

HEINL RADIO BUSINESS LETTER

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No. 1169

*2 bills introduced -
will see that we
have copies
R.H.S.*

MORTGAGE STATION CONTROL HIT; LICENSE REVOKED

The Federal Communications Commission this week struck a blow at mortgage control of broadcasting stations as it revoked the license of a Maryland station and set for hearing the renewals of two other stations.

The license of Station WSAL, Salisbury, Md., was revoked by the FCC and hearings were scheduled on renewal of licenses of two other stations on the ground that they were controlled by a Washington radio engineer, Glenn D. Gillett, in violation of the Communications Act.

Mr. Gillett was said to have obtained control of the stations by purchasing mortgages on them. He failed, however, to have the stations transferred legally to him by FCC approval of the deals.

Simultaneous with the revocation of the WSAL license, Frank M. Stearns, its operator, filed an application to assign the permit to the Eastern Shore Broadcasting Co.

The two other stations said by the FCC to be controlled by Mr. Gillett through mortgage holdings are WBAK, Wilkes Barre, Penna., and WQDM, St. Albans, Vt. Both were granted temporary license renewals pending hearings.

Mr. Stearns was said by the FCC "to have made false and fraudulent statements" with regard to the station's financing, equipment and ownership.

The WSAL license revocation is effective November 13, unless the licensee applies for a hearing, in which case it will stand suspended until decision of the Commission following such hearing.

On January 13, 1938, Frank M. Stearns was licensed to operate station WSAL, daytime hours on 1200 kc., with 250 watts, the FCC stated.

"He is held to have made false and fraudulent statements and failed to make full disclosure to the Commission concerning the financing of station construction, equipment used, and ownership, management, and control, facts which would have warranted refusal to grant construction permit and station license had they been known to the Commission", it added. "It further appears that the rights granted under the terms of the license have, without the Commission's written consent, been transferred,

assigned or otherwise disposed of by the licensee, in violation of the Communications Act of 1934, as amended. There is evidence that Glenn D. Gillett, mortgagee, has been in actual control of the station.

"Gillett is also in apparent control of Stations WBAX and WQDM, in violation of Section 310(b) of the Act. License for WBAX, (1210 kc., 100 watts, unlimited time) is in the name of John H. Stenger, Jr. That for WQDM (1390 kc., 1 KW, day) is held by E. J. Regan and F. Arthur Bostwick."

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WMCA EXONERATED; MILDLY REPROVED BY FCC

Station WMCA, New York, was exonerated of any serious illegal action in broadcasting military information of British and German authorities at the outbreak of the European war in an order issued this week by the Federal Communications Commission.

The order, while removing the threat of license revocation, contained a mild reproof of the station management and stated that the case would be considered in any future examination of the licensee.

The decision was unanimous despite the fact that shortly after the public hearing on September 27 several members of the Commission were reliably reported to be insistent that WMCA's license be revoked.

After reciting the circumstances of the broadcast and the advertisements of "scoops" in trade journals, the FCC said in its order:

"That the broadcasting of the substance of the messages described runs counter to the provisions of Sec. 605 of the Communications Act admits of little doubt. The evidence in this case shows conclusively that the messages in question were important orders of the governments of Germany and Great Britain, respectively; that they were to govern important ship movements in anticipation of, and perhaps during war; that they were addressed communications, albeit to multiple addressees; that they were intercepted without the authority of the senders; and that WMCA knowing that the messages had been obtained by means of interception, broadcast the substance thereof from its station. This conduct of the station must be viewed in the light of the great international stress then prevailing and of the special duty of American broadcasters, who are licensed for the purpose of serving the public interest, to conduct their operations with a corresponding degree of care.

"While, as has already been pointed out, the specific statutory prohibition now before us applies generally, a violation of it by a holder of a radio broadcast license must command

our special attention. Especially is this true since there threads throughout the statute both generally and specifically the notion that broadcasters perforce of law undertake to serve the public interest. The legal concept of public interest is not different in time of crisis although its factual content may vary from time to time as the public necessarily and properly shifts the emphasis of its concern from one predominant fact to another.

"Apart from the broadcasts of the station and the inadequate response to the Commission's order to show cause, the irresponsible actions of the licensee in connection with the full-page advertisement quoted above warrant comment. Regardless of the legality of such advertising as a trade practice it raises a question as to the character and responsibility of the management in the light of its obligation to operate the station in the public interest. More than honesty is at stake. The advertisement creates the possibility that competing broadcast stations will be drawn toward the same line of illegal broadcast activity boasted by this station. The President of the licensee corporation, Donald Flamm, admitted that the statements the station quoted from the George Ross column were false and that although he examined the "layout" of the advertisement, neither he nor anyone else in his organization made any investigation or gave consideration to the question as to truth of the representations. When asked what disciplinary action had been taken in this connection Flamm replied merely that he had given directions that all future advertisements were to be submitted to the attorney for the station.

"On behalf of the licensee it is recognized that the broadcasts in question occurred during a period of unusual activity in the gathering and dissemination of news of special interest to the public. Speed in transmitting through the air news flashes bearing on the European crisis was assumed to be of the essence of this and other stations' service. The same international stress which made the conduct grave created the urge to scoop the other stations. As was recognized broadly new and important problems in connection with radio broadcasting arose from the war crisis. Under these circumstances the Commission will assume that these particular broadcasts were provoked by the occasion and are not necessarily indicative of more widespread infractions in the course of this station's broadcast activities.

"After consideration of the record and all the attendant circumstances in this matter, the Commission is of the opinion that an order of revocation need not be entered at this time. On the whole, however, grave doubt has been cast upon the licensee's qualifications to operate its station in a manner consistent with the public interest. Accordingly the record made in the different phases of this proceeding must be of cumulative weight in determining the disposition to be made upon any future examination into the conduct of this station."

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RADIO COMMITTEE NAMES PUBLICITY DIRECTOR

John W. Studebaker, United States Commissioner of Education and Chairman of the Federal Radio Educational Committee, has announced the appointment of J. Kenneth Jones as Director of Information of the Committee.

Mr. Jones comes to the Committee after serving briefly as Publicity Director of the Community Fund of Chicago. Prior to that he was on the continuity and production staff of Station WHAS, Columbia outlet in Louisville, Kentucky, and before his radio service he was Executive Secretary of the National Committee on Public Education for Crime Control, in New York City.

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CAPITAL GETS HIGH FREQUENCY STATION

The Federal Communications Commission this week authorized granting of a construction permit to McNary & Chambers, Washington, radio engineering firm, for erection in Bethesda, Md., of a radio broadcasting station of the high frequency modulation type, heralded by radio engineers as the coming instrument of high fidelity transmission and receiving.

The station will operate on a frequency of 42,600 kilocycles with 100 watts power. This is in the ultra-high frequency band. Present home receivers are limited to 1,600 kilocycles.

A report filed with the Commission disclosed the operators plan to study the nature of the service delivered, using frequency modulation receivers installed in homes and buildings throughout Washington and adjacent areas.

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WAR STRESSES VALUE OF EDUCATIONAL BROADCASTS

Recent evacuation of British cities in the face of European war dangers has emphasized the importance of radio in the English educational system, the National Committee on Education by Radio points out. When the children were moved out into the country, they left behind them their libraries, museums, picture galleries, and motion picture facilities. The most readily available means of filling this gap is the radio. The city teacher who had some skepticism about the value of radio is now coming to understand why the rural schools, cut off from educational facilities available in cities, have been benefitted particularly by the broadcasts of the BBC.

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RADIO CARRIES ON IN CHINA WAR ZONE

Shanghai, though in the occupied Japanese area, is still the center of broadcasting in China, some 40 stations operating within the foreign concession area, according to a Consular report to the U. S. Commerce Department.

"Many shifts in the ownership of Chinese stations have occurred during the past two years", the report states, "while an increasing number of Japanese stations have been opened. The Chinese Government 35,000-watt short wave stations at Chungking, which came into operation during 1938, have since February 1939 been broadcasting to important countries of the world. Foreign owned stations in Shanghai operate from 6 a.m. to as late as 1 a.m., while Chinese operated stations continue their programs well into the night.

"Programs of Chinese stations consist largely of Chinese musical pieces, drama, dialog, monologs, news comments, religious services, health talks, safety talks, and similar subjects. Some stations feature lessons in English, French and German, while others broadcast several hours of western music. Foreign dance music has become popular among Chinese listeners, and several Chinese stations are now featuring such programs.

"Foreign owned stations in Shanghai broadcast 95 per cent musical programs, consisting mainly of recordings. Musical selections include classical numbers, dance music, and orchestra selections. Shanghai, being a very cosmopolitan city, is well provided with musical programs appealing to the several nationalities. Recorded humorous dialog is used extensively in sponsored programs.

"Programs of stations in interior cities under Japanese control are mainly of Chinese appeal, including music, drama, speeches, news, and propaganda.

"At Shanghai most Chinese stations carry advertisements or sponsored programs. Rates are highly competitive. The principal foreign-owned stations, XMHA, XMHC, XQHB, and XHMO all carry advertising. There is no fixed scale of rates and confidential discounts are common. Rates on the Chinese stations are very irregular. Some of the stations in Japanese occupied areas operate commercial; others are maintained by the Japanese authorities."

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The Federal Communications Commission entered its final order denying the application of the Moody Bible Institute Radio Station, Chicago, for a permit to construct a new non-commercial educational broadcast station to operate on frequency 41,300 kc. with power of 100 watts, unlimited time. The order is effective November 1, 1939.

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FLY DEFENDS NAB CODE IN MAIDEN RADIO SPEECH

The self-imposed Code of the National Association of Broadcasters was approved in principle last night (Thursday) by James L. Fly, Chairman of the Federal Communications Commission, in his first address since he took office. The talk was broadcast by the Columbia Broadcasting System.

While avoiding mention of names, Chairman Fly suggested to broadcasters and others that the NAB Code be given a fair trial and that all members of the trade organization should look to the "over-all benefits" rather than find fault with a rule which restricts them.

Elliott Roosevelt, son of the President, announced his resignation from the NAB last week in protest against a Code provision barring expression of opinion on controversial issues in a sponsored broadcast. Other stations have threatened to quit because of the ban on paid broadcasts by the Rev. Charles E. Coughlin, Detroit priest, after expiration of present contracts.

"It may be obvious that even self-regulation, voluntarily imposed, may at times actually regulate", he said. "We are reminded of the boy, who, understanding the problem, meets with a group and decides upon the rules of the game which shall be applicable to all concerned. Thereafter, when one of the particular rules has its impact upon his own conduct, and the boy breaks up the game, picks up his playthings and goes home, he is hardly displaying the highest type of sportsmanship.

"The adoption of the Code and its self-imposition by the broadcasters is an example of democracy at work. Democracy can hardly mean either in a game or in a form of Government that those who have adopted the regulations will abide by them only so long as they serve their own particular interest. Any set of regulations, even when self-imposed, is apt at some point along the line to apply to every particular person who has adopted the regulation. No one particularly enjoys the regulation the moment it restricts his own activity; but still, he should be capable of viewing the over-all benefits which may be derived from a comprehensive and effective set of rules applicable to all alike.

"But control of radio in the public interest is more serious than any game.

"A ready illustration of the character of the problems and the necessity of supplementing existing regulation was demonstrated by conditions at the outbreak of the current war. The crisis precipitated serious problems of completeness, fairness and accuracy of war news, and of the delineation and proper identification of war propaganda. Broadly, the integrity of the service was at stake. The problem of neutrality itself was involved. In that instance, representatives of the broadcasting industry drafted, and, to their credit, most of the broadcasters

adopted, a code of practices concerning war news and comment, effectively meeting these problems.

"It should be noted that neither this nor the general code already adopted was the work of the Communications Commission. They are none the less important as examples of self-regulation consistent with the public interest.

"To return to the provision of the Code voluntarily adopted last July which has provoked considerable discussion, the one having to do with the handling of controversial issues. This article recognizes that a well-balanced program of a radiobroadcasting station should include, as part of the station's public service, time for the presentation over the air of public questions, including questions of a controversial nature. However, it is provided that time for the presentation of controversial issues over the air shall not be sold except for political broadcasts. The Code does not prohibit selling time for the discussion of controversial public issues in the public forum type of program when such program is regularly presented as a series of two-sided discussions of public issues.

"It seems to me that here again, the problem is one of giving the rule a fair opportunity to work. The job of the broadcaster is to see that the public has opportunity to hear free debate upon all controversial problems.

"The one limitation in the Code is that time on the air may not be sold for the presentation of controversial issues. The Code places the duty on broadcasters to bring both sides of such issues to the public regardless of the ability of the speakers to pay for the time. It has been, and we may expect it to continue to be, the policy of the broadcasting companies to give free time to the responsible leaders who desire to speak on controversial issues. And at the same time to provide for the listeners an equal opportunity to hear the other side.

"The really grave issue is whether or not the right to speak and to present one-sided arguments on public questions shall be limited to those who can buy the time. In other words, shall single individuals or groups of individuals through sheer economic power be permitted to buy the limited amount of time and space in these limited channels of expression in order to advocate in a one-sided manner the views which they themselves desire to promote. Shall this mode of expression be sold to the highest bidder? If carried to the logical extreme, how then can the millions of the public constituting the radio audience be assured of receiving the complete and balanced discussions of public issues which they are entitled to receive. The least freedom exists in those countries today where only limited groups of powerful individuals can utilize the radio waves with absolute freedom.

"It is worthy of repetition that both sides in public controversies should be heard; that there should be as full and complete a discussion of public issues as the time and facilities will permit. In turn, it must follow that no single powerful

person or group should be able through the exercise of economic or other power to present only their side of controversial issues, and through the exercise of the same power exclude the other side from the radio channels.

"I have no particular brief for any detailed form of rule. It may well be that in the light of experience, the rule need be changed in some particulars, with a view to assuring the public that it does have full opportunity to hear full, free and two-sided discussions of all the great issues. Radio as a social force can only move along the line of giving to the public the fullest and freest expression of information, comment and opinion on all the great problems. Under the true system of democracy it can never be made available exclusively to the limited and powerful group who will present only their own side of any issue.

"It should be borne in mind that the Government does not license the radio station itself because it thinks that the owner has any legal right to be heard. The real reason the station is permitted to operate is because of the service which that station undertakes to give to all of you - the radio audience. I repeat, that much is basic."

Mr. Fly added that the FCC "neither asserts nor seeks the power to censor" radio programs and that "neither the Congress nor the Commission undertakes to act as a general lord for the industry."

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BULOVA DEAL UPHELD IN FINAL FCC ORDER

The Federal Communications Commission this week entered its final order approving the controversial deal of Arde Bulova, New York watch manufacturer and broadcaster, to close an Atlantic City and a New York City station and operate a new outlet in New York, Station WBIL.

Following a public hearing at which the Bulova deal was attacked and defended, the FCC issued an order which upheld an earlier ruling granting the application of the Greater Broadcasting Corporation, of New York, a license to operate a new station on 1100 kc., with 5 KW power, unlimited time, in New York.

Station WPG in Atlantic City, N. J., which now operates on 1100 kc., with 5 KW, and shares time with Station WBIL, in New York City, will cease to operate in Atlantic City. Station WOV, New York City, now operating on 1130 kc., with 1 KW power, will also cease operation. The order is effective November 1.

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SWEENEY SAYS OWN SURVEY SHOWS SUPER-POWER NEED

A one-man post-card survey contradicts findings of the Federal Communications Commission and shows the need for super-power broadcasting by Stations such as WLW, Cincinnati, to serve rural areas, Representative Sweeney (D.), of Ohio, said this week.

In an extension of remarks in the Congressional Record Representative Sweeney set forth in detail the results of his survey.

"Mr. Speaker, after months of work, and I might say after a great deal of time and effort, I am prepared now to give the House the result of a postal-card survey I personally made of the broadcasting situation as it exists today", he said. "I made this survey in an effort to show that the action of the Federal Communications Commission in denying clear-channel stations additional power to meet the demands of rural listeners was arbitrary, unwarranted, and capricious.

"You will recall that last May the Federal Communications Commission, and after a stormy hearing that lasted several months, decided - I might say against the weight of all social and economic evidence - to deny clear-channel stations a power output in excess of 50 kilowatts. This decision meant that people living in rural areas in many States of the United States would be left with poor, and in a very great percent of the instances, without any satisfactory radio reception. At the time the Commission arrived at this strange decision to put aside the public interest and to administratively legislate for a very small minority in the broadcasting field, I criticized this finding and called attention of Members of the Congress to this unexplainable act. At that time I did not have many facts and figures available other than the information which was brought out at the hearings. Because I found such a great deal of interest both in the House and on the outside in my criticism of the Commission, I decided to make a survey of my own and see what the situation was at the present time.

"With this in mind, I sent out 25,000 cards to rural route box holders in Louisiana, Kentucky, Michigan, Florida, Virginia, Kansas, Missouri, West Virginia, Alabama, North Carolina, Mississippi, Ohio, Indiana, and Arkansas asking them to select the first 4 stations of their choice both in the daytime and at night, and to also give me their comment on the business of broadcasting. I got back, to date, a 10 percent return on these cards and the result has been amazing, not only to me but I am sure it will be likewise amazing and probably very interesting to the Federal Communications Commission. The survey card which I sent was almost an exact duplicate of the one sent out by the Commission in 1935 and again in 1937, and bears out exactly what I said on the floor of this House on Tuesday, May 16, 1939, when I made the statement that rural America stands condemned to the 'tongueless silence of the dreamless dusk'. That rural and suburban America depend upon and listen to clear-channel stations has been demonstrated by the returns of this survey. This is unquestionably substantiated by the fact that in the

14 States mentioned, the clear-channel stations which now have the greatest amount of power are almost alone in the field of preference of the rural radio listener. Rural America depends upon the clear-channel stations and if I am to believe the comments contained in the cards that I got back, most of this cross section of the country, not only are anxious, but demand power that will put them on a par with their metropolitan brothers in the matter of radio reception.

"In this connection I might add that many of the cards came back to me with the notation to restore the power of the Ohio station which was the only one permitted to operate in excess of 50 kilowatts for a specified time. The survey demonstrates beyond the shadow of a doubt that this station, in its experimental operation, was able to furnish good radio reception to the rural areas, a condition that cannot now be approached since the station was arbitrarily reduced from 500 kilowatts to 50 kilowatts power last March.

"From every section of the country comes the demand that Congress should take in its own hands the business of permitting clear-channel stations to operate on power greater than 50 kilowatts. If the Ohio station served the rural listener so effectively, I cannot see why the Commission does not probe the question a little further, and should it do this I am sure it will reach the unalterable conclusion that the only answer to reception parity in radio is power. If the Commission would decide to grant licenses to clear-channel stations for power in excess of 50 kilowatts the answer would be automatic in the affirmative."

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CELLER OFFERS BILL TO CURB DEFAMATION ON RADIO

A bill was introduced in the House by Representative Celler (D.), of New York, this week to provide criminal and civil remedies for the defamation of classes of persons, groups, etc., either over the air or through the mails.

The legislation provides the right to bring civil action for damages in the Federal Courts against any person or persons who use the radio or the mails or the press in transmitting in interstate or foreign commerce printed or oral defamatory, slanderous or libelous statements concerning any religious, racial, national, fraternal, industrial, commercial or labor group.

Similarly, any person or persons who shall by radio or by press or through the mails, send or transmit, or shall cause to be sent or transmitted in interstate or foreign commerce, any written, printed or oral communication which is defamatory of any religious, racial, national, fraternal, industrial, commercial, or labor group, shall be liable for imprisonment for a term not to exceed one year, or to a fine not to exceed \$5,000 or both. In such action, as in the civil action, the defenses of truth and privilege shall be available.

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:::: TRADE NOTES ::::
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World Radio Market releases of the U. S. Department of Commerce this week included reports on Chosen, French Guiana, Canary Islands, and China.

David Lawrence, editor of the United States News, and Edgar L. Bill, of the National Association of Broadcasters, are scheduled to air opposing views on the new NAB ruling on controversial broadcasts in talks via CBS network Sunday, October 29, and Sunday, Nov. 5, respectively. (WABC CBS, 1:35 to 2:00 P.M., EST, Sunday, Oct. 29, and 1:45 to 2:00 P.M., EST, Sunday, Nov. 5). The title of Mr. Lawrence's address is "Freedom for the Thought We Hate", and is in reply to one made over CBS Sunday, Oct. 22, by Neville Miller, NAB President. Mr. Bill, President of Station WMBD in Peoria, Ill., and Chairman of the NAB Code Compliance Committee which promulgated the ruling, has "The Code Means Fair Play to All" as his topic.

An application to remove its transmitter to Kearney, N. J., will be filed with the Federal Communications Commission, it was announced this week by Donald Flamm, President of Station WMCA. Selection of the site was made recently following an agreement with the City of New York to eliminate the two 300 foot towers from the Flushing plant held to be a hazard to the new North Beach airport. Pending approval of the application, WMCA will continue operation from the present location.

G.T.C. Fry will become Sales Promotion Manager for Columbia's Detroit office, effective November 1, it was announced by Victor M. Ratner, CBS Director of Sales Promotion. Mr. Fry comes to Columbia from a post as Assistant Promotion Manager for Esquire Magazine, and will report directly to Mr. Ratner.

Appointment of a receiver for the Majestic Radio & Television Corporation was asked in Chicago Federal Court yesterday by Attorney Norman Nachman, who said he represented creditors. Interests closely identified with Majestic Radio & Television Corporation were responsible for the heavy selling of the company's stock just before trading was suspended Tuesday by the New York Curb Exchange, an investigation by State Attorney General John J. Bennett, Jr., disclosed, according to an Associated Press report under the date line of New York, Oct. 25. Temporary suspension of trading of that company's stock in the Curb Exchange was ordered on October 24.

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