

HEINL RADIO BUSINESS LETTER

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PAYNE RULING SEEN AS SLAP AT RADIO LAWYERS

Commissioner George Henry Payne, who has been strangely quiet for the past year, this week let loose a blast that rocked his erstwhile foes, the radio lawyers, and may cost them an estimated \$100,000 a year.

Delivering a rigid interpretation of a new Federal Communications Commission rule regarding interventions, Commissioner Payne set a precedent, which if followed in subsequent FCC decisions, will curtail considerably radio litigation before the Commission. Mr. Payne's decision is expected to be appealed to the full Commission.

Denying a petition of the Orlando Broadcasting Co., of Orlando, Fla., for leave to intervene in a case involving an application for a construction permit to erect another station in Orlando, Commissioner Payne held that the applicant had not shown that the case vitally affects its own interests.

"The instant petition to intervene and to enlarge the issues to include questions other than those specified in the Notice of Hearing requires an interpretation of the Commission's Rule 1.102 which became effective on August 1, 1939", Commissioner Payne explained. "Because the questions raised by the instant petition are also involved in a number of other petitions now pending on the motions docket, I feel that it is appropriate to express in some detail my views concerning the sufficiency of the instant petition in the light of the Commission's present rule governing intervention and enlargement of issues.

"The Commission's rule relating to intervention and enlargement of issues, reads as follows:

"Sec. 1.102 Intervention. Petitions for intervention must set forth the grounds of the proposed intervention, the position and interest of the petitioner in the proceeding, the facts on which the petitioner bases his claim that his intervention will be in the public interest and must be subscribed or verified in accordance with Sec. 1.122. The granting of a petition to intervene shall have the effect of permitting intervention before the Commission but shall not be considered as any recognition of any legal or equitable right or interest in the proceeding. The granting of such petition shall not have the effect of changing or enlarging the issues which shall be those specified in the Commission's notice of hearing unless on motion the Commission shall amend the same.'

"The underlying purpose of the Commission in adopting its present rule on intervention was to correct a practice which had become prevalent under the prior rule of the Commission relating to intervention. Under its former rule, the Commission permitted any person to intervene in a hearing if his petition disclosed 'a substantial interest in the subject matter'. This standard was so broad and the Commission's practice under it was so loose that intervention in Commission hearings came to be almost a matter lying in the exclusive discretion of persons seeking to become parties to Commission proceedings. The experience of the Commission during the past few years clearly demonstrated that the participation of parties other than the applicant in broadcast proceedings in a great many cases resulted in unnecessarily long delays and expense to both the Commission and applicants without any compensating public benefit. In many cases the major function served by intervenors was to impede the progress of the hearing, increase the size of the record, confuse the issues and pile up costs to the applicant and to the Commission through the introduction of cumulative evidence, unnecessary cross-examination, dilatory motions, requests for oral argument and other devices designed to prevent expeditious disposal of Commission business.

"The underlying purpose of the present rule is to limit participation in proceedings, particularly on broadcast applications, to those persons whose participation will be of assistance to the Commission in carrying out its statutory functions. The present rule requires a petitioner to set forth not only his interest in the proceeding but also 'the facts on which the petitioner bases his claim that his intervention will be in the public interest'. The fact that a proposed intervenor may have the right to contest in a court the validity of an order granting or denying a particular application does not in and of itself mean that such person is entitled as a matter of right to be made a party to the proceedings before the Commission on such application. Intervention in proceedings before administrative agencies like the Federal Communications Commission is ordinarily covered by statutory provision.

"The Communications Act contains no provisions giving the right of intervention in proceedings before the Commission to any person or class of persons, but expressly provides that the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends as will best conduce to the proper dispatch of business and to the ends of justice. By the adoption of Rule 1.102 the Commission in effect has declared that it will conduce to the proper dispatch of business and to the ends of justice if it permits intervention in a proceeding before it only if the making of a record in which the facts are fully and completely developed, is facilitated by permitting the requested intervention. It is this theory - that where the public will benefit through aid or assistance given to the Commission or the applicant by a party-intervenor in a broadcast hearing, such participation should be permitted - which underlies Rule 1.102."

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CODE COMMITTEE CONSIDERS COUGHLIN BAN

Ticklish issues, chief of which is the Father Coughlin broadcasts, were being considered by the NAB Code Compliance Committee in executive session early this week in Washington. It is the first session of the Committee since the Code became operative on Monday.

Pressure has been brought to bear on the Committee to outlaw the commercial broadcasts of the Detroit priest, it is understood, on the ground that they fall under the NAB Code ban on the injection of controversial talks in sponsored programs.

As forty odd stations are paid for the programs, however, are paid an aggregate of \$6,600 a week for the time, an appeal to the NAB Board of Directors is expected if the Code Committee tries to limit Father Coughlin to the public forum periods.

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RADIO EXPORTS SET NEW MONTHLY HIGH

United States exports of radio transmitting sets, tubes and parts attained a new monthly high level in August with a total of \$310,585, a relatively good improvement over the July total of \$280,847, according to the Electrical Division, Department of Commerce. An important gain was also registered by radio receiving set sales which advanced from \$618,890 in July to \$802,154 in August.

During the same period exports of electrical equipment generally amounted to \$9,223,656, a decline of \$288,305, or 3 percent, from the July total of \$9,511,961.

Although August shipments were below those for the preceding month, they were \$479,677, or 5.5 percent, better than foreign sales during the corresponding month of 1938.

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SUPREME COURT PONDERES APPEAL OF WLW

The final word on whether or not Station WLW, Cincinnati, has a legal right to resume operation with an experimental power of 500,000 watts awaits a decision of the United States Supreme Court, which convened this week.

The Crosley Corporation, through Duke M. Patrick, Washington counsel, filed an appeal for a writ of certiorari last

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week, seeking a review of the decision of the U. S. Court of Appeals for the District of Columbia, which had sustained the Federal Communications Commission.

Mr. Patrick contended the lower court erred in dismissing its appeal from the FCC decision refusing to renew the 500,000 watt authorization as well as in holding that the license which WLW sought to have renewed was not a "license" within the meaning of the Act. This latter contention grew out of the fact that the super-power authorization was in the nature of a special experimental grant, rather than a standard form of license.

The highest tribunal may or may not take jurisdiction. Lawyers point out that in the majority of petitions for certiorari, the court refuses to accept them unless a fundamental question of law, heretofore undecided, is involved.

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EDUCATORS CRITICAL OF NAB CODE OF ETHICS

As the National Association of Broadcasters began administering its self-imposed Code of Ethics this week, the National Committee on Education by Radio released a critical analysis of the Code in its bi-monthly bulletin "Education by Radio".

Reciting the history of the code movement from the statement made by David Sarnoff, President of the Radio Corporation of America, at the chain-monopoly hearing of the Federal Communications Commission in December, 1938, the Committee organ cites comparisons of the proposed Code and the provisions actually adopted subsequently at Atlantic City.

"The Committee drafted a provision for dealing with controversial issues which would have eliminated any possibility of further continuation of such unfairness", S. Howard Evans, Secretary, wrote. "Their proposed rule required that time for such discussion be given rather than sold and that if controversial issues were discussed on sponsored programs at least two representative and opposing points of view should be presented.

"One practical effect of such provisions was this: when considered in relation to the recommendations for religious broadcasts, they seemed to be forcing Father Coughlin either to change the character of his recent broadcasts or cease to use radio. The very fact that such results could be anticipated is an indication of the care with which the proposed code was drawn. The meaning of such a document would have been clear. Protest could have been made about specific provisions in it and changes could have been effected without destroying the value of the code.

"The code actually adopted by representatives of the various stations at the National Association of Broadcasters' convention in Atlantic City is a totally different thing. While well worded, its meaning is not clear. Its provisions are not specific. Its objectives seem to be not so much meeting the social obligations set for radio by Mr. Sarnoff as making the acceptance of a code an end in itself. This is said, not as a criticism of industrial self regulation, but as a comment on this particular effort of commercial broadcasters to win public confidence. Self regulation is to be encouraged, but its objective must be public service, not industrial public relations."

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TWO UNLICENSED AMATEURS CONVICTED

The Federal Communications Commission has disclosed that Egen Stickles and Howard W. Crandall, both of Bradford, Pennsylvania, have been convicted in the Federal District Court of Erie, Pennsylvania, on charges of operating an unlicensed amateur radio station in violation of Section 318 of the Federal Communications Act. Egen Stickles was also convicted of operating the station without an operator's license in violation of Section 301 of the Act.

Both men pled guilty and were placed on probation for two years. They were also required to pay the costs of the trial. The case was prosecuted by the U. S. District Attorney in Erie on evidence supplied by Inspector Walter Davis, of the field staff of the Federal Communications Commission.

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SENATE DEBATE SHOWS NEED FOR AMPLIFIERS

Spectators who packed the Senate galleries this week to hear the historic neutrality debate complained that the Senate chamber is not equipped as is the House with a modern amplification system.

The words of Senators often were inaudible in the galleries, even to newspaper correspondents.

So far veterans in the Senate have refused to permit installation of an amplification system on the ground that it would offend the Senate's traditional dignity.

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EDUCATORS' ASSOCIATION BACK LAGUARDIA PLEA

As the Federal Communications Commission denied a request of the New York City counsel on behalf of Mayor LaGuardia to strike two of the issues in the forthcoming hearings on WNYC, National Association of Educational Broadcasters announced its support of the New York Mayor's fight for amendment of FCC rules.

Mayor LaGuardia and New York officials will be given a hearing October 16 on his proposal that non-commercial stations such as WNYC be permitted to pick up and rebroadcast short-wave programs.

"It was felt that the granting of the application", the Educational Broadcasters said, "would pave the way for experimentation which in time might make possible a network of educational broadcasting stations."

Meanwhile, the New York City Council opened its Fall season with a row over "freedom of the air", centering about operations of the municipal broadcasting station.

The issue was raised by the Fusion-Republican-Labor group after the Democratic majority had tried to end the practice of broadcasting the Council's proceedings over WNYC.

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WOR GETS PERMIT FOR FREQUENCY MODULATED STATION

The Federal Communications Commission has given WOR, New York, permission to construct a new frequency-modulated broadcasting station to service the metropolitan area. The new station will operate with a power of 1000 watts on an ultra-high frequency channel of 43.3 megacycles under the call letters W2X1, according to J. R. Poppele, Chief Engineer of WOR.

Employing the Armstrong system of frequency modulation - a complete departure from the usual methods of radiophone transmission - this new station's site is to be selected by WOR engineers within the next few weeks at the conclusion of extensive field tests.

Developed by Maj. Edward Armstrong at his laboratories in Alpine, N. J., the new system is distinguished by its ability to overcome static and noisy reception, to improve fidelity of reproduction and to eliminate current problems of inter-station interference and service coverage.

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TRADE NOTES

W.V.B. Van Dyck, Assistant to the President of the International General Electric Company has been decorated by the Brazilian Government with the Order of The Southern Cross, the highest order given by the Brazilian Government to private citizens. The presentation was made by Oscar Correia, Consul-General of Brazil in New York.

Two Pennsylvania stations - WJAC, Johnstown, and WFBG, Altoona - became affiliated with the Red Network of the National Broadcasting Company on October 1, bringing the total of NBC stations to 176. WJAC, owned by WJAC, Inc., operates on a local channel of 1370 kc. with a power of 250 watts, day and night. WFBG operates on a local channel of 1310 kc., with full-time power of 100 watts. It is owned by the Gable Broadcasting Company.

In a complaint issued by the Federal Trade Commission, Martin Benjamin Rothman, trading as Esquire Products, 216 North Clinton St., Chicago, was charged with using lottery devices in the sale and distribution of radios, waffle irons, silverware, coffee tray sets, pencils and griddles. According to the complaint, the respondent furnished various push cards accompanied by order blanks, instructions, and other printed matter for use in the sale and distribution of his merchandise by means of a lottery scheme. Alleging violation of the Federal Trade Commission Act, the complaint granted the respondent 20 days for filing answer to the charges.

Two more stations joined the Mutual Broadcasting System with the addition of WEBC and WDSM, servicing both Duluth, Minnesota, and Superior, Wisconsin, effective October 1. WEBC operates on a channel of 1290 kilocycles with 5000 watts day, 1000 watts night. WDSM employs 100 watts full-time on a frequency of 1200 kilocycles. The Mutual tally now stands at 123 affiliates.

Twenty-three high schools in New York City have been selected by the Board of Education as origination points of the Friday broadcasts over CBS network during the 1939-40 session of "Columbia's American School of the Air". A twenty-fourth high school is soon to be selected. The Friday series, entitled "This Living World", is presented by CBS in cooperation with the New York City Board of Education and the National Education Association. Programs dealing with history and current events are to be broadcast from the auditorium stage of a different high school each week. An average attendance of 2,500 pupils is expected at each broadcast, so that more than 50,000 students will have an opportunity to see how the "School of the Air" is produced.

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ASCAP OPENS ANNIVERSARY MUSIC FESTIVAL

In celebration of its twenty-fifth birthday, the American Society of Composers, Authors and Publishers began Sunday night at Carnegie Hall, New York City, a week's festival of American music. The festival has a twofold purpose: to honor American creative artists and to serve as an anodyne for those who are heavy-laden from the war abroad.

Sunday night's program was the first of eight, all presented by ASCAP "with its compliments and deep gratitude to the whole American people". The festival is to be a cavalcade of American tonal art, according to the New York Times music critic, taking in its stride music that is, in the words of Gene Buck, President of ASCAP, "serious and frivolous, sacred and secular, songs of the soil or works for the symphony".

The opening program stemmed from light opera and musical comedy. The songs and lyrics of every number were written by members of ASCAP. Dr. Frank J. Black led the orchestra, which was assisted by a mixed chorus. Occasional solos were sung by Hollace Shaw, soprano, and Floyd Sherman, tenor. The evening's principal soloist was Jane Froman who was listed in the program book as a soprano, a word that fails to do justice to the range of her voice or the passion of her singing.

It was a program for sentimentalist. Probably the young jitterbugs would regard tunes like Victor Herbert's "Kiss Me Again" and "A Kiss in the Dark", or Sigmund Romberg's "Indian Love Call" as being on the "corny" side. But the old codgers among the sentimentalists could be equally short about what the young jitterbugs regard as "in the groove", and probably they will be when swing has its innings later in the week.

There were songs on the program that every American has heard or had to hear in recent years. Prime favorites like Cole Porter's "Night and Day", George Gershwin's "The Man I Love", Irving Berlin's "Easter Parade", Jerome Kern's "Ole Man River". There was a memorial medley of music by Victor Herbert, founder of ASCAP; Rudolf Friml and George M. Cohan also were honored with medleys and George Gershwin's "Porgy and Bess" was represented.

Last night's program honored the Negro in American music. There was symphonic music, minstrelsy and a jam session.

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RCA AND FARNSWORTH SIGN PATENT AGREEMENT

Radio Corporation of America and Farnsworth Television & Radio Corporation announce that they have entered into patent license agreements whereby each party has acquired the right to use the inventions of the other in the fields of television and in other fields of their respective businesses.

Radio Corporation of America acquired a non-exclusive license under the patents of the Farnsworth Corporation for television receivers, for television transmitters and other radio and sound recording and reproducing apparatus. The Farnsworth Corporation acquired a standard, non-exclusive license for broadcast and television receivers and electrical phonographs under the patents of Radio Corporation of America, and also other non-exclusive licenses for television and broadcast transmitters and for its other fields of business. Neither Corporation acquired any right to grant sub-licenses to third parties under the patents of the other Corporation.

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FINCH PUTS 87,500 SHARES ON MARKET

A registration statement covering 87,500 shares of common stock of Finch Telecommunications, Inc., was filed last week with the Securities and Exchange Commission at Washington, it was announced by W.G.H. Finch, President. Public offering of the stock is expected to be made by a group of investment dealers headed by Distributors Group, Inc., according to Mr. Finch.

Proceeds of the financing are expected to be used by the company, according to Mr. Finch, for the purchase of additional machinery, expansion of sales and advertising, for research and development, and for additional working capital and general corporate purposes.

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NBC, MBS WIN D.M.A.A. AWARDS

The National Broadcasting Company was presented with three of the four citations to radio companies as direct mail leaders of 1939 by the Direct Mail Advertising Association at its annual banquet held last week at the Hotel Roosevelt, New York City.

For the second consecutive year, the Mutual Broadcasting System's Sales Promotion Department was awarded a scroll by the D.M.A.A. for "general excellence and results achieved". The

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awarding of the scroll to Robert A. Schmid, Sales Promotion Manager for Mutual, brings the total of Mutual's sales promotion awards for 1939 to three.

NBC executives whose departments received the citations for 1939 campaigns were E.P.H. James, NBC Advertising and Sales Promotion Manager, New York; Emmons C. Carlson, Advertising and Sales Promotion Manager of NBC stations WMAQ and WENR, Chicago, and John H. Dodge, Commercial Manager of NBC stations WMAL and WRC, Washington, D. C.

Judges were Dr. Kenneth Dameron, Professor of Marketing, Ohio State University, Chairman; Dr. Paul H. Nystrom, Professor of Marketing, Columbia University; C. B. Larrabee, Managing Editor, Printer's Ink; S. H. Giellerup, Vice-President, Marschalk & Pratt, Inc., and L. Rohe Walter, Advertising Manager, the Flinkote Company, and President of the D.M.A.A.

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A.P. DIRECTORS TO CONSIDER RADIO POLICY

Radio will be a major topic of discussion at the Board meeting of the Associated Press, to be held in New York October 3. A thorough study and analysis of the results of the action taken last Spring, when for the first time A.P. news was made available for broadcasting under commercial sponsorship, will be made by the Board and certain changes in the present setup may be made.

There are now 19 member newspapers broadcasting AP news on sponsored programs on their owned or associated stations, paying AP an extra assessment amounting to 25% of the first wire and general charge elements for the privilege. More than 100 member papers are paying a 5% extra charge to broadcast AP news on a sustaining basis, according to L. P. Hall, AP executive, who said that many of these publishers had expressed an intention of using the news commercially as soon as their present contracts with other news services expire.

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