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INDEX TO ISSUE OF MARCH 3, 1939.

Tug-Of-War Between Congress And <u>F.D.R.</u> Ahead.....	2
McNinch-Craven Feud Flares Into <u>Open War</u>	3
Wigglesworth Sees Dictatorship Threat In Bill.....	5
WLW Returns To 50 KW. Power, <u>Cuts Rates 10%</u>	7
NAB To Meet In <u>Atlantic City</u> July 10-13.....	8
NAB Hints It Prefers White To Wheeler Plan.....	9
Elliott Roosevelt To Enliven Chain Inquiry.....	10
McLeod Bill Seeks 3-Year License Minimum.....	11
Roosevelt Station Cuts Off Garner Attack.....	11
Crosley To Have Own Building At N. Y. Fair.....	12

No. 1103

TUG-OF-WAR BETWEEN CONGRESS AND F.D.R. AHEAD

With opposition to the McNinch-Wheeler plan for abolishing the Federal Communications Commission and setting up a three-man agency rapidly becoming more articulate, the fate of the reorganization measure is decidedly uncertain at this stage.

Administration spokesmen, however, have hinted that President Roosevelt will take an active part in promoting the plan when he returns to Washington Saturday. As Congress so far has indicated a hostile or indifferent attitude toward the legislation, it appears that another tug-of-war between the Chief Executive and Congress is in prospect.

Chairman Frank R. McNinch, who drafted the Wheeler Bill, is said to be determined to go ahead with the plan, despite even the sudden change in the attitude of Chairman Wheeler, of the Senate Interstate Commerce Committee. Senator Wheeler, at first avowedly intent upon rushing the legislation, apparently has lost much of his enthusiasm for it and is said to be agreeable to compromises.

So far no hearings have been scheduled although Administration leaders are urging all committees to report out whatever legislation they wish to have enacted this session so that plans for an early adjournment may be made.

Meanwhile, there were other reports current that President Roosevelt plans to get behind legislation for the authorization of a Pan American short-wave station in Washington and to urge divorcement of newspapers and radio by writing in a policy for the FCC or its successor to follow in handling applications for broadcasting facilities from newspapers.

Congressional committees last year turned down flatly the Pan American station bills last session after brief hearings, and there has been no move to revive them since, except by the authors. However, a special inter-departmental committee headed by Chairman McNinch has been expected to file a report with the President for several weeks making recommendations as to how best the United States may improve its relations with Latin American countries via radio.

At one time it appeared that the Committee would suggest that the Government continue its cooperation with private short-wave stations by sponsoring special programs of good will. However, it is known that many presidential advisors, including

Secretary Ickes, believe the Government should have its own station. He already has a well-equipped studio in the Interior Department.

The idea of restricting newspaper ownership of radio stations is not new. But this week reporters covering the White House stated that the President is considering recommending legislation to make it effective. Just how such a law, if passed, would affect the 200 newspaper owned stations now on the air is uncertain. It is doubtful that it would be used to deprive them of their licenses.

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McNINCH-CRAVEN FEUD FLARES INTO OPEN WAR

The long-smouldering feud between Chairman Frank R. McNinch and Commissioner T.A.M. Craven broke spectacularly into the open this week as the Chairman issued a statement accusing his colleague of making a "grandstand play of devotion to free speech and opposition to censorship".

Commander Craven, who first broke with Mr. McNinch last Fall when he opposed the Chairman's tactics in the FCC "purge", declined to comment on the matter, but he indicated he may have something to say later.

The McNinch outburst was occasioned by the play given by some newspapers to the Craven minority report on the handling of radio program complaints. Commissioner Craven had inferred that the FCC, in refusing to change its practice of holding stations to account for isolated program complaints, is continuing its policy of indirect censorship of radio, which is specifically prohibited by the Communications Act.

Despite the fact that Chairman McNinch stated that Commander Craven's report "attacked the intelligence, the integrity, and the motives of the other six Commissioners", it was understood that more of Commissioner Craven's colleagues were secretly with him than against him. The only precedent for Chairman McNinch's open attack on Commissioner Craven was his similar, though less formal, outbursts against Commissioner George Henry Payne.

Commissioner Craven, who has the support of the broadcasting industry in his opposition to the FCC's practice of withholding a station's license renewal upon the basis of a program complaint, made no attack on the FCC in his report other than to complain that the majority report it adopted instead of his recommendations did not go far enough.

Unwittingly, perhaps, the FCC Chairman admitted the Craven charge that the new procedure left things where they were before when he stated:

3/3/39

"No important change is made in the procedure for handling them (the program complaints) which has been in effect recently."

"Articles published in a limited number of newspapers today, especially one credited to the Chicago Tribune Press Service, thoroughly misrepresent the Commission's action on program complaint procedure on February 27", said Chairman McNinch. "They call for correction even though the publications are partly explained by the incitement of gratuitous, alarmist statements by Commissioner T.A.M. Craven in a one-man minority report. Commissioner Craven, by implication, attacked the intelligence, the integrity and the motives of the other six Commissioners, to execute a grandstand play of devotion to free speech and opposition to censorship."

"The simple fact is that the Commission adopted a report clarifying and formalizing the staff procedure for handling informal complaints and presenting them to the Commission. The report also lists the types of programs regarding which complaints are frequently made. No important change is made in the procedure for handling them which has been in effect recently. That is made clear by a release and by the full text of both reports, all promptly given fullest publicity by the Commission

"It is true that Commissioner Craven goes much further -- miles further than was asked or expected in the Commission's direction to the Committee, which was 'recommending procedure to be followed in the handling of informal complaints against radio broadcast stations.' The Commission recognized this overstepping Monday in adopting the report of Commissioners Sykes and Payne instead of Commissioner Craven's report. No one voted for Commissioner Craven's report but himself."

"Commissioner Craven has much to say of the dangers of censorship. What if any actions of the Commission could he refer to? In the only two cases which have even been conspicuously attacked on this alleged ground -- Mae West and 'Beyond the Horizon' -- Commissioner Craven was a party to the actions."

"Commissioner Craven says in thousands of words that he favors avoidance of censorship, free speech, due regard for the authority of other Federal agencies, full discussion of political questions, and privately owned and competitive broadcasting. Who doesn't? A committee report to his associates on 'procedure' -- not on policies -- is hardly an appropriate setting for a stump speech and flag waving. And such treatment is highly unjust to the other six Commissioners."

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WIGGLESWORTH SEES DICTATORSHIP THREAT IN BILL

The charge that Chairman Frank R. McNinch of the Federal Communications Commission was seeking to set up a dictatorship of radio and communications in the "Corcoran-Cohen-McNinch" bill proposing a three-man Commission was made over a national network this week by Representative Richard B. Wigglesworth (R.), of Massachusetts.

The purpose of the measure, he asserted in an address over the Mutual Broadcasting System Wednesday night, is to eliminate minority opinions and to evade a Congressional investigation of radio. He predicted that the legislation will not be enacted into law.

Charging that the measure constitutes a sinister threat to freedom of the air, freedom of speech, and freedom of religious worship, Congressman Wigglesworth said that it would give the Chairman autocratic powers.

Pertinent excerpts from the address follow:

"I am opposed to enactment of the proposed bill at this time because, in my judgment, it constitutes a challenge to freedom of the air. I am opposed to it also because I believe it is advanced at this time in the hope of concealing from Congress and the country facts which they are entitled to know and because I believe and have long believed, that a thorough-going investigation of broadcasting and its regulation under the Federal Communications Commission should be conducted with a view to obtaining all the facts before any new legislation is enacted."

"Its espousal by Chairman McNinch is startling in the light of his statement in 1937 when he said 'the aggregate wisdom and judgment of seven minds is surely greater than any two or three of the seven.' Contrast this statement with his statement three weeks ago over this network after some sixteen months of experience when he said, 'the bigger the Commission the less effective and the less efficient it is apt to be. In my opinion the best way to guard against these faults and weaknesses is to put both the power and responsibility for regulation in a small group'. This statement seems to have been inspired by the fact that certain members of the Commission have consistently insisted on voting as their conscience has dictated and refused to act as rubber stamps. Sincere differences of judgment and minority of opinions are apparently not welcome in dictatorial fields."

"The Corcoran-Cohen-McNinch bill, if enacted into law, would bring the Federal Communications Commission, a quasi-judicial agency, in large measure under Executive domination, a proposal embodied in general terms in the original Government reorganization bill a year ago which excited such condemnation by

3/3/33

the American people. It would arm the Executive branch of the government with almost complete dictatorial power in this vitally important field in American life."

"One further word in reference to the terms of the proposed bill. Chairman McNinch in his broadcast has referred to it as 'a new communications program'. The fact is that the bill as drafted proposes no new program whatsoever. On the contrary it specifically provides that the 'provisions of the Communications Commission Act of 1934 as amended shall continue in full force and effect and apply to the Commission and the members of the Board to the same extent as said Act is now applicable to the Federal Communications Commission and the members thereof'. Despite many questions of major policy which must be determined for proper regulation and which Congress has sought to determine over a period of years through the Federal Communications Commission, not one single recommendation for change in policy is embodied in the provisions of the proposed legislation.

"I have already indicated that I am opposed to the enactment of the proposed bill at this time for other reasons. I am opposed to its enactment because in the light of all that has transpired in recent years, it is impossible for me to escape the conviction that it is advocated at this time in the hope of concealing from Congress and the country facts and practices in the field of radio broadcasting regulation of which they should know. I am opposed to its enactment at this time because I believe as the bill itself emphasizes, that a thorough-going Congressional investigation of broadcasting and its regulation under the Federal Communications Commission is essential before policies can be defined and proper legislation enacted.

"For years there has been a rising tide of criticism and complaint directed at the door of the Federal Communications Commission. For years it has been subject to criticism for alleged sins of omission and commission. For years there has been apparent criticism by some members of the Commission of the actions and decisions of other members of the Commission. 'It is notorious' says Chairman McNinch, 'that for several years before I became Chairman of the Commission it was handicapped by dissension and division.' It was the general understanding that Chairman McNinch was appointed as a trouble-shooter, not as a trouble-maker, with a view to eliminating the basis for charges laid at the door of the Commission."

"I have not the time to discuss in detail the evidence advanced in support of the charge that the Commission has failed to eliminate private ownership or its equivalent in radio channels and has failed to eliminate undesirable trafficking in radio licenses. I may mention in passing, however, that in tables furnished to Congress by the Federal Communications Commission showing the transfers of radio licenses in recent years, there will be found instance after instance of transfers for a consideration far in excess of the replacement cost of the radio station transferred. Other instances will be found of the transfer by lease

for period far in excess of the original license, limited by law to a maximum of three years. All these transfers were under the control of the Commission.

"One striking case of this character is afforded in the transfer of Station KNX, Los Angeles, to the Columbia Broadcasting System. The replacement value of the station amounted to \$217,000. After the deduction of accounts receivable, cash and good-will, the value of the physical property amounted, I am told to about \$63,000. The consideration paid for the transfer amounted to \$1,250,000 or about twenty times the value of the physical property."

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WLW RETURNS TO 50 KW. POWER, CUTS RATES 10%

Refused a stay order in a dramatic special session of the U. S. Court of Appeals, Station WLW, Cincinnati, on Wednesday ended its five-year operation as the "Nation's most powerful station", its power being reduced from 500 KW. to 50 KW. by order of the Federal Communications Commission.

Simultaneously, James D. Shouse, General Manager of WLW, and Vice-President of the Crosley Corporation, announced a 10 per cent reduction in advertising rates. This means a drop in the basic night hour rate from \$1,200 to \$1,080.

The Court of Appeals reached a decision Tuesday night, just a few hours before the FCC order denying WLW a continuance of its experimental license was due to become effective. After listening to arguments of Duke M. Patrick, attorney for WLW and William J. Dempsey, counsel of the FCC, the six Justices stated that the restraining order was denied.

The action concluded WLW's super-power broadcasts, which have been going over the air for nearly five years, and ended one of the hardest fought legal battles involving a radio station. Station WLW will continue to use 500,000 watts during the early morning hours over an experimental transmitter, W8XO, and has pending, along with a dozen other clear channel stations, an application for a license to operate commercially with 500 KW.

There is little likelihood, however, that the Commission will amend its rule to permit super-power stations to operate on a regular basis at this time, largely because of the Senate resolution which last session stated the body is opposed to such operation.

Just what recourse Crosley has in the courts now was somewhat uncertain this week. The action of the Court of Appeals dealt only with the plea for a stay order and does not bar WLW

from going ahead with its appeal from the FCC order. Moreover, Crosley could still appeal to the U. S. Supreme Court.

Decision of the court denying the petition for a stay brought an impasse in one of the most important legal contests between the radio industry and the FCC over the limitation of rights in the operation of experimental radio equipment.

Mr. Dempsey, representing the FCC, maintained the appeal from the Commission's denial was itself impotent, and that the Court of Appeals could not act to place itself in the position of granting a license to the station.

Second, Mr. Dempsey contended that the Court had no jurisdiction over any appeal from a denial of such experimental authorization, and could not 'even entertain' such an appeal.

A stay of execution, if granted, would, in effect, be tantamount to the Court's granting a license to the station, and this would not legally be within the statute of the Court's right, Mr. Dempsey argued. If it granted the stay, the Court would be acting as an administrative agent, not a judicial agent, he held.

Mr. Patrick presented Crosley's claims that:

1. The special authorization under which the station has operated for almost five years, and in which it seeks an extension, is no different than the license granted a regular radio station, insofar as appeal purposes are concerned, and therefore the corporation can legally "get into court" in the matter, and,

2. Once in Court, the corporation can ask the Court for any normal protective relief, such as a stay order, until the general appeal is finally acted upon.

Mr. Patrick claimed the experimental operation of WLW was for the good of radio "to make a contribution to the art of radio", and better to serve the listening public.

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NAB TO MEET IN ATLANTIC CITY JULY 10-13

The NAB convention will take place in Atlantic City, July 10-13 at the Ambassador Hotel, on the ocean front, it was announced this week by President Neville Miller, President of the National Association of Broadcasters.

The Executive Committee had authorized a transfer from San Francisco to the East, primarily because of the troubled legislative situation but also because smaller stations had complained. Preliminary plans already have been made with the Ambassador Hotel management for convention accommodations. Program details remain to be worked out.

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3/3/39

NAB HINTS IT PREFERS WHITE TO WHEELER PLAN

The National Association of Broadcasters, speaking for 406 of the Nation's 700 broadcasters, this week indicated it will support the White Bill for an eleven-man Commission as against the McNinch-Wheeler measure for a three-man agency.

Directors of the NAB, meeting in special session in Washington, discussed plans for fighting what they considered legislative threats of governmental censorship of radio and then issued a statement setting forth generalized opinions.

The broadcasters did not come out openly for or against either the Wheeler or the White bills, but they did state that they felt the Commission "should be large enough to dispel any doubt of the Government's desire for democratic regulation".

Asserting that the present system of broadcasting in the United States has operated in the public interest and should be continued, the NAB Directors added:

"We feel that there are certain principles which should serve as guides in formulation of public policy with regard to communications and broadcasting. These principles include the following:

"There must be effective recognition of the basic and fundamental differences between the functions, duties and responsibilities of a regulatory agency as they pertain to broadcasting and common carriers. Under the present law, the effort is made to provide regulation by the same agency for both. That, we feel, is an anomaly and has undoubtedly contributed to confusion within the Commission and criticism from without. Inherently there are difficulties in the effort of a single agency attempting to regulate such diverse types of industry. We believe that Congress should take cognizance of that diversity and make provisions for it in the set-up of the Commission. While we take no position as to the number of Commissioners, we do feel that the Commission should be large enough to dispel any doubt of the Government's desire for democratic regulation.

"There must be no censorship of programs. Congressional policy as expressed in the Acts of 1927 and 1934 has expressly forbidden censorship of radio programs and has undertaken to guarantee to the American people their right to be the final arbiters of what they shall hear, and by the same token, what programs shall be broadcast. The American people have been effectively their own censors; their own tastes have elevated the standards of radio and will continue to elevate them. The radio industry readily acknowledges that it is still in a developing stage, but we contend that it is not possible by any legislative fiat to establish taste or standards and we feel strongly that Congress does not desire to, and should not, depart from its established policy. Moreover, we feel that any proposal in legislation looking toward that result, should be defeated.

3/3/39

"There must be adequate recognition of the principle that the Federal Communications Commission, or whatever other Commission is created to regulate broadcasting, is an administrative agency functioning under specific mandate of Congress and in accordance with standards enacted by Congress. As the administrative agency executing the mandate of Congress, the functions of such board or Commission should be clearly expressed and defined and the rights, duties and obligations of the parties appearing before such Board or Commission should be more clearly subject to appropriate judicial determination by courts established for such purpose. Therefore, it is submitted that the appellate procedure in the existing act should be clarified.

"At present broadcasting stations are being overwhelmed by questionnaires, demands for information which obviously come from an atmosphere of common carrier regulation. Our feeling is that the continuation of the practice is not only harassing but also dangerous, in that it must inevitably lead to regulation of program content. The Association will and must oppose any proposal which gives legislative status to the practice.

"In accordance with these principles, the Directors of the NAB have requested the President of the Organization, Neville Miller, to appear before Congressional committees representing the Association."

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ELLIOTT ROOSEVELT TO ENLIVEN CHAIN INQUIRY

The chain-monopoly hearings being held by the Federal Communications Commission, which have been all but forgotten amid the controversy over reorganization of the Commission, cries of censorship, and the McNinch-Craven feud, may get some attention next week when Elliott Roosevelt, son of the President, takes the stand.

Young Roosevelt will testify on Tuesday as President of the Texas State Network, although he is also President of Hearst Radio, Inc

For the past two weeks regional network heads have occupied the stand. Among the principal witnesses have been officials of the Don Lee Broadcasting System and the Yankee Network.

John Shepard, III, President of the Yankee Network, whose case involving his two Boston stations is still before the Commission, explained his radio crusades and insisted that he was merely campaigning for better government.

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MCLEOD BILL SEEKS 3-YEAR LICENSE MINIMUM

To remove the fear of political reprisals against radio station operators for dissemination of political views and news, Representative Clarence J. McLeod, (R.), of Michigan, Thursday introduced in the House an amendment to the Federal Communications Commission Act.

Under Congressman McLeod's Bill, stations would be granted licenses for not less than three years - the present maximum - as against the limitation of six months. The FCC in acting upon applications for renewals would be specifically barred from considering any political views expressed over the station or held by the operator of the station.

Should the Commission refuse a renewal of a license and the operator feel that the refusal was based on political motives, he would be allowed to keep his license pending an appeal to the decision to the District Court of Appeals.

Representative McLeod, in introducing the bill said:

"This Administration or any political party which might be in power holds all radio broadcasting in a vice-like grip. Under the practice of granting licenses for only six months, the slightest whim or nod of a political bureaucrat can mean death to a station which has done no worse than to try to render a public service.

"The fear of reprisals is stultifying all broadcasting and has created an alarming system of indirect censorship. No political party should thus be able to prevent access to the air of those who have a legitimate message to deliver to the public."

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ROOSEVELT STATION CUTS OFF GARNER ATTACK

Radio Station KTAT, of Fort Worth, one of the key stations in Elliott Roosevelt's Texas State network, on Wednesday cut a preacher off the air while he was criticizing Vice President Garner.

The station announced it would not tolerate political programs "with the false front of religion".

The speaker was the Rev. John Lovell, paster of the Ranger, Tex., Calvary Baptist Church.

"As long as a bunch of bankers are for Mr. Garner, he will not make a good President", Lovell was saying. "If there's nothing else wrong with Mr. Garner, and I don't think there is . . . "

A studio announcer cut in with: "Circumstances beyond the control of this station prevent the continuance of this program."

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C O R R E C T I O N

Commenting upon an article "Philco First To Set Date for Television Debut", which appeared in the February 28th issue of this service, which was reprinted from the business section of the New York Times setting forth that Philco would endeavor to have at least a few receivers in stores for the opening of the World's Fair in New York on April 30th, Frank E. Mullen, Manager of the Department of Information of the Radio Corporation of America, writes as follows:

"I just noticed your story 'Philco First to Set Date for Television Debut'. Surely it can't be that you did not read our announcement made to the Radio Manufacturers' Association, October 20, 1938, that we expected to market receivers in the New York area May 1st?"

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CROSLEY TO HAVE OWN BUILDING AT N. Y. FAIR

The Crosley Corporation is now building and will occupy exclusively its own building at the New York World's Fair, Powell Crosley, Jr., President of the company, announced last week. It is the only Cincinnati company and the only exclusive refrigerator manufacturer in the country, it is said, to have its own building.

The cost of the building, which is centrally located on the Avenue of Communications near the Trylon and Perisphere, was placed at considerably in excess of \$100,000 by Mr. Crosley. It will be constructed along modernistic lines.

In the building will be exhibited the complete line of Crosley products, including radios, radio-phonograph combinations, Shelvador refrigerators, washers, ironers, gas and electric ranges, Crosley Koldrink bottle coolers and Crosley Coolrest bed coolers.

One of the outstanding exhibits will be the Crosley Reado, the radio facsimile printer introduced by the Crosley Corporation in January this year. This new product will be in operation so that people visiting the exhibit may see it receiving printed words and pictures by radio. A facsimile transmitting unit will also be installed so that people may see how visual broadcasts are made. Engineers will be in charge to explain to questioners the operation of this new radio instrument.

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