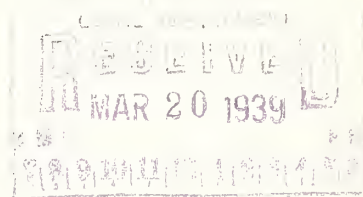


HEINL RADIO BUSINESS LETTER

2400 CALIFORNIA STREET

WASHINGTON, D. C.

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INDEX TO ISSUE OF MARCH 17, 1939.

Mills Warns That Radio May Be Denied Music.....	2
Pan American Station Bill Dead, Says Vinson.....	4
FCC Makes Changes In High Frequency Allocations.....	5
"Back Door" Censorship Charged To FCC.....	8
Sirovich Defends ASCAP In Congressional Record.....	9
Trade Notes.....	10
Newspaper Case Enlivens Craven-McNinch Feud.....	11
Parent-Teacher Group Protests Children's Programs.....	12
Charlie's "Kidnapping" Gives N.Y. A Start.....	12

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MILLS WARNS THAT RADIO MAY BE DENIED MUSIC

As the Copyright Committee of the National Association of Broadcasters prepared to tackle the music copyright problem again at a meeting in New York, beginning next Monday, E. C. Mills, Chairman of the Administrative Committee of the American Society of Composers, Authors, and Publishers, charged the NAB with fostering ill will and State acts to hamper the copyright owners.

Asserting that the NAB "with characteristic stupidity and short-sightedness" is making the broadcasting industry "the goat", Mr. Mills said that "it is not conceivable that if the present policy and campaign of attack and vilification continues to be pursued, that when 1940 arrives the song-writers of America and the rest of the world will refuse to license the use of their works by any broadcasting station."

The statement by Mr. Mills came on the heels of enactment of anti-ASCAP legislation by two more States - North Dakota and New Mexico - and his return after a Western trip to battle such State legislation

"These bills apparently all had a common authorship - Andrew W. Bennett and his associates in the NAB", Mr. Mills said. "Notwithstanding the often repeated assertion of NAB and its spokesmen to the effect that it does not sponsor or approve anti-ASCAP legislation in the various States, the fact remains that it does, more or less secretly, not only sponsor but financially support where necessary movements to introduce and enact such laws.

"Broadcasters generally, with an oily disregard for the facts, pretend that what they want is some sort of a law which will safeguard them from the commission of 'innocent infringements'. Therefore, they protest that if they can enact laws which will require ASCAP to file lists in the various States of all the compositions of which it controls the performing rights, they will then be able to refer to those lists in the offices of their respective Secretaries of State, and thus protect themselves against 'innocent infringements'. Of course, this is just hokum - because two years ago I offered every one of them, absolutely free of charge, a copy of The ASCAP Index, which covers every musical composition used by broadcasting stations and is being added to constantly so that now it is inclusive of all compositions used by broadcasters in the years 1934-1935-1936, as well as the complete record of all musical compositions copyrighted during 1937.

"The ASCAP Index covers not only works of which the Society controls the performing rights, but as well, compositions controlled by SESAC, AMP and independent owners not affiliated with any organization. Less than two hundred of the stations were sufficiently interested to accept The ASCAP Index and buy the filing cases in which to install it. Yet these same people who profess such an overwhelming desire for just exactly this sort of a record propose to duplicate in forty-eight States the records maintained in the office of the Register of Copyrights at Washington. They apparently care nothing for the burden thus to be placed upon the Treasuries of their respective States, and the whole plan of attack upon the part of the broadcasters seems to have as its objective the thought that ASCAP will be frightened, and at the end of 1940 will be so soft and pliable that the broadcasters can then dictate much better terms for renewal of licensing agreements than might otherwise be the case.

"With characteristic stupidity and shortsightedness, the NAB is proceeding in just exactly the wrong way - they are making the industry of broadcasting the 'goat' in that they are not only building up a tremendous ill-will upon the part of the songwriters of the whole world, but they are creating a public impression that what the broadcasters most desire is an opportunity to pirate and confiscate the music which is the vital essential to the successful operation of their commercial enterprises.

"Broadcasters in their propaganda in behalf of these State anti-ASCAP bills profess to be abused in that they 'pay ASCAP fees on programs which do not use ASCAP music'. Of course, this statement is utterly at variance with the true facts when, after weeks of discussion in 1932, NAB's Board of Directors approved this very formula and in 1935 approved and accepted a renewal of the same formula.

"It is not inconceivable that if the present policy and campaign of attack and vilification continues to be pursued, that when 1940 arrives, the songwriters of America and the rest of the world will refuse to license the use of their works by any broadcasting station. Broadcasters create no music and are parasites as far as music itself is concerned. What they do is to make purely commercial profits by capitalizing upon the music created by others and interpreted by the great artists. Unfortunately, spokesmen for the broadcasters and the leaders in that industry generally have seen fit to so resent the fact that the men and women who create the product most essential to their successful commercial operation demand to be paid fairly for the use of their material, that in their propaganda to State Legislatures they term these men and women, who are helpless and hopeless to protect themselves as individuals, 'racketeers' and worse because through collectively exercising their rights, they have succeeded in building an organization which is in a position to protect them.

"In not one single State where ASCAP has had a fair opportunity to present its case before committees to which anti-ASCAP legislation has been referred has the State subsequently enacted the hostile statute. Only where under the duress of 'rail-roading' tactics by broadcasters and political pressure brought to bear through threats of retaliation at future elections as to such State Legislators who did not support their cause have the broadcasters been successful in procuring enactment of these laws.

"At no time has ASCAP been in the slightest doubt as to the outcome nor is it in any doubt now. It does seem strange that an industry which enjoys a free franchise from the United States Government to utilize the air in such a manner as will earn for it a staggering annual income taken out of the pockets of the public by the advertisers should pursue such short-sighted policies. The broadcasters are ASCAP's best customers. The product which ASCAP's members create is a vital essential to their successful operation. Whether they like it or not, these two parties will have to get along.

"Songwriters today could not live without the income from radio. Radio could not live without the output of the songwriters. If it could, it would. And, if finally, in order to test the merits both in the public opinion and in the minds of the law-makers and to the satisfaction of the broadcasters themselves, it becomes necessary for the songwriters to entirely withhold their product, the broadcasters will have only themselves to blame for a condition brought about as a result of their years of consistent and continued and amply financed efforts in the National Congress, through the Department of Justice and in State Legislatures to destroy the protective organization which the songwriters have created, and without the protection of which they would be helpless and hopeless to protect their lawful rights."

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PAN AMERICAN STATION BILL DEAD, SAYS VINSON

Despite rumors that President Roosevelt intended to promote legislation for construction of a Pan American short-wave station at this session of Congress, Chairman Vinson of the House Naval Affairs Committee, stated this week that the Celler bill is "pigeon-holed" for this year.

Although long overdue, there has been no indication, moreover, as to when the report of the Inter-departmental Committee studying the subject of U. S. Broadcasts to Latin America will be released. Chairman Frank R. McNinch, of the Federal Communications Commission, heads the Committee.

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FCC MAKES CHANGES IN HIGH FREQUENCY ALLOCATIONS

The Federal Communications Commission issued this week a report covering the allocation of frequencies throughout the radio spectrum from 30,000 to 300,000 kilocycles. The Commission also made public the table of allocations to the specific services.

In addition to announcing various changes in the allocation to these specific services, the report, by its terms, accomplishes the following:

1. Extends the outstanding instruments of authorization for frequencies above 60,000 kilocycles except those operating in the broadcast service (television, facsimile, relay, high-frequency and experimental broadcast) to October 1, 1939.

2. Provides that applications for renewal which are due to be filed on August 1, 1939, shall specify frequencies in accordance with the new allocation.

3. Provides that applicants for new instruments of authorization after the effective date of this order (April 13, 1939, shall request frequencies in accordance with the new table of allocations. Broadcasting:

The allocation of frequencies above 30,000 kilocycles vitally affects several important broadcast services; namely, television, facsimile, relay, high frequency and experimental broadcast.

The action taken by the Commission with respect to television is in general accord with the action taken on October 13, 1937, in that the same 19 bands are reserved for television; however, three of the bands, namely, 162,000-168,000 kc., 210,000-216,000 kc., and 264,000-270,000 kc., may be used also for general or specific research and experimentation in the radio art along lines which are not specifically directed toward any established service. These stations will be required to vacate these bands if operation thereon results in interference to any television station.

The Commission believes that in order to permit television to be inaugurated on a nationwide basis a minimum of 19 channels should be reserved below 300 megacycles. This does not mean that the minimum number of channels allocated by this order will eventually provide channels for a completely competitive nationwide service. Undoubtedly additional channels above 300 megacycles or some rearrangement of the present plan will be necessary at a later date, the FCC stated.

"The action taken by the Commission is merely one step toward the development of the television service", it added. "The question of proper standards of design and operation are now being studied and will receive appropriate action with the least possible delay. All outstanding authorizations for television service are experimental."

In the band 41,000-44,000 kc., 75 channels are made available for assignment to aural broadcasting and facsimile broadcasting stations. Twenty-five of these channels have already been allocated to non-commercial educational broadcast stations. The revised order does not change the existing broadcast allocation in this band nor does it change the allocation to broadcasting on frequencies below 41,000 kc.

Order 19 originally provided for broadcasting in the band 142,000-144,000 kc. In order to provide frequencies for the aviation service, it was necessary to shift broadcasting to the band 116,000-118,000 kc. which was formerly tentatively assigned to amateurs.

Frequencies will be provided in each of the broadcast bands above 40,000 kc. for experimentation in frequency modulation as well as amplitude modulation in order that the relative merits of the two types of modulation may be properly evaluated by the Commission at an early date. It is anticipated that as a result of such experimentation proper standards will be eventually developed.

The action of the Commission in revising Order 19 provides a total of 12 channels for broadcasting service, such as, for example, relay broadcasting, in the frequency band 132,000-140,000 kc. These channels are in substantial accord with the original allocation.

Police Service:

The police service has been allocated eight channels between 132,000-140,000 kc. to supplement the frequencies which have previously been allocated to this service within the band 30,000-40,000 kc. At the present time there is only a small number of police stations operating experimentally above 100 megacycles.

Municipal and county governments as in the past will be required to cooperate to the fullest extent and coordinate their needs for radio communication service in order that interference may be minimized. These frequencies will be maintained experimentally until such time as developments may determine which manner they may be best used by this service.

Aviation Service:

In order to provide additional frequencies for the aviation service, which is essentially a safety service, and may not be served by any other method of communication, the frequency band 140,000-143,880 kilocycles has been allocated to this service. Many of the present problems which confront the aviation industry through its employment of medium frequencies may be solved through the use of the ultra-high frequencies. These frequencies are of utmost importance to the aviation service in that they are comparatively free from atmospheric interference and electrical disturbances, which render communication on medium frequencies impossible at times. Because of the natural limitations of these frequencies in their transmission

and reception range, duplication of use of a given frequency will be possible at intervals of about 500 miles.

The frequency band 129,000-132,000 kilocycles remains unchanged and will be available for airport traffic control. Six airport frequencies separated by approximately 500 kilocycles will be available for use at various airports throughout the country. Where there are several airports in the same locality, such as New York, the use of a separate and distinct frequency may be authorized. The intervening guard bands are provided in order to avoid interference and thus give the maximum degree of safety possible.

Fixed Service:

The fixed service has been allocated 14 channels in the band 132,000-140,000 kilocycles. In view of the decided and extensive demand for frequencies for the various classes of service which by their very nature are dependent on radio communication rather than wire lines, it is only possible to provide frequencies for the fixed service for use in areas where wire facilities are not available, or, due to circuitous wire routing or emergency circumstances, the use of radio may be found justified. Consequently, a limited number of frequencies have been made available for fixed service.

Experimental Service:

The experimental service has been allocated, in addition to the frequencies previously assigned, the shared use of those frequencies allocated to the special services. These additional channels which are interspersed throughout the frequency range 30,000-40,000 kilocycles and 132,000-140,000 kilocycles are primarily for general experimentation which is not directed specifically to any established service.

In addition, the order provides that all frequencies between 129,000 and 144,000 kilocycles are also available for assignment on an experimental basis to stations engaged in the development of a specific service in accordance with the rules and regulations governing that service. For example, should a municipality desire to experiment in the police service on frequencies above 130 megacycles, the frequencies allocated to the police service would be used.

There are also made available to the experimental service three bands of frequencies which have been allocated primarily for television broadcasting. These bands are separated approximately 50 megacycles apart, commencing with a band 162,000 kilocycles. Frequencies within these bands are available on a temporary basis only for general or specific research and experimentation in the development of the radio art along lines which are not specifically directed toward any established service. The holder of any general experimental instrument of authorization for any frequency or frequencies within these bands must vacate such frequency or frequencies if interference results to the television service. The assignments to experimental stations will be made upon the approximate 0.1% channeling system.

Relay Press Service:

The term "relay press" station has been adopted by the Commission since Order 19 was first promulgated. Frequencies above 30,000 kc. formerly designated as "mobile press" are now designated "relay press". A relay press station is limited to the transmission of news for publication, or orders, instructions or inquiries concerning such news to be published by the licensee and other publishers of the same news, or to be disseminated by the news association with which the licensee is regularly affiliated. Licenses for relay press stations are granted for communication to or from points where other communication facilities are not available. The frequencies provided in the revised order for relay press stations fall within the bands 30,000-40,000 and 132,000-140,000 kc.

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"BACK DOOR" CENSORSHIP CHARGED TO FCC

Charges that the Federal Communications Commission is exercising a "back door" censorship on radio programs and that the large broadcasting companies are exerting influence on the FCC to retain desirable frequencies were made this week in the chain-monopoly inquiry.

Roger N. Baldwin, Director of the American Civil Liberties Union, accused the Commission of suppressing freedom of speech through "backdoor" censorship.

"Commission opinions as well as speeches and letters of Commissioners have the effect of duress on program content", Mr. Baldwin told an FCC committee investigating monopolistic tendencies in radio. "Thus the Commission is doing through the backdoor what the Congress has prohibited it from doing through the front door."

Mr. Baldwin referred to the specific provision in the Communications Act providing that the Commission shall not censor radio. He said the Union's chief complaint was the Commission's practice of licensing stations for six-month period instead of for three years as allowed by the Act. Forcing a station off the air, he said, should be by revoking its license rather than failing to renew it. He said the Commission then would have to prove the station was not operating in public interest.

Mr. Baldwin criticized commercially sponsored news comments by Elliott Roosevelt, son of President Roosevelt and President of the Texas State network. He said that a network official should refrain from discussing controversial topics.

S. Howard Evans, Secretary of the National Committee on Education by Radio, which represents educational associations, read a paper in which he asserted the present system of station allocation imposes "a severe limitation on any possible opportunity for freedom of speech on the air". He said the system invited lobbying and pressure methods on the part of the large broadcasting companies.

S. King Funkhauser, special counsel for the Commission, challenged the latter statement. At one point questions were injected by Commissioner Paul A. Walker and by Chairman Frank R. McNinch. In the end Funkhauser had to content himself with Evans' admission that he had no knowledge of influence, except that he knew that high-priced lawyers and engineers of the broadcasting companies spend a great deal of time in Washington in contact with the Commission's employees.

"I make no charges that monopoly does exist", Mr. Evans said. "But there is danger that it will develop, for the favorable channel assignments are aligned with the chain broadcasting companies, and the chain broadcasters maintain a lobby in Washington to create a state of mind in the Commission so that they will give favorable assignments. They are willing to spend considerable money for legal and technical representatives to advise with the people in the Commission."

"Do you know that anyone has spent money for that?" Mr. Funkhauser asked.

"Yes - R. C. A.", Mr. Evans answered. "And as long as the Commission favors certain stations against other stations, they are inviting that sort of pressure."

"You say they spend money to get favorable assignments?"

"No, to maintain favorable assignments."

"Name them."

"WEAF, WJZ, WNAQ, KOA."

"You say they maintain these stations by spending money?" Mr. Funkhauser asked.

"No", Mr. Evans answered, "They maintain talent necessary to keep those assignments. They are here to confer with the Commission's engineers, lawyers and employees, and they have succeeded in having the Commission refer to regular broadcast bands, as regular commercial broadcast bands. They are here to create the psychology of looking on it as commercial broadcasting."

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SIROVICH DEFENDS ASCAP IN CONGRESSIONAL RECORD

Representative Sirovich (D.), of New York, on Thursday inserted in the appendix of the Congressional Record, a lengthy defense he made of American authors and composers, including the ASCAP, from what he termed unfair copyright legislation in reprinting an address he made on the House floor in 1936.

Among other things, he defended the \$250 minimum damage fee carried in the 1909 Copyright Act, which composers may impose on anyone using their copyrighted music without permission.

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 ::: TRADE NOTES :::
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CBS Rate Card 25, effective April 1, 1939, was announced this week by William C. Gittinger, Sales Manager of the Columbia Broadcasting System. It includes seven new CBS stations, bringing the current total for the network to 115 stations.

A unique process, developed in France, for printing colors on metallic paper is being used in the commercial field here for the first time on the cover of the NBC quarterly network program book for March. The cover is the work of J. Makowsky of Paris. Being mailed to advertisers and agencies throughout the country, the new program book is divided into three sections, including a summary of industries represented on the NBC networks; a list of sponsored programs with the name of the sponsor, program title, time on the air, network and agency, and a selected line-up of sustaining programs with a description of the program, time on the air and network. The book also points out that NBC network revenue in 1938 was larger than that of any other single medium in the advertising field.

The Union of South Africa, Brazil and Mexico were the largest foreign purchasers of radio receiving sets from the United States during the month of January, according to the Commerce Department. In the order named, they accounted for purchases amounting to \$131,462, \$82,706 and \$74,866.

An unusual advertisement which linked newspaper, radio and poster advertising, appeared recently in William Allen White's Emporia (Kan.) Gazette. It was five and one-half inch copy on three columns placed by the Emporia Poster Advertising Company, illustrating and telling about the big, five-color posters used about town by the new local radio station, KTSW, to advertise itself. Station KTSW has never advertised in the Gazette but many radio advertisers are buying Gazette space to call attention to their radio time.

BBC finances for 1938 show new high in income, actual gross being a trifle beyond \$19,000,000, of which 90% derived from radio licenses, according to Variety. Payoffs aggregated \$17,764,000 and balance sheet shows Corporation's full assets registered at around \$25,600,000. Half of total expenditures were spent on programs. Breakdown of licenses shows that of money subscribed by the public, BBC gets only roughly 75%.

Marshall Field & Co., Chicago, will cease to use the radio as an advertising medium at the conclusion of its "Musical Clock" program on Saturday after nine years of continuous use, six mornings a week.

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NEWSPAPER CASE ENLIVENS CRAVEN-McNINCH FEUD

The minority report of Commissioner T.A.M. Craven in the Allentown newspaper-monopoly case which the Federal Communications Commission set for hearing early this week (see last news letter) widened the breach between Commander Craven and Chairman Frank R. McNinch.

Chairman McNinch's only comment on the case, which may lead to a declaration of policy on newspaper control of broadcasting stations, was:

"What objection can there be to allowing the people directly affected by a proposed local monopoly of communications to say what they want in an open hearing? All the Commission has done is to set this case for a hearing at Allentown."

Commissioner Craven, in his minority report said, in part:

"If these applications are to be set for hearing on this issue it can only be because a majority of the Commission have already adopted in their own minds, or contemplate adopting as a result of these proceedings, a principle that ownership of broadcast stations by newspaper publishers, or by certain kinds or classes thereof, is contrary to public interest, convenience and necessity, and justifies or requires the denial of any application involving such ownership.

"The adoption of such a policy represents a radical change in a policy which has been uniformly and consistently followed by the Government of the United States since the earliest days of broadcasting * * * Prominent among those who pioneered in broadcasting in 1921 and 1922 were newspaper publishers, and, as a group, second perhaps only to manufacturers of electrical equipment, they have contributed ever since to the establishment and advance of our broadcasting system.

"In the most vigorous manner at my command", Commissioner Craven told the Commission, "I desire to record my vote against the adoption of such a policy and to state my reasons for so voting. In my opinion (1) The Commission has no power under the Communications Act of 1934 to adopt such a policy; (2) even assuming that the Commission has discretion in the matter, such a policy would be contrary to public interest, convenience and necessity; (3) a hearing on particular applications is not a proper or fair method of determining whether such policy would be adopted.

"The question directly affects some 240 licensees of existing stations scattered over the length and breadth of this country. It involves evidence to be drawn from some 18 years of experience with newspaper-owned stations, from practically every State in the Union, and from a wide variety of witnesses. It involves considerations drawn from the regulation of other industries, and of complicated social and economic factors. The parties affected are entitled to notice that the Commission contemplates so important a change in principle and to adequate opportunity to be heard.

"It might develop - although I doubt it - that newspaper publishers owning stations should be sub-classified, and that one or more sub-classes should be barred and others not. There are several different situations among newspaper-owned stations, varying from the case where such a station is one of several competitive stations serving the same community to the case where the only newspapers and the only stations are owned by the same interests. Many publishers have only one station each. Others have two or more, sometimes in the same city and sometimes in different cities. If there is to be a sub-classification, it must be clearly defined and based on a reasonable distinction that has some relation to the welfare of broadcasting service."

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PARENT-TEACHER GROUP PROTESTS CHILDREN'S PROGRAMS

The Federal Communications Commission this week received protests from the Blow-Webb School Parent-Teacher Association, of Washington, against the Tom Mix, Buck Rogers and Gang Busters radio programs.

Mrs. J. M. Selby, who headed the Parent-teacher delegation, said she considered the programs undesirable and too exciting for the children at whom they are directed.

However, Mrs. Selby, who told S. King Funkhouser, counsel for the Commission, that she infrequently listened to the radio herself, said that the Parent-Teacher group would have no objection to Gang Busters if it were put on the air after small children had retired.

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CHARLIE'S "KIDNAPPING" GIVES N.Y. A START

The "kidnapping" of Charlie McCarthy gave blasé New York a slight shock this week, but the irrepressible dummy was restored so quickly to Edgar Bergen at the Hotel Waldorf Astoria that no one, not even Edgar, lost any sleep.

After some anxious hours, Charlie was returned intact to the ventriloquist by Frank Farrell, night club reporter for the World-Telegram, who had used a note signed by Bergen to get hold of Charlie while his companion was seeing New York night life. Bergen insisted it was a publicity stunt but that he had nothing to do with it. Hereafter, he said, he will keep Charlie under lock and key.

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