

HEINL RADIO BUSINESS LETTER

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March 14, 1939.

FOUR MORE WEEKS OF CHAIN-MONOPOLY QUIZ

Releasing a revised schedule of hearings in the chain-monopoly investigation, the Federal Communications Commission this week revealed that the inquiry will continue for at least four weeks more. This week the FCC is hearing critics of the radio system, including complaints from the Civil Liberties Union, the C.I.O., and Norman Baker, who lost his license several years ago.

The FCC Committee stated that next week it would begin hearings regarding so-called "lease" and "management" contracts and related matters.

Broadcast licensees and others will be called by the Committee to submit evidence with reference to contracts, agreements, and arrangements relating to the management, control, and operation of stations. The Committee will inquire particularly into the manner in which stations are operated so that actual operating practices may be considered in connection with contracts and arrangements entered into by licensees for station management, program production, and sale or lease of station time.

Licensees and others who will be called to present evidence include the following.

National Broadcasting Co., Inc.; Westinghouse Electric & Mfg. Co., (KDKA; KYW; WBZ; WBZA); General Electric Company (WGY); North Texas Broadcasting Co., (KPLT); City of Camden (WCAM); John H. Stenger (WBAZ); Regan & Bostwick (WQDM); The Associated Broadcasters, Inc. (KSFO); Columbia Broadcasting System, Inc.; St. Lawrence University (WCAD); Racine Broadcasting Corp. (WRJN); Loyola University (WWL); Moody Bible Institute (WMBI); The Cable Broadcasting Co., (WFBG); Cornell University (WESG); Monumental Radio Co., (WCAO); Baltimore Radio Show, Inc., (WFBR); James R. Doss, Jr., (WJRD); Educational Broadcasting Corp., (KROW); C. C. Morris (KADA).

Hearings relating to the ultimate ownership and the multiple ownership of broadcast stations will be held during the week of March 28th. Under the head of ultimate ownership the FCC Committee will receive evidence regarding ownership of stations which has been concealed or not disclosed fully. Multiple ownership is concerned with the ownership of two or more stations by the same or common interest.

Much information has been gathered on this subject from various parties including a number of brokers who hold stock in

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corporations in the broadcast field often as nominees for other parties, and sometimes as nominees for other brokers who in turn are nominees for other parties.

During the week of April 4, the transcription phase of the broadcasting industry will be investigated, it was announced by S. King Funkhouser, temporary special counsel assisting in the investigation of chain and network broadcasting and monopoly.

Among those who are scheduled to appear are: the National Broadcasting Company, Columbia Broadcasting System, Mutual Broadcasting System, and Associated Music Publishers, Inc. Gerald King, of Radio Transcription Producer's Association of Hollywood, California, will appear before the Committee on Tuesday, (today), March 14, to enable him to return to California immediately.

The Committee plans to look into the use, availability and quality of transcription programs as well as their relation to advertising agencies and station representatives.

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AFA BAN ON WPA JOKES NOT APPLIED TO RADIO

Emily Holt, Executive Secretary of AFRA, and Ralph Whitehead, Executive Secretary of the American Federation of Actors, assured the National Association of Broadcasters last week that AFA's ban on WPA jokes would not affect broadcasting.

Many AFRA members also belong to AFA, the vaudeville and night club union. When AFA ordered its members to stop making any cracks about the WPA, there was some question as to whether AFA members would refuse to read radio scripts that included WPA jokes.

Mr. Whitehead joined Mrs. Holt, however, in saying that the rule applied only when AFA members were working in AFA territory, that is, in night clubs and vaudeville.

In AFRA's jurisdiction, actors took the scripts that were given to them, Mrs. Holt added. AFRA had no intention of making a similar rule, she said.

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SYKES RESIGNATION ACCEPTED; SUCCESSOR DOUBTFUL

President Roosevelt announced at his press conference last Friday afternoon that he would accept the resignation of Judge Eugene O. Sykes, veteran member of the Federal Communications Commission, as of April 1st, but he gave no hint as to whether or not he would appoint a successor.

Because of the pending legislation for reorganization of the Commission, it was believed unlikely that the President would fill the vacancy immediately.

He is expected, however, to take a hand in expediting the reorganization very shortly.

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FCC ESTABLISHES POLICY ON HIGH FREQUENCY RENEWALS

The Federal Communications Commission last week announced a policy in regard to the consideration of applications for renewal of licenses of all the existing high frequency broadcasting stations. The Commission has licensed 49 high frequency broadcasting stations, all on an experimental basis. The licenses expire April 1.

The Commission set down three principles for its guidance in studying the applications for renewal. They are as follows:

1. When the applicant does not show that it has carried on any worthwhile experimental work during the last period, the application be designated for hearing.
2. If some work has been done, but of no great significance, then the licensee be informed of the work it must do during the next period and a commitment be obtained from the licensee before granting the renewal.
3. When the applicant has carried on a reasonably diligent experimental program and proposes to continue this work, a letter be prepared reviewing this course and making any suggestions for work that may be done during the next license period.

Of the 49 high frequency broadcasting stations licensed, 42 use amplitude modulation and 7 use frequency modulation.

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NEWSPAPER CONTROL ISSUE SET FOR HEARING

For the first time since the controversy over newspaper control of radio stations started, the Federal Communications Commission has set for hearing a clear-cut case before deciding whether or not an application should be rejected solely on the grounds that it would give a newspaper publisher control of all news dissemination in a community.

The FCC this week set for hearing the application of WSAN, Inc., and the Lehigh Valley Broadcasting Co., of Allentown, Pa., for the merger of the town's two stations, WSAN and WCBA, which now share time on 1440 kc.

The Law Department, after the customary examination, reported that there are no legal, financial, or technical obstacles to the merger. The only question at issue, it was explained, is whether a publisher, the Allentown Call Publishing Company, which owns the two local papers, should control the sole radio station as well.

The newspaper already owns WSAN, while WCBA is owned by a church, which wishes to seel the majority stock. Under the proposed merger, the publisher would own 65 percent of the stock of the consolidated station and the church or its minister 35 percent.

While the FCC in the past has favored the merger of stations sharing a single channel, the majority members balked at granting the Allentown application. Chairman Frank R. McNinch and Paul A. Walker openly expressed the view at the FCC meeting that the granting of the application would not be in the public interest.

Commissioners T.A.M. Craven and Norman Case voted against setting the application for hearing, while Eugene O. Sykes and George Henry Payne voted with McNinch and Walker. Thad H. Brown was absent.

The FCC stated that the action was taken "to determine whether the granting of the applications to consolidate two existing stations would result in, or trend toward, a monopoly in radio broadcasting and its immediate environs, and to determine if the operation of the stations by the Lehigh Valley Broadcasting Company would be in the public interest".

Commander Craven submitted a minority opinion in which he contended that the Commission has no authority under the Communications Act to deny a newspaper control of a radio station if all other conditions are met. He predicted, moreover, that if the FCC denies the pending application it will be compelled to reopen the cases of all of the 200 odd newspaper-owned radio stations.

The hearing will be held in Allentown, the FCC stated, "if the Commission's budget permits".

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FCC ENGINEERS SEE HOPE IN SUN SPOT STUDIES

As the radio services grow and congestion increases, due to the limited frequencies available, studies of the sun spot cycle offer great hope for the improvement of all radio services in the near future. This view was expressed this week by engineers of the Federal Communications Commission in reporting upon "sunspots" and their effect on radio wave transmission.

"Sunspot activity constitutes one of the most interesting and at the same time troublesome phases of radio today", a FCC release states. "The National Bureau of Standards, the Army, the Navy, and the Coast Guard are cooperating with the Commission in a continuous study on land and sea of the effect of the solar sunspot cycle on radio.

"Sunspots are no more than the name implies - dark spots on the surface of the sun which come and go. The number of these spots has been found to vary periodically over a period of 11 years. It is believed that these spots are the centers of violent electromagnetic eruptions or disturbances on the sun's surface. With the coming of radio, it was found that these periods within which violent outbreaks of sunspots occurred on the sun - often called magnetic storms - had a pronounced effect on radio transmission. In addition it was also determined that a certain correlation could be made between the general trend of radio transmission and the number of sunspots occurring throughout the 11 year period. It is this period which is called the solar sunspot cycle.

"High frequency waves such as those used for international broadcasting are always weakened, and sometimes blotted out completely for many hours or even days during the course of one of these magnetic storms. Radio engineers and the managers of radio stations are thus able, with the knowledge of the cycle or period of activity of magnetic storms, to choose their program time in advance in the case of international broadcasts, in such manner as to avoid, whenever possible, those times when interruptions to their service appear to be most likely.

"As the average number of sunspots varies in a regular manner over this period of 11 years and since there is a definite relationship between them and the transmission of radio waves, the importance and necessity of continuous experimental observations is readily understandable.

"The magnitude of the work involved is not so generally appreciated, however. In a survey made for broadcasting by the Federal Communications Commission in 1935, in which the radio industry cooperated, 58 field intensity meters were operated at 11 different locations in the United States for a period of six months. Over 4000 continuous 24-hour records of the field intensity of clear channel stations in the United States were obtained over some 500 different paths, varying in distance from 60 to 2700 miles. It took a staff of the Commission's Engineering Department over 6 months to make a statistical analysis of the most important part of

this data. In a more recent survey, made by the Commission for the marine service, data were secured on somewhat more than 100 vessels, and measurements of field intensity and noise covering another period of six months were made on a number of vessels on voyages throughout the world.

"The information obtained in this way is used by the Commission in assigning the frequencies and powers of broadcast stations and in fixing the minimum distances between stations operating on the same or adjacent frequencies. It is also used in prescribing the power of stations in the marine service in order that the statutes of law, enacted by Congress with respect to safety of life and property, will be observed by American vessels.

"This information is essential in formulating the standards of good engineering practice for all radio services and is of particular importance in the regulation of broadcasting and the safety services, such as marine, aviation, and police, where the interest and safety of the public are the Commission's chief concern."

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EXCERPTS FROM ELLIOTT ROOSEVELT'S TESTIMONY

Following are excerpts from the testimony given by Elliott Roosevelt, son of the President, before the chain-monopoly committee of the Federal Communications Commission last week, highlights of which were reported in last Friday's news release:

"There has been lots of loose talk about trafficking in licenses and the broadcasters realizing huge profits from the sale of licenses. This talk, in my opinion, is largely engendered by a lack of appreciation of the difference between trafficking in licenses and the legitimate sale of the stations. I feel that trafficking in licenses would seem to me to take place in one of two ways, first of all, where a person secures a construction permit to build a station with no intent to construct or operate that station, and, secondly, those who seek to sell this right to others for a profit after securing the permit, or else where the man buys a station with no intent of operating it but for the sole purpose of disposing of the station at a profit.

"On the other hand, a legitimate sale of a station is where a person in good faith constructs and operates it or purchases and operates it and builds up the business on the station and then, through circumstances, is forced to sell the station. He may, for any number of reasons, wish to dispose of the station, and, say he has built up a business which brings him a substantial yearly profit, then if he is required to suffer a loss in disposing of the station because in the minds of some he might be trafficking in a license, he is really in a position where it is very difficult for many of us to feel that there is a real reason to build up a station because we don't know whether we are able to dispose of the

"After all, this is not the Commission's primary interest - rather I feel that it is the Commission's primary interest, and that is, insuring the people of the United States the best radio service which this country is capable of producing. If the buyer of the station can continue to render a high grade radio service and can improve upon that service I cannot see what difference it makes whether the station sells for a dime or for a million dollars, as long as you continue to regulate the buyer just as you do the seller, and make sure that the type of operation is such that it is in the best interest of the public.

"I don't know of a single industry of comparable size which is required to apply each six months for the right to continue in business. The railroads, for instance, and the airlines are given certificates of convenience and necessity which allow them assurance of continuation, and I feel that it has not lessened on their operations in any degree the regulatory authority exercised by the government over them in the mere fact that they have a vested right in the license or certificate that is given to them. The government can step in and take it away from them at any time that they don't operate in the public convenience and necessity.

"Over and above that, it is my feeling that if we were allowed to secure assurance of continued life so long as we operate in accordance with the law and the regulations of the Commission that we should be placed on a sound basis like every other business. We feel, and I know that it is the sentiment of most of the smaller radio station operators in the country - I can't speak for the larger stations because I don't happen to be in that end of the business - but I know that if we were allowed to be honest and place a direct valuation on the license which we have, which after all is the good-will and the type of operation which we build up in our community, if we can place a valuation on that and the banks can be made to see the investment possibilities that there are on radio, that it will go a long way toward making radio a very much better industry for the people of the United States as a whole.

"I feel that the Commission, as such, really could recommend to Congress that legislation should be enacted to give radio stations certificates to operate which are revokable upon showing that they have failed to operate according to the law and I also feel that the regulations should be clarified, more clearly defined as to what is failing in operation in the public interest, convenience and necessity. After all, I notice that in the Act there is the phrase, 'public interest, convenience and necessity', but I have yet to have it explained to me exactly what public convenience is in a radio station and I would like also to have somebody explain to me what the public necessity of a radio station is, outside of the educational and entertainment values, and religious and so forth values that we have in bringing messages directly into the homes of the people of this country.

"If the regulatory right of the United States Government is not diminished, what logical reason can be advanced for holding the radio industry under such a short lease of life? We should be made the most stable industry in the country if we are to be able to be worthy of the tremendous trust which is given to us when we are given such a tremendously important method of reaching the people and are told you must operate this on behalf of the people."

The following exchange took place:

Mr. Roosevelt,

The Witness: I should like to make this statement with regard to censorship. I believe that there is - although the Commission may not realize - a censorship of fear at the present time operating in the radio industry. That is largely regulated and exists because of a lack of knowledge of just exactly what can be done and can't be done in the way of radio broadcasting today. There are no set rules, and I believe that many stations are today fearful of what rights they actually have and do not have, that if they carry certain types of programs that they may be in danger of reclamation, in the form of possibly losing their license, if the Commission did not happen to think that that program was in the public interest.

Chairman McNinch: You are, of course, familiar with the fact that Section 326 carries this language, Mr. Roosevelt: 'Nothing in this Act shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication.'

Do you not know that if the Commission should take any action that would be contrary to that section of the statute that the courts would very promptly give relief against it?

The Witness: Yes, sir, I believe that is true. I am merely stating what is the general feeling in the industry, that there should be a more clear definition of just what would be regarded as a program which is not in the public interest. Today, we have no laws in this country which protect the radio stations in any way; we have no libel laws which would enable us to be exempt from being subject to suit for what someone else says over our radio stations, and we are today in a position where we have to request copy in advance on political broadcasts, for instance, in order to make sure that there is nothing in there which is of a libelous nature which might hurt us. Yet, at the same time, we feel that actually that may be operating in the direction of an actual censorship of what is said, even though we have no clear definition of what is right and what is wrong that can be said over the air. And we have no limit of our liability for what the other fellow said.

Chairman McNinch: If exercised at all in the direction of censorship, that would be a censorship exercised by the station though, would it not?

The Witness: Yes, sir. I think though that there should be something in the law with regard to limiting the liability of radio stations for what might be said by someone departing from their script and making remarks over the air about an individual or group which were of a defamatory character and which could be construed as not being in the public interest.

Chairman McNinch: I am not prepared at all to take issue with you about that. But to do that, you would want some sort of limitation, would you not, put upon the power of the station in the selection of material?

The Witness: How is that, again, Sir?

Chairman McNinch: In order to afford you the protection against libel that you refer to, would you want a statute to put some limitations upon the right of the station management in the selection of its material that goes over the air?

The Witness: I believe that the station management should be required by statute to properly label all material that goes out over the air, and they should be held responsible for proper labeling. Once having done that, if someone then utilizes that air in a manner which is deemed as being libelous, I believe that then that person should be held liable and not the station itself.

Chairman McNinch: What I was inquiring about, and am very much interested in, is to know how better you would suggest that the prohibition of censorship by the Commission - not by the station - can be stated than in the emphatic language that is in the Act, when it denounces censorship, saying that there shall be no power, nor shall the Commission devise any rules or regulations which would interfere with free speech or amount to censorship? Can you add anything of substance or meaning to that statutory prohibition?

The Witness: Well, we feel this way; that the law is emphatic in its statement to a certain extent, but we do feel that there is, to a certain extent, the possibility that if a type of program should be broadcast which did not meet the approval of the Commission - that there still is a possibility and not that this Commission has ever utilized that power - through the power of taking away a license, the Commission could exercise a form of censorship.

Chairman McNinch: But the Commission has not, so far as you know?

The Witness: No, sir.

Chairman McNinch: Now, would you want to take the position that, regardless of the character of program material, the Commission in determining whether or not a station has been operated in the public interest during the preceding six months should be deprived of any power to say that programs had not been in the public interest?

The Witness: I believe that the Commission should primarily concern itself with seeing that nothing of a profane, defamatory, or unclean type of broadcast should get out over the air, and beyond that point, I do not think that the Commission should be particularly interested in the regulation of the type of program.

Chairman McNinch: Take your term "unclean" which is not in the statute - the statute denounces matters which are obscene, or vulgar, or profane, but you say "unclean".

The Witness: Well, that is merely another word for those three.

Chairman McNinch: Well, but is it? May not a thing be unclean in the estimation of the general public but not be vulgar, not be profane and not be obscene? May it not be suggestive, and so suggestive, as to be offensive to the whole public?

The Witness: I think that anything of a suggestive nature comes under the term of a vulgar type of program.

Chairman McNinch: But unless it did come under that, unless the courts would sustain it as being suggestiveness of a vulgar type, then the Commission would not have any authority under the present statute, according to your -

The Witness: I believe though that any court would sustain that.

Chairman McNinch: That is speculation. We often miss our guesses on what courts will do. But you believe that outside of those three categories, the station should be entirely free and should never be called to account for program material, if it is not obscene, vulgar, or profane within the meaning of the statute?

The Witness: Yes, sir, as long as it properly labels its broadcasts.

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 ::: TRADE NOTES :::
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The Western Union Telegraph Company has agreed to file with the Federal Communications Commission the tariffs on inbound traffic from foreign countries. The company had previously refused to file such tariffs.

Gordon Selfridge, Jr., of Selfridge & Co., Ltd., blamed sponsored radio for the slow advance of television in the United States, in an interview in London last week with Richard Burbidge, Managing Director of Harrods, Ltd., during a Selfridge television program. Interviewed afterward, Mr. Selfridge said sponsored television could not come until costs were reduced, and he hoped it would not come for some time, "otherwise we will all be broke."

The Federal Communications Commission has announced that a hearing would be called during the Fall of 1939 to correct the evils of the Alaskan aviation communication system and that all licensees and applicants for aviation service in Alaska would be made parties to this meeting. The Commission stated that on the basis of the population, which approximates 60,000, the air passenger traffic in Alaska is now $16\frac{1}{2}$ times greater than in the United States. The keen competition resulting from the fact that the aeroplane represents the quickest and only reliable means of transportation during the Winter has made it impossible for the companies to organize an aviation communications system among themselves.

Ten new radios, three new types of portable air-conditioning units, and a complete line of Conservador refrigeration, together with a new line of dry batteries and auto radios, were announced by Philco Radio & Television Corporation at its Mid-Winter Convention at the Palm Beach, Fla., Biltmore Hotel on March 16, 17 and 18.

The Federal Communications Commission announced this week it had granted the few applications which have been made by broadcast licensees for extensions of time within which to file annual financial reports due from them on March 15, 1939. The extensions vary in length, in accordance with individual need. The reports affected cover the calendar year 1938. The Commission authorized that further applications for extensions be granted in individual cases for reasonable cause shown.

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ELECTRICAL TRADE PARLEY PROGRAM COMPLETED

The Department of Commerce has completed arrangements for a two-day "open house" for executives of the electrical goods manufacturing industry, to be held on March 30 and 31.

The conference, sponsored by the National Electrical Manufacturers' Association, is designed to acquaint this large section of the American industrial system with the research and trade promotion facilities offered to business by the Department of Commerce. It will be held in the Department of Commerce auditorium.

The electrical goods group embraces seventy major industries, producing products ranging from commercial radio equipment to turbine generators and household refrigerators. During 1938 it employed more than 250,000 persons, with the value of its products approximating \$1,600,000,000.

The two-day conference will be opened Thursday morning by an address by Secretary Harry L. Hopkins. He will be followed during the course of the two days by 26 officials of the Commerce Department who will detail their various activities, especially as they pertain to the electrical goods industry.

The discussion of foreign trade, with which the industry is concerned to the extent of more than \$100,000,000 a year in sales abroad, will be introduced on Friday afternoon with a preliminary statement by Assistant Director F. H. Rawls, of the Bureau of Foreign and Domestic Commerce. John H. Payne, Chief, Electrical Division, will outline the special services available primarily for electrical manufacturers and exporters. Other foreign trade services will be explained by the chiefs of the various Bureau divisions; Commercial Intelligence, Commercial Laws, Finance, Foreign Tariffs, and Foreign Trade Statistics. The chief of the District offices will then outline the services available to business in all parts of the country.

Copies of the program may be obtained from the National Electrical Manufacturers' Association in New York, or from the Bureau of Foreign and Domestic Commerce, Washington, D. C.

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MRS. FRED D. WILLIAMS, WIFE OF EX-RMA HEAD, DIES

Mrs. Fred D. Williams, wife of a former President of the Radio Manufacturers' Association and now associated with the Philco Radio & Television Corporation as its representative in London, died Sunday in Wayne, Pa., a suburb of Philadelphia. Mr. Williams was in London at the time.

Bond Geddes, Executive Vice President of RMA, sent flowers on behalf of the Association, to the funeral, which was held this (Tuesday) afternoon.

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