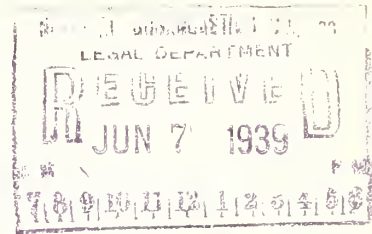


# HEINL RADIO BUSINESS LETTER

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June 6, 1939

## HEARING LIKELY AS FCC S-W ORDER IS ASSAILED

A public hearing on the recent regulations promulgated by the Federal Communications Commission with respect to the operation of international radio broadcasting stations in this country appeared likely this week as protests came from broadcasters and Capitol Hill.

The storm center of the regulations is the provision which stipulates that programs carried by the short-wave stations must reflect "the culture of this country" and promote "international good will, understanding, and cooperation".

The criticism, which had been growing in broadcasting circles, burst forth on Capitol Hill Friday when Representative McLeod (R.), of Michigan, attacked the regulations as a form of censorship. He told the House that President Roosevelt should demand the resignation of the entire membership of the Commission.

A spokesman for the FCC explained subsequently that the regulations had been approved by the State Department before being issued and that the language in question is almost identical with that used in a resolution adopted at the seventh International Conference of American States at Montevideo in 1933.

Meanwhile, it was learned, that the National Association of Broadcasters has written to ask the Commission to hold a public hearing on the matter.

Possibility that the rule may ultimately lead to international diplomatic entanglements which may become embarrassing also has been raised. It is pointed out that when statements in the press cause protests from foreign governments, these can be met with the reply that the press in this country is a free one and the Government has no way of controlling it. Regrets are expressed and the incident is closed.

On the other hand, it is argued, if some remark is made or drama broadcast over an international station, and it is held offensive by a foreign government and results in a protest, the Commission, by its program rule, has precluded the State Department from making a statement that the Government has no control over such matter, because it has, in effect, assumed jurisdiction by the new rule.

The rule was promulgated without giving the industry or others an opportunity to be heard. However, the matter was deliberated seriously by the Commission and its action was backed

by the opinion of its Legal Department that such language was not prohibited by the Radio Act and did not involve censorship.

When the matter was first considered by the FCC, Commissioner T.A.M. Craven voted against it. Before it was finally adopted the matter was referred to the State Department, and when it gave its approval to the language the Commission approval was unanimous.

"There is no intention whatsoever on the part of any Commission official to even suggest the scrutiny of individual programs prior to their release by the broadcast stations", an FCC spokesman said.

Representative McLeod, in his speech on the House floor, said, in part:

"Mr. Chairman, a few days ago the Federal Communications Commission issued regulations governing the broadcasting of international programs by radio stations in the United States which should alarm Congress, the press, and every person in this country.

"These regulations order radio stations to broadcast only international progress of good will. In effect it gives to the Commission the power to tell radio stations what they shall or shall not say over the radio. The Commission uses the term 'good will', which signifies that something has to be defined or determined; in other words, censorship of the radio and censorship of speech.

"It has long been apparent that the Commission has sought greater control of the air waves, but such a brazen attempt to say what shall or shall not be broadcast - in effect censorship of radio programs - most certainly was not anticipated.

"When the FCC attempts to tell the broadcaster what programs he shall broadcast internationally, it knows that if it can get by with this dictation there is just one short step remaining to the control of standard broadcasts or domestic programs, and when that hurdle is cleared radio is under the domination of bureaucracy and ceases to be free. . . . .

"When the Federal Communications Commission was created by this body it was not intended that censorship was to be part of the Commission's functions. The primary duties of the Commission are to prevent confusion in the air by allocation of wave lengths and to guard against libel or indecency. But here we have a creation of Congress, suddenly turned a Frankenstein, ignoring the will of Congress, and determining just what American radio stations shall or shall not say during international broadcasts. To carry out their purposes, violation of this fascistic principle will warrant revocation of a radio station's license and thereby force it out of business.



"Gentlemen, I cannot say to you too strongly that without freedom of opinions, thoughts, and ideas this Nation has no right to entertain any hope for the survival of Democratic principles. This regulation is but a small cancer now, but unless it is cut out at the start it will spread like any unattended malignant growth, until finally free speech will be throttled, the press will be a mouthpiece for the few, and radios will blare forth only the ideas of the FCC.

"Gentlemen, no matter how you view this regulation, you can reach no other conclusion than that this is the most flagrant attempt yet made to stifle and kill the right of free speech. In all the history of our Nation no more audacious or tyrannical step has been taken to destroy a vested right. If not corrected immediately, this regulation can mean the beginning of a Fascist censorship of the press as well as of the radio.

"The Supreme Court, speaking through Chief Justice Hughes, has made it clear in a unanimous decision that the scope of Federal regulation over radio relates only to the allocation of facilities. Congress, moreover, in section 326 of the 1934 Federal Communications Act, has specifically prohibited such censorship by the Commission in the following language:

"Nothing in this Act shall be understood or construed to give the Commission the power of censorship of 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. No person within the jurisdiction of the United States shall utter any obscene, indecent, or profane language by means of radio communication."

"The danger of the unadulterated censorship as imposed by the Commission only last week must be apparent to all of you. It is a real threat against the newspaper and the freedom of the individual. It is something abhorrent to every American to whom freedom of speech is a precious heritage.

"This action of the Radio Commission is undemocratic control of radio, and we have only to look at some of the countries of the Old World where broadcasting has been converted into the most powerful weapon of dictatorship to fully appreciate the significance of such control.

"Heretofore, radio has taken its place with freedom of religion, speech, and the press, but this action completely destroys that freedom and makes it the slave of a bureaucratic government.

"Mr. Chairman, the amazing predicament in which we find ourselves today calls for immediate remedial action. The President of the United States, in view of this serious situation, should forthwith demand the resignation of the entire Commission."

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## NAB ASKS REPEAL OF FCC INTERNATIONAL RULE

Asking that the recently-promulgated regulation proscribing the type of programs to be carried by the privately-owned U. S. international radio stations be rescinded, the National Association of Broadcasters this week addressed an appeal for a hearing to the Federal Communications Commission.

The regulation, Neville Miller, President of the NAB, said in his letter to Chairman Frank R. McNinch, infringes upon freedom of speech, is contrary to the Nation's foreign policy, and is an arbitrary assumption of power not allowed by the Communications Act.

The text of his letter follows:

"On May 23, 1939, the Commission promulgated new rules and regulations for the operation of international broadcast stations. These rules included new and unprecedented restrictions and requirements as to program content and were issued without prior public hearing. Of the nine licensees operating fourteen international broadcast stations, the majority are members of the National Association of Broadcasters. This organization has a committee for the study and coordination of international broadcasting and is now accumulating more comprehensive information in this field than has been available. Meanwhile, however, these new rules and regulations precipitate certain fundamental questions which are a matter of vital concern to broadcasting generally and to the entire American public. It is to these more fundamental matters that we address ourselves.

"Paragraph (a) of Section 42.03 of the new regulations provides that 'A licensee of an international broadcast station shall render only an international broadcast service which will reflect the culture of this country and which will promote international goodwill, understanding and cooperation'. It is submitted that the question as to whether a specific program reflects the culture of this country or promotes, at any given moment, international goodwill, understanding and cooperation, is a matter upon which there may be sharp differences of opinion. A literal interpretation of this regulation would, for example, require a licensee to suppress spokesmen for minority groups if either the licensee or the Commission thought their views would not promote 'international goodwill, understanding and cooperation'. Freedom of speech as an integral part of the culture of this country not only is a cherished tradition, but a living reality. Any requirement that international broadcast stations suppress a speaker because his remarks might not promote 'international goodwill, understanding and cooperation' would, therefore, seem to be in conflict with the requirement that the service rendered by an international broadcast station 'reflect the culture of this country'.

"We are advised by several licensees of international broadcast stations that foreign listeners rely upon stations in the United States as a source for unbiased and uncensored news of the world. This reliance is based upon the fact that these listeners know that in the United States there is no governmental supervision or control over the matter to be broadcast. In many other countries, broadcasting is an instrument of the government and listeners to their stations are aware of the fact that their programs, including news reports and information on current events, are colored to fit the philosophy and views of the government. The consequent distortion of news into self serving propaganda has evoked a growing resentment toward the countries from which it emanates, and such resentment has reacted to enhance foreign respect for the present impartial dissemination of programs from the United States. We, therefore, feel that the confidence that has been developed in the independent operations of American short-wave stations will be destroyed when it becomes known that an agency of the government of the United States has laid down requirements to control the program content of these stations.

"Moreover, it is respectfully submitted that the existence of this regulation (42.03 - a) needlessly places this government in a position which we believe to be contrary to our traditional policy in the field of foreign relations. There are abundant examples of instances in which some citizen of the United States has made certain utterances by radio or through the press which have aroused the antagonism of the representatives of foreign powers. It has been the customary reply of our State Department to the protests by offended powers that this country is one in which freedom of speech is an actuality and the government has no power to abridge this fundamental right. The regulation which we are discussing definitely implies official responsibility for all matter broadcast over international stations. This we believe is unsound policy and incompatible with the operation of broadcast stations by private enterprise in a democracy. It would seem equally appropriate to require government supervision and censorship of all matter contained in American newspapers circulated abroad which use the facilities of the American Merchant Marine or the second class mail for delivery. This analogy, we believe, clearly demonstrates the errors and the immediate dangers of the policy which this new regulation embodies.

"We likewise desire to invite your attention to paragraph (b) of Section 42.03 which places further restrictions upon program content to the extent that it limits and prescribes the type of commercial advertisement which can be made, the type of commodity which can be advertised and then excludes all commercial or sponsored programs that 'are not consistent with the purpose or intent of this section'. Such regulations are neither desirable nor necessary nor susceptible to sufficient clarity of interpretation or agreement as to meaning to permit them to be practically applied. If international broadcasting is to be continued as an instrument of private enterprise, we feel that the regulatory authority should confine its functions to questions of technical efficiency, allocation and general performance in the public interest.



"It seems appropriate to emphasize that the record of licensees in the international broadcast field has been one of greatly increasing service to foreign listeners. During the past two years, there has been a marked development of facilities and personnel by the various private licensees. Their programs are being exclusively designed for international audiences. The responses that have been received indicate that foreign listeners appreciate the fact that these programs, reflecting as they do, a living pattern of our democracy, have not undertaken to propagandize any political ideology. This should be continued, because the most effective way to develop and foster international goodwill by the United States is to avoid copying the tactics of totalitarian governments who supervise and direct all broadcasting.

"Finally, we have been unable to find a legal basis for the regulations which we have discussed. It need only be pointed out that the authority for all powers exercised by the Commission must be found in the Act itself and that such authority must be expressly conferred or follow by necessary implication from powers expressly conferred. In this case, we can find neither. While the Communications Act of 1934 clothes the Commission with extremely broad powers on matters of allocation and the technical and physical operations of broadcast stations, we can find nothing in the Act or in the several decisions of the court which have been based upon this Act to support this character of regulation. We have been unable to find any provision of the Act or decision of the court which would authorize the Commission to pass upon the content of programs broadcast either directly by prior examination of the program material or indirectly by imposing requirements which will have the same effect.

"The Federal Communications Act of 1934 is silent on the subject of program content. Not only does this absence of language support our conclusions that the Commission is without authority to regulate program content as such, whether in the international or domestic broadcasting field, but it should be particularly noted that the statutes expressly prohibit censorship in any form. We desire to emphasize the language in Section 326, which states:

"'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.'

If the Commission has the authority to promulgate this character of regulation in the international field, it must have equal authority with respect to domestic broadcastin, as the same provisions of the law govern both classifications. If licensees of international broadcast stations can be required to restrict their programs to any regulatory authority's concept of American culture, it would seem clear that the licensees of domestic broadcasting



stations could be required to limit their programs to some 'official' definition of culture, education and entertainment. That this would constitute a violent transgression of the basic principles of American democracy is self-evident. We further submit that the proposed regulations would establish the precedent for such transgression and surely no such dangerous prerogative is contemplated by the Communications Act of 1934 and is in direct conflict with Section 326 of the Act which expressly prohibits any type or character of censorship or any condition or regulation 'which shall interfere with the right of free speech by means of radio communication'.

"In view of the importance of the subject itself and in further view of the necessary implications to which the adoption of such regulations give rise, we request that the Commission follow the same course selected by it in the adoption and promulgation of rules and regulations governing the domestic operation of broadcast stations and that it conduct hearings on these regulations. We further request that the Commission reconsider its action of May 23, 1939, and postpone final action until such time as an opportunity may be given for the conduct of a hearing upon the questions above referred to and others which are necessarily involved in the consideration of this subject."

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#### NEW RADIO GALLERY GETS WHITE HOUSE BID

Members of the new Congressional Radio Gallery - wherein those connected with radio have the same privileges in Congress as the Press Gallery - were invited for the first time to the reception President and Mrs. Roosevelt give each year to members of the press. Although it was one of the hottest nights of the year, the occasion proved enjoyable because of the fact that in addition to the White House proper, the beautiful gardens and terraces were thrown open to the guests. A feature of the evening was a Virginia Reel participated in by Mrs. Roosevelt.

Among those present representing the Radio Gallery were Harry C. Butcher, Vice-President of the Columbia Broadcasting System, and Mrs. Butcher; Kenneth H. Berkeley, Manager of the National Broadcasting Company in Washington, and Mrs. Berkeley; Miss Anne Gillis, of Columbia, Mr. and Mrs. John Charles Daly, of Columbia; Mr. and Mrs. Fulton Lewis, Jr., of the Mutual Broadcasting Corporation; Rex Lampman and William McAndrew of NBC, and William J. Slocum, Jr., of Columbia. Carlton Smith, presidential announcer of NBC, and Mrs. Smith also attended. Mr. Smith and Bob Trout, Columbia presidential announcer, however, have long been on the White House invitation list.

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## McDONALD RAPS TELEVISION IN ANNUAL REPORT

Reiterating his view that the sale of television receivers to the public is premature, Commdr. Eugene F. McDonald, Jr. President of the Zenith Radio Corporation, this week explained the company's position to its stockholders in an annual report this week.

"The management continues to believe that television is not yet ready for the public and refuses to be stampeded into the premature production of television receivers for sale to the public. We are manufacturing television receivers, which are being loaned to experienced observers, not sold. Any television receivers sold at this time may become obsolete shortly. Your company is ready but television is not.

"The Federal Communications Commission on May 22 refused to approve or disapprove the standards for television proposed by the Radio Manufacturers' Association. This action confirms the stand which the corporation has taken against the premature introduction of television.

"The management's definite stand on the matter of television has greatly increased the company's goodwill with radio dealers and the trade in general. The sales, even in the New York area, of television have been negligible. Television one day will be a great industry, but that day is not this year.

"The economic problems of television are far greater than the technical problems. One of the most important economic problems resolves itself into a vicious triangle. First, no radio manufacturer or broadcasting organization can afford the expense of supplying adequate television programs for a sufficient length of time to obtain circulation. Second, the advertisers will not contribute to and pay for the programs until circulation is acquired. Third, the public, which is the circulation, will not buy television receivers until they are assured of satisfactory and continued programs."

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## 20,000 SAW TELEVISED FIGHT, NBC SAYS

The National Broadcasting Co. has estimated that approximately 20,000 persons watched and heard the first television of a major outdoor heavyweight batter Thursday night when Lou Nova won a technical knockout over Max Baer.

A portable television transmitter set up at the edge of the press section in Yankee Stadium televised the action over Station W2XBS. Reception throughout the New York area was described as clear and bright, despite the absence of special lighting at the ringside. Baer's thick mop of hair, tumbling about as Nova jabbed his face was easily discernable on the 8 x 10 inch screens. Blows hammered in by both likewise came across distinctly.

NBC's observers commented:

"Television has amply demonstrated its power to capture the fascination inherent in boxing."

Not only was the main go put into the picture but also some of the preliminaries.

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:::	TRADE NOTES	:::
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Final public hearings before the Department of Labor's Division of Public Contracts, in the radio minimum wage procedure under the Walsh-Healey Act, relating to government purchases of radio, have been scheduled by Administrator Walling for July 6th.

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The FCC hearing on Mayor LaGuardia's petition to amend the Commission's rules relative to the rebroadcasting of foreign programs has been postponed on request of the New York executive until September 11th.

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Continuation of all "nuisance" taxes, including the 5 percent radio tax, is the administration program before Congress. Hope for eventual repeal of the radio tax, however, at some distant time, was indicated in the administration program presented by Secretary of the Treasury Morgenthau to the House Ways and Means Committee on May 27th, and the Radio Manufacturers' Association will continue its efforts toward repeal or reduction of the tax, although no hearings on the "nuisance" taxes will be held by the House Committee.

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Edward J. Kelly, Assistant Manager of Manufacturing for the RCA Manufacturing Company, has been appointed Manager of Radio and Record Manufacturing and of Production Engineering activities at the company's Camden plant. Mr. Kelly has been with RCA for twenty-three years.

E. T. Hamilton, whose association with the company dates back thirty years, has been appointed Manager of all Warehousing and Shipping activities at Camden. He continues as Manager of Materials Control.

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## WINTERBOTTOM HONORED FOR 25 YEARS' SERVICE

W. A. Winterbottom, Vice President and General Manager of R.C.A. Communications, Inc., received last week a gold watch as a gift from friends and associates at a dinner at the Downtown Athletic Club in New York City. The ceremony commemorated his twenty-five years of service with the company. The presentation was made by Edward J. Nally, Director of the Radio Corporation of America, who gave Mr. Winterbottom his start with R.C.A. Communications.

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## NEW DEVICE TO FLASH GREETINGS IN PALEY CEREMONY

When Wilson E. Burgess, selected for outstanding amateur radio achievement during 1938, steps up to the microphone at the Hotel Pierre, New York City, tonight (June 6) to receive the William S. Paley Amateur Radio Award, he will see greetings of fellow "hams" from all over the United States flashed on a four-foot screen - thanks to a device, recently developed under supervision of Walter S. Lemmon of Greenwich, Connecticut, and head of the World Wide Broadcasting Foundation.

It is the new Radiotype, a revolutionary invention in the communications field. As yet little known to the general public, it operates much in the manner of an electric typewriter, except that it automatically receives its impulses over the air. Messages transmitted on ultra high frequency waves are recorded on the machine at breath-taking speed, and flashed simultaneously in magnified letters on a nearby screen.

"Hams" from Maine to Los Angeles have already been notified that the device is going into operation June 6th, and that congratulations are in order for Mr. Burgess. They cannot communicate with the Hotel Pierre direct, but have been asked to send in their good wishes to the American Radio Relay League's short-wave station, W2DKJ/2, set up in the Communications Building at the New York World's Fair. From this point, an operator will write the messages on a transmitting Radiotype, for which they will leap the ether to a receiving Radiotype in the hotel dining room.

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## NBC BILLINGS FOR MAY ARE UP 8.4%

Continuing their rise for the eighteenth consecutive month and registering an all-time high for May advertisers' expenditures on National Broadcasting Company networks in May totaled \$3,702,102, an increase of 8.4 percent over May, 1938. Total for the Red and Blue Networks in May, 1938, was \$3,414,200. The May billings also showed a contra-seasonal gain of 4.0 percent over April, 1939, when the total was \$3,560,984.

NBC's cumulative billings for the first five months of 1939 totaled \$19,216,533, up 7.8 percent over the previous record of \$17,823,105 set for the same period of 1938.

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## MUTUAL BILLINGS FOR MAY \$234,764

For 13 consecutive months, the Mutual Broadcasting System billings have shown an increase over the corresponding month of the previous year, it was announced today.

The figures released for May, 1939, totalled \$234,764 an increase of 20.9 percent over the May, 1938, billings which were \$194,201.

Billings for the first five months of 1939 totalled \$1,396,049, an increase of 22.5 percent over the same period in 1938, which totalled \$1,139,767.

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## CBS REACHES ALL-TIME HIGH WITH MAY BILLINGS

Gross billings on the Columbia Network for May surpassed all previous highs with a total of \$3,063,329 - 25.4% better than May, 1938. Once again CBS booked more business than any other network. The cumulative five-month total for 1939 stands at \$14,058,638, a gain of 4.4% over the record-breaking period of 1938. Only once before - in March, 1938 - have billings on Columbia passed the three-million mark; at that time the gross was \$3,034,317.

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