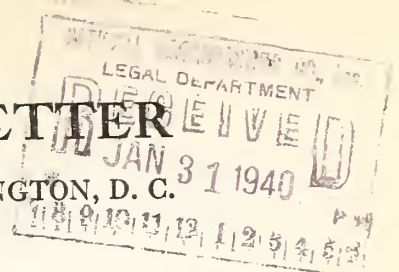


HEINL RADIO BUSINESS LETTER

2400 CALIFORNIA STREET

WASHINGTON, D. C.



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January 30, 1940

SUPREME COURT ENHANCES AUTHORITY OF THE FCC

The U. S. Supreme Court on Monday overturned many popular misconceptions regarding the rights of appeal from decisions of the Federal Communications Commission in a significant ruling and a rebuke to the U. S. Court of Appeals for the District of Columbia.

The Supreme Court upheld the Government's contention that the Court of Appeals has no right to supervise the administrative action of the FCC.

The tribunal reversed a decision directing the FCC to reconsider an application by the Pottsville (Pa.) Broadcasting Company for a radio station construction permit without at the same time considering two other applications subsequently filed. A similar ruling was made in the case of Paul R Heitmeyer, of Cheyenne, Wyo.

Justice Frankfurter, who wrote the unanimous opinion, asserted that "courts are not charged with general guardianship against all potential mischief in the complicated tasks of government".

"The present case", he added, "makes timely the reminder that 'Legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts.'"

"Congress, which creates and sustains these agencies, must be trusted to correct whatever defects experience may reveal.

"Interference by the courts is not conducive to the development of habits of responsibility in administrative agencies. Anglo-American courts, as we know them, are themselves in no small measure the product of a historic process."

The decision directed the United States Court of Appeals for the District of Columbia to dissolve a writ of mandamus granted against the Commission and to dismiss the broadcasting company's petition.

In appealing to the Supreme Court, the Federal Communications Commission said that the Court of Appeals, in issuing a mandamus to require individual consideration of the Pottsville and Heitmeyer applications, had infringed upon its administrative powers, and Justice Frankfurter's decision, which reviewed at length the history of administrative bodies in the Government, made it clear that the court believes that Congress had intended these groups to be supreme in their own field.

The decision said that unless "vital differentiations between the functions of judicial and administrative tribunals are observed, courts will stray outside their province and read the laws of Congress through the distorting lenses of inapplicable legal doctrines".

"Interference by the courts is not conducive to the development of habits of responsibility in administrative agencies", the Frankfurter opinion said.

Attorney General Robert H. Jackson, in his last argument before the Supreme Court as Solicitor General, asserted that "the only ultimate effect" of the decision by the Court of Appeals "is to destroy orderly procedure in the Commission".

The Appeals Court ruling, he added, subordinates the interests of the public "to the private interests of a particular applicant who happened to be the first to file for given facilities".

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ALIEN'S SHIP RADIO LICENSE REVOKED BY FCC

The Federal Communications Commission last week ordered revocation of the ship radio station license of Franklyn Fischer, of New York City, to operate radiotelegraph equipment on the yacht SINBAD II.

On July 1, last, Fischer made application to operate a 25 watt station on the yacht, which is of American registry. The license was issued for one year, from July 13, and the call letters WCQR were assigned. On October 4 Fischer applied to increase the power of this station to 50 watts, which was granted six days later.

In both instances Fischer stated, under oath, that he was a citizen of the United States by birth. The Commission's inspector-in-charge at New York subsequently learned that Fischer was born in Vienna and has not been naturalized. Fischer is given 15 days in which to request hearing or return his license.

The Communications Act specifically restricts radio licenses of all kinds to American citizens.

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The 1940 International Yearbook of Editor & Publisher, issued last week, carries the following information relative to radio: a list of books on radio and the press, radio editors in the United States and Canada, and a list by States of radio stations affiliated with newspapers.

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AID TO POLICE SEEN IN FCC RULING ON "F.M."

Announcement by the Federal Communications Commission that it would accept applications for Class 11 experimental authorizations, covering the use of frequency modulation in emergency and other non-broadcast services, was interpreted this week by FCC officials as giving a definite boost to police use of radio communication.

The step was in line with previous actions, it was said, in making available to the police of the United States as rapidly as possible, new developments in the art of radio transmission.

Today's nearly 1,200 police radio stations are a marked contrast to the handful of such stations a decade ago. On January 1 of this year 28 States were operating 251 police radio stations and, in addition, there were 913 municipal police radio systems involving 6,074 radio transmitters.

The first reference to police radio as such appears in the records of the Federal Radio Commission in Order No. 74 issued October 11, 1929, which allocated three frequencies for emergency police stations. However, police departments had made use of radio before the date for various purposes. The City of New York established a radio station on June 2, 1916, under the call letters KUVS, for communication with harbor police boats and for the general policing of shipping in New York harbor. This station is still in operation and is now assigned the call letters WPY.

The first State police radio system was established in 1923 by the State police of Pennsylvania, consisting of a number of low frequency radiotelegraph stations for communication with the police headquarters. This system is also still in existence but at present supplements the wire communications which interconnect the various police headquarters.

The first police radio system, such as is now generally recognized, was established by the City of Detroit, and the first State police radio system to communicate with the State police radio automobiles was established by the State of Michigan. As early as 1920 experiments with a police radio car had been carried on in Detroit in collaboration with the Detroit News. In 1922 the significant radio call letters "KCP" were assigned to the Police Department of that city, but it was not until 1928 that an effective city radio police patrol was achieved.

It should be noted that "police broadcasting station" is a misnomer, the FCC pointed out. Police radio stations are not, strictly speaking, broadcasting stations since everything they send is directed either to individual persons or to restricted groups of persons, while broadcast stations transmit programs for reception by the general public.

From the early beginnings of police radio, the number of stations rapidly increased, and, keeping pace with the development, additional frequencies were allocated for this use. In the latter part of 1931 and in the early part of 1932, a great deal of interest was aroused in the possibility of using frequencies above 30,000 kilocycles for local communications. It appeared evident on the basis of laboratory work that these frequencies in all probability would become extremely useful for police and other communications. However, insufficient information was at hand, and no practical experience had been gained which could be used as a basis for the promulgation of rules and regulations or an allocation of these frequencies in an equitable manner among the various services.

The Federal Radio Commission, which was then responsible for radio licenses, decided to authorize the experimental use of these frequencies by police departments for the purpose of gaining information as to their utility. As far as possible operations were permitted in exactly the same manner as they would be conducted should the licenses have been on a permanent basis rather than experimental in nature.

The first construction permit for a two-way police radio system issued under this policy was to the City of Bayonne, N.J., in 1932. Although this city had the first construction permit, the City of Port Jervis, N. Y., was the first to be actually licensed for two-way communication.

In addition to the facilities made available for communication from police headquarters to the police officer on duty, frequencies have been set aside, and rules and regulations promulgated, under which a nationwide police radiotelegraph communications system is developing. By interconnection with the leased wire telegraph circuits, which are established in the northeastern States, this system makes possible the exchange of information about crime and criminals between practically every center of population in the United States.

Much interest is now being evinced in frequency modulation with respect to broadcasting, and the Commission has ordered a hearing on February 28th on this subject. Considerable experience has been gained experimentally with respect to the use of this new facility in broadcasting. However, very little, if any, has been done in the matter of the practical application of frequency modulation to other services. In spite of the fact that in services other than broadcast only narrow band frequency modulation can be permitted, it is claimed that by the adoption of this system interference from static and from sources such as motors and spark plugs will be minimized.

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TELEVISION TOUR COVERS EASTERN EXPERIMENTS

The itinerary that the Federal Communications Commission will follow in its inspection of television developments in the East, February 1-5, was announced last Tuesday.

On February 1 the Commission will first see in Albany and Schenectady a demonstration of a General Electric broadcast from a transmission originating in New York City. That evening in the Newburgh area and Poughkeepsie, the FCC will witness home reception of a television program from the RCA-NBC station atop the Empire State Building in New York City.

On February 2, the FCC will go to New York City and first inspect the NBC studios and television broadcasts. The following day it will visit the Cath-Ray Electronic Laboratories to see its new receivers and will witness a demonstration of the flexible system of transmission at the laboratories of Alan B. Dumont in Passaic, N.J.

On February 3 the Commission will go to the RCA plant at Camden, N.J., to see a new large screen projection and other developments still in the laboratory stage.

The same day it will witness a demonstration of polarization mitigation of interference at the laboration of the Philco Radio & Television Corporation in Philadelphia.

Because of its inability to visit Los Angeles, the FCC has instructed its local inspector to inspect the television work of the Don Lee Broadcasting System.

All members of the Commission, except Commander T.A.M. Craven, are expected to take the Eastern trip. Commissioner Craven, Chairman of the Special Television Committee, made the previous tour and is now in Florida on vacation.

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KUMA LICENSE REVOCATION MADE FINAL

The Federal Communications Commission last week made final its order of revocation in the case of radio station KUMA at Yuma, Arizona, after allowing Albert H. Schermann, licensee, to withdraw application for hearing. The revocation order is effective February 1, 1940.

Revocation proceedings were instituted February 20, 1939. The matter came up for hearing December 1 last at Phoenix, Arizona. The evidence shows that Schermann violated the law in that he failed to operate his station in accordance with the terms of the license, having transferred station control to E. B. Sturdivant. Schermann was shown to have visited Yuma but three times in five years. KUMA operates on 1420 kilocycles, 100 watts, specified hours.

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NORMAN BAKER, EX-U.S. BROADCASTER, CONVICTED

A Federal Court jury last week at Little Rock, Ark., convicted Norman Baker, one-time American broadcaster and founder of hospitals at Eureka Springs, Ark., and Muscatine, Iowa, and two associates on charges of using the mails to defraud in advertising the Baker treatment as a "cure".

The court deferred sentence when a motion for a new trial was entered.

The station of Norman Baker, KTNT of Muscatine, Ia., operating a hospital where he alleged cancer could be cured without an operation, was closed down in 1931 by the old Federal Radio Commission on the complaint of the American Medical Association. Baker, following the example set by Dr. John R. Brinkley, described in a Congressional hearing as "a goag gland specialist", whose station KFKB at Milford, Kansas, had also been closed, later began broadcasting back into the United States from Station XENT in Mexico, just across from Laredo, Texas. This station was said to have had 150,000 watts power and could be clearly heard in many parts of the U.S. Baker conducted a full-fledged campaign, after having announced himself a Republican candidate for the United States Senate from Iowa - by appealing to the voters of Iowa from Mexico over XENT, which was a brand new idea in American politics.

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CHILE CONFERENCE DRAWS UP PROPOSALS

The second inter-American Radio Conference at Santiago, Chile, ended Saturday last, after having drawn up recommendations based on nine days' study, the New York Times reported.

The Conference achieved solutions or paved the way for early settlement of the following problems:

- Allocation of radio frequencies on the American continent
- Uniform time and time signals
- Short-wave broadcasting
- Frequency tolerances
- International radio police services for the enforcement of law
- Suppression of non-essential radio
- Freedom of radio communications
- Air navigation aids
- Study of the needs of aeronautical services for additional frequencies

The status of amateurs remained unchanged.

All American countries with the exception of Canada are represented, the meetings following the Third South American Radio Communications Conference in which South Americans covered the regional field.

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THEATERS COMPLAIN TO CONGRESS RE RADIO LURES

Congress this week heard a complaint from motion picture theatre representatives that radio programs such as "The Pot of Gold" feature constitute gambling in violation of the Communications Act.

Representative Tenerowicz (D.), of Michigan, placed in the Congressional Record letters from theatre owners in Michigan with the following remarks of his own:

"Already the practice referred to - the conduct over a national radio hook-up of what amounts to gambling - has been brought to the attention of the Federal Communications Commission. A group of theaters in Detroit, known as Cooperative Theaters of Michigan, through their representative, Mr. Thomas McGuire, have undertaken single-handed to stop this weekly diversion of revenues from the little-theater owners of the Nation. They have sponsored the complaint but it is my understanding that because of legal loopholes, the Commission may not be able to take any action.

"These letters assert that incalculable losses in revenue are being suffered by this legitimate group of taxpayers every Tuesday night when this particular program takes to the air. To me it is a palpably unethical intrusion and a matter that deserves immediate 'policing' by the Commission."

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MILLER REPORTS MANY STATIONS BACK MUSIC PROJECT

Neville Miller, President of the National Association of Broadcasters, returning to Washington this week from attending district meetings throughout the United States, reported that 90 percent of the stations represented at the conferences will support the NAB-organized Broadcast Music, Inc.

Broadcast Music was organized a few months ago in a new attempt to make the organized broadcasters independent of the American Society of Composers, Authors and Publishers, with which it has been battling over charges imposed for using copyright music.

"I have just returned to Washington from attending District meetings in New Orleans, Dallas, Los Angeles, San Francisco, Portland, Seattle, Columbia, Georgia, and Orlando, Florida", Mr. Miller said. "These meetings, with the Third District recently held in Camden, complete the series of District meetings, and I believe we can feel very encouraged over the enthusiastic support which Broadcast Music received at practically all the meetings.

"Now, for a few statistics - 416 stations were represented at the meetings, and representatives of 358 stations have either signed or agreed to recommend approval by their directors, or have

indicated approval in some manner. In a number of cases, the representative present individually approved of Broadcast Music, but felt he was unauthorized to commit his station in any way without first reporting back to his superiors. 140 stations have sent in their checks, together with signed Stock Subscriptions and License Agreements; additional ones are arriving in every mail. I believe we can now count on the support of at least 90 percent of those stations which were represented at the meetings. That, to me, indicates a tremendous endorsement. However, there is much work yet to be done."

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INDUSTRY SOLD 9,000,000 RADIOS LAST YEAR

The American radio industry sold 9,000,000 radio sets in 1939 for a total of \$289,000,000, according to the January issue of "Radio and Television Today", edited by O. H. Caldwell. The total number of sets in the United States on January 1, 1940, he estimated, was 45,200,000 as compared with 40,800,000 on the corresponding date of 1939.

During the year the public, through advertising, purchase of sets, servicing, etc., paid \$814,000,000 for its radio entertainment.

Following are the tables in which the totals were arrived at:

<u>Radio Sets In Use</u>		<u>Jan. 1, 1939</u>	<u>Jan. 1, 1940</u>
U.S. homes with radios		27,500,000	28,700,000
"Secondary" sets in above homes. . .		7,500,000	9,200,000
Battery Portables		200,000	900,000
Auto-radios		5,800,000	6,500,000
Total sets in use, U.S.		40,800,000	45,200,000
Total homes in U.S.		32,250,000	33,000,000
Total homes with autos		19,000,000	20,500,000
Total residence telephones		13,250,000	13,500,000
Total homes with electricity		24,000,000	24,450,000

U.S. Annual Radio Bill

Sale of time by broadcasters, 1939	\$170,000,000
Talent costs	35,000,000
Electricity, batteries, etc., to operate 38,400,000 receivers	165,000,000
9,000,000 radios sold in 1939 at retail. . . .	289,000,000
36,000,000 replacement tubes @ \$1.25	45,000,000
Radio parts, supplies, etc.	50,000,000
Servicing radio sets	60,000,000

U.S. Public paid for radio in 1939 \$814,000,000

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 ::: TRADE NOTES :::
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World radio market series released by the Department of Commerce this week covered Ivory Coast, Mauretania, Dohomey, Niger, and French Soudan.

Members of Congress are receiving circular letters from I. H. Nakdimen, Treasurer of the Oklahoma-Arkansas Telephone Co., of Poteau, Okla., attacking the Federal Communications Commission for its handling of the telephone inquiry and charging that the Commission is unduly influenced by the Bell System.

WJR, the Goodwill Station, Detroit, reports for 1939: Net income, \$483,925, equal to \$3.74 each on 129,500 capital shares, against \$330,578, or \$2.55 a share, the year before.

WSAY, Rochester, N.Y., will join the Mutual Broadcasting System on Thursday, February 1, when permanent lines will be installed, thus giving the network an affiliation in the 25th ranking retail sales market of the U.S. - and a total of 118 stations in U.S. and Hawaii. WSAY has 250 watts, full time, on 1210 kilocycles and is operated by Gordon P. Brown. The station went on the air Sept. 26, 1936.

Executive authorization on Federal Communications Commission recommendation has resulted in issuance of a single license to cover four submarine cables across the Niagara River connecting the United States and Canada. The licensee is the Great North Western Telegraph Company of Canada, whose cables link Buffalo, N.Y., and Bridgeburg, Ontario, at the draw of the international bridge, via Western Union Telegraph Company facilities on Squaw Island.

"Then Came War: 1939", a set of three twelve-inch records edited by Elmer Davis, CBS news analyst, which dramatize the historic events leading up to the present European war, has been produced by Time Abroad, Inc., and released by the World Book Company. The records are the first of a series, entitled "The Sound of History", which will present current history to American students in vivid, dramatic form. The pressings were made by Columbia Recording Corporation's new high-quality process at its Bridgeport, Conn., plant.

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TELEVISION AUDIENCE GROWS 10%, NBC SURVEY SHOWS

First facts on telecasting in New York City were released this week by Alfred H. Morton, NBC Vice-President in Charge of Television, in a report covering the National Broadcasting Company's first eight months of telecasting.

Mr. Morton's figures show that television has built up an audience already of more than 2,000 receiver owners in New York City and its immediate environs. Mr. Morton's conclusion is optimistic. "We feel that with the groundwork described in this report", he says, "we have established the machinery, the philosophies and the enthusiasm requisite for successful television broadcasting."

Receiving sets in metropolitan New York homes, according to the Morton survey, were 89.8% of the total number distributed, with a scattering of receivers in theaters, hotels and other public places.

The average evening audience at the present time is indicated as about 8,000 persons, out of a potential audience of 10,000 persons. The average for all audiences, afternoon and evening, is placed at 68.9% of the estimated potential audience.

"We find also that 100% of the television audience views at least two hours of the week's program schedule", the NBC official comments, "and that 87.1% takes time to look in upon between five or six hours a week, approximately one-half of the total schedule. Sixty percent of the audience sees between seven and eight hours a week and 21% view the entire week's schedule."

The facts released by Morton were contained in a report submitted to the Federal Communications Commission at the time of his appearance at the hearing on proposed television rules and regulations. Material relating to audience reaction was compiled from questionnaire returns by NBC lookers-in.

The audience poll, now in the annals of radio history, was begun last October. Its purpose is to synchronize the National Broadcasting Company's television programming activities with the interests and desires of the average viewer. The audience was invited on numerous occasions to write for weekly program charts. A feature of these charts is a detachable return card, bearing spaces for the rating of each program item telecast by NBC. The first mailing of these charts comprised 249 names of set owners. Three months later, for the first week of 1940, the list had grown to 1,005 set owners and is currently growing at the rate of about 10% a week, NBC stated.

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