, the Commission is authorized to provide for experimental use of frequencies in the public interest. In passing upon applications for experimental authorizations a standard which has been consistently followed by the Commission has been to require that the proposed program of experimentation must offer promise of substantial contribution to the radio art. Before the Commission will grant any special experimental authorization, however, it is incumbent upon the applicant to show that the special authori-

zation requested is necessary in order to accomplish the proposed program of experimentation. Assuming, therefore, that the experimental objectives which the applicant intends to accomplish under the special authorization sought to be extended would contribute substantially to the development of broadcasting, the crucial question in the present proceeding is whether applicant has shown that the use of 700 kc. with power of 500 kw., unlimited time, is necessary for the accomplishment of these objectives.

"The specific proposals for further experimentation advanced by the Crosley Corporation are: first, further transmitter development; second, to make a complete and intensive field survey to determine what constitutes service and the limiting effect of the factors which govern such service; and, third, to construct and design an antenna which will have the effect of controlling sky wave as a factor of service rather than as an interference factor.

"The first of these objectives clearly would not require an output of 500 kw. power, unlimited time. To the extent that a power output of 500 kw. would be required at all to carry on further investigations of the technical aspects of the transmitting equipment necessary to generate a wave of 500 kw. power, the operation of Station WBXO under applicant's experimental license during the hours 12 midnight and 6 A.M. will suffice. There has been no showing made that the extension of the special experimental authorization is necessary in order to enable the applicant to carry out its first proposed line of experimentation.

"It is primarily for the purpose of carrying out the second and third lines of experimentation that applicant requests permission to operate Station WLW unlimited hours on the frequency of 700 kc. with a power output of 500 kw. Applicant's contention is that the extension of the special experimental authorization is necessary for this purpose. This contention, however, cannot be sustained."

X X X X X X X X

NEW STATION AUTHORIZED FOR LOUISVILLE

Over the objections of the two existing stations and a third station in the listening area, the Federal Communications Commission this week granted a permit for a new broadcasting station at Louisville, Ky., to the Kentucky Broadcasting Corporation headed by a local lawyer.

The station will operate on 1210 kc. with 100 watts at night and 250 watts daytime, unlimited time.

The grant was opposed by Stations WAVE and WHAS, of Louisville, and WGRC, of New Albany, Ind. Station WHAS is owned by the Louisville Times Company, which publishes two daily newspapers in Louisville and recently was unsuccessful in seeking a second radio station.

X X X X X X X X

WHEELER BILL GIVES CHAIRMAN AUTOCRATIC POWERS

A bill that not only abolishes the Federal Communications Commission and sets up a three-man board of control in its stead but gives the Chairman virtual dictatorial powers over the radio and communications industries was introduced in the Senate on Thursday by Senator Wheeler, Chairman of the Interstate Commerce Committee.

Far more drastic in its proposed centralization of authority than was expected, the measure is due for a severe overhauling in both the Senate and the House. The most fireworks, however, probably will come when the bill reaches the House.

Drafted under the direction of Chairman Frank R. McNinch of the FCC, and reputedly with the aid if not the dictation of Thomas G. Corcoran, the measure sets up a three-man bipartisan board to administer the Communications Act, three Assistant Administrators responsible to the Chairman, and boosts the salaries of key officers.

Major positions are exempt from the Civil Service laws and FCC employees are transferred to the new agency only on a temporary basis, subject to subsequent acceptance by the new Board.

Senator Wheeler, while hoping for early action by the Senate, said that public hearings will be held by the Committee and that later he will introduce a bill to define policies on newspaper ownership of radio stations, super-power, censorship of programs, and the like for the new Commission.

Members of the Federal Communications Commission who have disagreed with many of the Chairman's policies and the "purge" last Fall, it was learned, are planning to participate in the Senate and House hearings and to expose many FCC actions hitherto kept under cover.

Three members of the Communications Commission, however, are being spoken of in radio trade circles as possible appointees for the three-man Board. They are Mc. McNinch, as Chairman, and Commissioners Eugene O. Sykes and Thad Brown, who were members of the old Federal Radio Commission's Broadcast Division.

The Wheeler bill stipulates that the salaries of the three new Commissioners will be \$10,000 a year and their terms two, four and six years at first and thereafter six years.

Without regard to Civil Service, the Board is empowered to appoint and to prescribe the duties and fix the salaries of three Administrative Assistants for broadcasting, communications carriers, and international radio and communications.

Other officers provided are similar to those functioning under the FCC at present, but the salary scale has been raised.

The Director of Information, who was paid only \$4,600 prior to the "purge" of Franklin G. Wisner, and who now receives \$7,200, will get \$8,000 under the new set-up. He will be entitled to two assistants at \$6,000 each, whereas he now has one at \$3,000.

Each Commissioner is authorized to appoint an assistant at \$5,000 and a secretary at \$3,000.

The three Administrative Assistants, whose salary is fixed at \$9,000, while appointed by the Board will come under the administrative supervision of the Chairman.

Appointments below the key positions in the administration, legal and engineering divisions are to be made subject to the Civil Service Act and the Classification Act.

X X X X X X X X

PRINCIPAL PROVISIONS OF McNINCH-WHEELER BILL

Following are the principal provisions of the McNinch-Wheeler bill to abolish the Federal Communications Commission and to set up a new three-man Administrative Board:

"Sec. 2. There is hereby created an agency to be known as the Federal Communications and Radio Commission which shall be administered by a Board composed of three members. All jurisdiction, powers, duties, and functions of the Federal Communications Commission under the Communications Act of 1934, as amended, are hereby imposed upon and vested in the Commission. The provisions of the Communications Act, 1934, as herein amended, shall, until further action by the Congress, continue in full force and effect, and shall apply to the Commission and to members of the Board to the same extent as said Act is now applicable to the Federal Communications Commission and to members thereof. The Commission shall have an official seal which shall be judicially noticed.

"Sec. 3. The members of the Board shall be appointed by the President, by and with the advice and consent of the Senate, one of whom the President shall designate as Chairman, who shall be the principal executive officer of the Commission. The members of the Board first appointed shall continue in office for terms of two, four and six years respectively from December 31 next following the date of their appointment, the term of each to be designated by the President, but their successors shall be appointed for terms of six years; except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he succeeds. The members of the Board shall receive a salary at the rate of \$10,000 per annum. Two members of the Board shall constitute a quorum.

"Not more than two members of the Board shall be of the same political party. The Board shall have power to perform any and all acts, to prescribe, issue, make, amend, and rescind such orders, rules and regulations and to hold such hearings as it may find necessary or appropriate to carry out the provisions of this Act. The Board is hereby authorized by its order to assign or refer any portion of its work, business or functions to an individual member of the Board or to an employee or employees of the Commission, to be designated by such order, for action thereon, and by its order, at any time to amend, modify, supplement, or rescind any such assignment or reference: Provided, however, That this authority shall not apply to the making of final decisions in contested proceedings involving the taking of testimony at public hearings.

"Sec. 4. Without regard to the Civil Service laws or the Classification Act of 1923, as amended, (1) the Board may appoint and prescribe the duties and fix the salaries of an administrative assistant for broadcasting, an administrative assistant for communications carriers, an administrative assistant for international radio and communications, a secretary of the Commission, a Chief Engineer and not more than three assistants, a chief accountant and not more than three assistants, a General Counsel and not more than three assistants, a Director of Research and Information and not more than two assistants, and, subject to the Classification Act of 1923, as amended, such attorneys as are necessary in the execution of the functions of the Commission; (a) each Commissioner may appoint and prescribe the duties of an assistant at an annual salary not to exceed \$5,000, and a secretary at an annual salary not to exceed \$3,000. The three Administrative Assistants, the General Counsel, the Chief Engineer and the Chief Accountant shall each receive an annual salary not to exceed \$9,000; the Secretary of the Commission shall receive an annual salary not to exceed \$7,500, and the Director of Research and Information shall receive an annual salary of not to exceed \$8,000. The assistants to the Chief Engineer, Chief Accountant and General Counsel shall each receive an annual salary not in excess of \$7,500 and the assistants to the Director of Research and Information shall not receive an annual salary in excess of \$6,000 each. Subject to the Civil Service laws and the Classification Act of 1923, as amended, the Board may appoint such other officers, engineers, accountants, inspectors and other employees as are necessary in the execution of the functions of the Commission.

"Sec. 5. The Administrative Assistant for Broadcasting, under the administrative supervision of the Chairman, shall be responsible for the efficient and expeditious handling and presentation to the Board of all matters relating to or connected with broadcasting (except international broadcasting).

"Sec. 6. The Administrative Assistant for Communications Carriers, under the administrative supervision of the Chairman, shall be responsible for the efficient and expeditious handling and presentation to the Board of all matters relating to or connected with record communications by wire, radio or cable and all forms and classes of fixed and mobile radio telegraph service (other than international record communications) and all matters relating to or connected with telephone communications (other than broadcasting) by wire, radio or cable including all forms of fixed

and mobile radio, telephone service (other than international telephone communications).

"Sec. 7. The Administrative Assistant for International Radio and Communications, under the administrative supervision of the Chairman, shall be responsible for the efficient and expeditious handling and presentation to the Board of all matters relating to or connected with international radio and international communications.

"Sec. 8. (a) All officers and employees of the Federal Communications Commission (except the members thereof, whose offices are hereby abolished) are hereby transferred to the Commission, without change in classification or compensation for a period of sixty (60) days or for such longer period, not to exceed four months, in a temporary status as may be deemed necessary by the Board, subject to appropriate adjustment of classification or compensation to conform to the duties to which they may be assigned. All such officers and employees shall be eligible and shall have a preference for appointment in a permanent status to any position for which, in the opinion of the Board, they are qualified.

"(b) There are hereby transferred to the jurisdiction and control of the Commission all records and property (including office furniture and equipment, and including monitoring radio stations) under the jurisdiction of the Federal Communications Commission.

"(c) All appropriations and unexpended balances of appropriations available for expenditure by the Federal Communications Commission shall be available for expenditure by the Commission for any and all authorized objects of expenditure in the discretion of the Board, without regard to the requirement of apportionment under the Anti-deficiency Act of February 27, 1906. To the extent that it may be practicable to do so, the Board shall allocate a portion of its available funds for expenditure exclusively in the performance of functions relating to broadcasting and communications carriers, respectively, and shall make its expenditures in the performance of such functions in accordance with such allocations: Provided, That, if the Board at any time determines that any such allocation is in excess of the amount necessary for the performance of the functions for which such allocation was made, such excess may be used in the discretion of the Board for the performance of some other function."

X X X X X X X X

PLACEMENT OF RESPONSIBILITY KEY OF PLAN, SAYS WHEELER

Contending that large Commissions are "a mistake", Senator Wheeler (D.), of Montana, came to the defense of his bill establishing a three-man board with a statement that it would enable Congress to fix responsibility for failures in administration in the future.

"The bill I am introducing to create a new Federal Communications and Radio Commission, replacing the present Federal Communications Commission, is intended to correct looseness and uncertainty to functioning and diffused responsibility", he said.

2/9/39

"The staff organization would be compact, and closely integrated internally and in its relation to the Board. Provision is made for division of functions as between broadcasting, telephone and telegraph and international radio and communications, with provisions to assure that none of these functions shall be slighted.

"My observation over a long period of years convinces me that big commissions are a mistake. Personal responsibility is lost. Often we know that matters are badly handled, but we can't tell where or how the mishandling starts, or where to put the blame. Commonly, too, a big board lacks cohesion and morale. It is very likely to be an aggregation of individualists, each working too much in his own way and to his own ends, with too little common purpose of serving the public interest.

"In the Communications Commission such conditions have been aggravated because the Commission for years has been plagued by politics - not simple party politics alone but the politics of big business too. The best way to eliminate politics is to center responsibility, carefully defined and appropriately limited, in a small group, where it cannot be dodged or divided. That way I think we can get results.

"In this new set-up responsibility would be centered squarely upon the members of the small Board and the staff functioning under its direction.

"The bill transfers to the new agency all jurisdiction, powers, duties and functions of the Federal Communications Commission under the Communications Act of 1934, as amended. Insofar as this bill is concerned, all of the substantive provisions of the Communications Act of 1934 are continued in effect and made applicable to the new agency. Any changes in substantive provisions involving such questions as the methods of regulation, ownership, of broadcasting stations by newspapers, the character of radio programs, censorship, high power and superpower stations, and other policies, will be proposed in a separate bill I shall introduce later. The only changes now proposed in the existing law are changes in the administrative machinery of the agency.

X X X X X X X X X

Station WNEW, New York, this week was granted permission by the Federal Communications Commission to increase its daytime power on 1250 kc. from 2.5 kw. to 5 kw. It shares time with Station WHBI, Newark, N. J.

X X X X X X X X X X