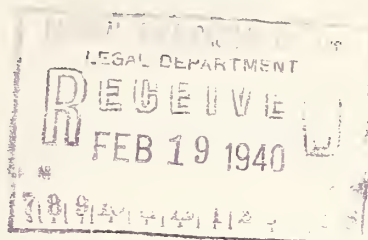


HEINL RADIO BUSINESS LETTER

2400 CALIFORNIA STREET

WASHINGTON, D. C.



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TWO LICENSES REVOKED; "HIDDEN MANAGEMENT" CHARGED

Continuing its "crack-down" policy on the broadcasting industry, the Federal Communications Commission this week revoked two more licenses because of evidence of "hidden management" and irregular financial operations.

The revocations brought to eight the number of license cancellations since January 1st, six of them in Texas, and aroused fears that more are to come as a result of investigations now under way.

The revocation of the license of Station WSAL, Salisbury, Md., was an affirmation of an order issued last October but withheld on an appeal for hearings. The licensee is Frank M. Stearns. Involved in the inquiry also was Glenn D. Gillett, Washington consulting engineer, who was shown to have furnished the money for construction of the Salisbury station.

Final action of the FCC was based upon "false statements" made under oath by the licensee, according to an FCC statement, but the original order was directed at "mortgage control" of the station by Gillett, who was said to own majority interest in WBAK, Wilkes Barre, Pa., and WQDM, St. Albans, Vt.

Evidence of hidden management, operation and control of radio station KGKB, Tyler, Texas, was given by the FCC as reason for the revocation of the license issued to the East Texas State Broadcasting Company. It is effective March 1, 1940.

An investigation conducted by the Commission revealed that actual control has been in the hands of James G. Ulmer and that the East Texas Broadcasting Company has never filed with the Commission an application for transfer or assignment of its license, as required by law, the FCC stated.

Regarding the WSAL revocation, the FCC said in explanation:

"Where, as here, a license is obtained as a direct result of false statements and representations under oath, involving among other things an applicant's financial responsibility, and made to the Commission in the application itself as well as in the evidence submitted at public hearing in support thereof, the Commission has only one course of action and that is to make final its order of revocation upon that ground alone. The Commission is specifically empowered by Section 312(a) to revoke a license 'for false statements either in the application or in the statement of fact which may be required by Section 308 hereof or because

of conditions revealed by such statements of fact as may be required from time to time which would warrant the Commission in refusing to grant a license on an original application.' If the real facts had been known to the Commission with respect to applicant's finances the Commission could not have legally authorized the issuance of a license to an applicant who at best had available to him not to exceed \$340.00.

"Any contention that satisfactory service has been rendered and that the community in question would be without service in the future is not controlling in this case. However important the present service is, the Commission cannot escape the responsibility fixed by statute to ascertain the qualifications of applicants by considering truthful statements and to act accordingly in the granting or refusal of licenses. In requiring that applicants for licenses be found legally, technically, financially and otherwise qualified, Congress recognized that communities will be better served by those who truthfully show themselves to be qualified in all such respects than by persons who are willing to be used as mere figureheads for others who for reasons best known to themselves desire to conceal their interest.

"The applicant for a permit to construct and operate Broadcast Station WSAL made false statements under oath both in the original application and at the hearing thereon. Many of such statements involve matters of fact concerning the applicant's financial qualifications which, if the truth had been revealed, would have shown applicant not financially qualified and would have compelled the Commission to refuse to grant the license upon the original application.

"The revocation order heretofore entered in this matter on the 24th day of October, 1939, should be affirmed."

Meanwhile, it was disclosed in New York that M. H. Aylesworth, former NBC President, has been retained by Stack-Goble, the advertising agency handling the "Pot of Gold" account for Tums, to represent it in the Justice Department investigation of the radio program, cited last week by the FCC.

The agency has indicated it will fight any effort to put the program off the air. The FCC has asked the Justice Department to determine whether program is a violation of the lottery ban in the Communications Act.

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Station WMAL, Washington outlet of the NBC-Blue Network, for the second successive year has won the General Electric Plaque, awarded annually to the station which lost the least amount of time on the air through technical difficulties or personnel errors. Formal presentation of the plaque will be made at a dinner in the near future.

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CONGRESSIONAL LOBBYING AT FCC HIT BY LAWYERS

Criticism of Congress for exerting political pressure on members of the Federal Communications Commission is contained in a report by the Attorney General's Committee on Administrative Procedure just issued in connection with a broad study of Federal agencies.

The committee of eminent attorneys, headed by Dean Acheson, said that the extent of the influence of members of Congress on individual Commissioners could not be determined, but it commented that it is "unquestionably a practice which should be discontinued".

The report also criticizes some of the practices of its own colleagues, radio attorneys, before the FCC, discusses program censorship in general, and analyzes generally the hearing procedure of the Commission.

"It is a widely and firmly held belief that the FCC has been subjected to constant external pressure, particularly by members of Congress", the Committee said.

"The interest of Congressmen in applications pending before the Commission is evidenced by correspondence, telephone calls, and conferences. Not unusually, according to available information, Congressmen wait upon members of the Commission in their offices in order to present pleas in behalf of or against the granting of a license. Attempts by Congressmen to utilize their official positions as an excuse for special pleading (under the guise of explaining 'peculiarities' of local situations are made with some degree of frequency from the time an application is filed until the Commission has rendered its final order."

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U.S. ENVOYS TO GET NEWS STRAIGHT VIA SHORT-WAVE

American envoys in at least a dozen European countries will get their international news straight and uncensored henceforth via short-wave broadcasts from the United States.

The State Department announced this week that it had arranged to buy short-wave receiving sets for the Embassies in these countries so that the diplomats and their staffs will not have to rely on the censored news dispatches carried by the press in the nations where they are stationed.

The receivers are powerful enough to tune in United States short-wave stations, which broadcast international news daily to Europe as well as other parts of the world. They also can be used to listen to European broadcasting stations.

The sets are to be installed in the Embassies and Legations of the following countries:

Belgium, Denmark, Estonia, Finland, Greece, Hungary, Latvia, Lithuania, the Netherlands, Rumania, Turkey and Yugoslavia.

Censorship is not stringent in all those countries, it was explained, but since most of them are small, extreme care is taken in the news they print concerning their powerful neighbors.

The State Department, in cooperation with the Navy, already has a far-flung system of sending news to its important diplomatic missions. In a dozen principal cities in Europe, Asia, Africa and South America, the Navy has set up highly selective short-wave receiving sets manned by enlisted radiomen.

Nightly they receive a bulletin sent out by the Navy. It is written by officials of the State Department on the basis of the day's news.

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LAWYER GETS PERMIT FOR FIFTH D.C. STATION

The National Capital will soon have five broadcasting stations. Lawrence J. Heller, an attorney, was this week granted a construction permit to operate on 1310 kilocycles with 250-watt power, and a 50-watt amplifier or "booster" station.

Mr. Heller said he hopes to have the station on the air within six months, and that he plans to finance it himself. The cost, he estimated, will be more than \$50,000.

Location of studio and transmitters for the projected station remain to be decided, with approval of the FCC, Mr. Heller said. The main transmitter will be in downtown Northwest Washington, and the booster station on Wisconsin Avenue near River Road Northwest.

The new station would bring to five the total of Washington's commercial radio stations. In operation now are WMAL and WRC, of the National Broadcasting Company; WJSV of the Columbia Broadcasting System, and WOL of the Mutual Broadcasting System.

Mr. Heller said that his station "will operate on a commercial basis", but will devote considerable time to civic local programs, and to the development of latent local talent. Musical programs by local orchestras, and productions by Washington dramatic groups were listed by Mr. Heller as projects for the new station.

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FCC CONTINUES STUDY OF TELEVISION PROBLEMS

Confronted with many serious problems involved in encouraging the development of television, the Federal Communications Commission is proceeding slowly while awaiting further reports from the industry.

Chairman James L. Fly indicated this week that the Commission will not promulgate new regulations without considerable discussion and study of their effects on the industry. He said that another inspection of television laboratories and stations in the East may be made by an FCC technical staff before a final decision is reached.

Meanwhile, the Chairman has notified leading radio manufacturers that the FCC will not at this time appoint a special committee representing the industry to study transmission standards in an effort to reach an unanimous recommendation.

The Radio Manufacturers' Association also is restudying its previous proposals, it is understood, and is making new examinations of recent developments. FCC officials have indicated that if the RMA Engineering Committee obtains the united support of the industry in a new report that Chairman Fly will not appoint an independent group.

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FCC STUDYING BROADCASTS OF RACING NEWS

The Federal Communications Commission was reported this week to be investigating the broadcasting of racing news although it is uncertain what the Commission can do to curb it.

The FCC investigators were said to be interested in finding out whether stations which receive the racing news by wire are distributing it by other means than broadcasting.

The latest move of the Commission is another step in the efforts of certain Pennsylvania officials to use the Federal agency to police the wires and the air to keep such information from being transmitted to the public, it was said. The contention is that the wires used are interstate and that the radio waves are interstate, and as the State is powerless to act, it has sought the aid of the FCC. However, the FCC sometime ago refused aid in stopping the use of the land wires for transmission of such information on the ground that it was not a violation of a Federal statute.

There is said to be decided objection within the FCC to going into racing news problems continually, because there is no prohibition against it. It was pointed out that the information comes from tracks within States where racing is legal.

The Communications Act does not prohibit the broadcasting of racing information, but it was said that consideration is being given to the latest complaint because of allegations that in addition to broadcasting the information, the stations are transmitting it direct to clients using it for illegal purposes.

Just what the FCC can do if its investigation shows this to be true is a matter, it was indicated, which will have to be given to the Legal Department for further study.

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BARTON CITES THREAT TO FREEDOM OF RADIO, PRESS

Charges that some members of the Federal Trade Commission and the Department of Agriculture are threatening the freedom of radio and the press by destroying national advertising were made in Chicago Thursday by Representative Barton (R.), of New York.

Mr. Barton, who is an executive of a New York advertising agency, told the Union League Club the House had inadvertently appropriated \$88,829 to the FTC for an investigation of national advertising practices. The item is in a Supply Bill pending in the Senate, he said.

"There are men in the Federal Trade Commission and the Department of Agriculture, who hate national advertising, who want to destroy national advertising", he said. "They want to destroy it because national advertising supports the free American press, and the free American radio.

"And these New Dealers will not be satisfied until they clamp down their bureaucratic controls over the press and radio. If they can destroy national advertising they know that they will end the independence of the press and radio.

"This is the hidden danger in a seemingly harmless proposal. The press of the country generally has opposed the spendthrift extravagance of the New Deal. And the inner circle of the New Deal never forgives or forgets."

Mr. Barton said that he did not accuse the Federal Trade Commissioners themselves of being "anti-advertising or anti-business" nor did he consider that the Secretary of Agriculture was "anti-business".

"But I do say", he added, "that the New Dealers have loaded the staff of the Federal Trade Commission with men who are definitely anti-advertising and anti-business. I do say that D. E. Montgomery, who has the title of Consumers Counsel of the AAA in the Department of Agriculture, is anti-advertising, and that he and certain elements in the Federal Trade Commission have jointed together to provoke this attack."

To answer some of the attacks on the appropriation, the FTC has issued the following statement:

"From inquiries to the Commission and articles appearing in certain periodicals, there appears to be misconception concerning the character and scope of the Commission's proposed inquiry into the 'Methods and Costs of Distribution'.

"The purpose of the inquiry is to ascertain and assemble pertinent facts concerning the whole subject of distribution in a number of industries. This will involve examining different methods of distribution and, necessarily, the more important items of costs. Some industries will be included in which expenditures for advertising no doubt, will be unsubstantial; in others the advertising costs may be substantial. There is no purpose or intention of singling out advertising any more than any other item of the cost of distribution and no more emphasis will be placed on advertising costs in this inquiry than was done in such recent inquiries as Agricultural Income, Farm Implements and Motor Vehicles.

"In the numerous general inquiries conducted by the Commission and in the many thousands of cases in which it has made investigations and taken corrective action, the Commission has never made any declaration or taken any position against advertising as such. Furthermore, no such action is contemplated. Its action with respect to this subject has been confined to the elimination of false and misleading advertising under the Federal Trade Commission Act, and of unlawful advertising allowances under the Robinson-Patman Act. Even under the latter act no attempt has been made to prevent the granting of such allowances provided that when offered they were made available on proportionally equal terms to all customers."

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PALEY TO BE HONORED FOR BROADCASTING WORK

Election of William S. Paley, President of Columbia Broadcasting System, as an honorary member of the Veteran Wireless Operators' Association, is to be announced at the Association's 15th annual dinner next Wednesday evening, Feb. 21, in the Hotel Astor, New York City. This honor is being bestowed on Mr. Paley "for his contributions to broadcasting", according to William J. McGonigle, radio engineer, who is President of the Association.

At the dinner, Chief Engineers of the three major networks - E. K. Cohan of CBS, J. R. Poppele of Mutual, and O. B. Hanson of NBC - will receive the Marconi Memorial Gold Medal of Achievement for their work in the line of duty.

The 250 guests at the annual dinner also will witness presentation of the Marconi Memorial Service Award, a bronze plaque, to the entire American broadcasting industry for world leadership. The plaque will be accepted by an official of the National Association of Broadcasters.

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TRADE NOTES

World Radio Market released the U. S. Bureau of Foreign and Domestic Commerce reports this week for the Philippine Islands (regulations), Kenya, and Uganda.

Station WRUL, short-wave outlet operated by the World Wide Broadcasting Corporation, at Boston, has been granted an increase in power from 20 to 50 KW by the Federal Communications Commission.

A national advertising and promotional campaign for the RCA Victrola console instruments was announced this week by Thomas F. Joyce, Vice President and Advertising Director. The campaign will utilize cooperative newspaper ads with dealers and distributors, large space in ten magazines, and programs on almost fifty radio stations in principal markets. Lord & Thomas handle the account.

The largest single order for recorded programs in the history of the company, has just been shipped by the NBC Radio-Recording Division to 662 stations in the United States. The recording, entitled "Uncle Sam Calling", is an explanation of various aspects of the 1940 Census. It was produced by the Office of Education, U. S. Department of the Interior, in collaboration with the Bureau of the Census, Department of Commerce.

Hygrade Sylvania Corp., manufacturers of electrical products at plants in Massachusetts and Pennsylvania, has reported for 1939 net profit of \$856,807, equal to \$3.52 a common share, compared with \$438,690, or \$1.48 a share, in 1938.

Gate Taylor, formerly Advertising Manager of Broadcasting Magazine, has joined the staff of Variety as Chief of the Radio Advertising section.

Effective Monday, February 26, Station WSAV, Savannah, Ga., will join the National Broadcasting Company as its 184th affiliate, giving NBC the largest number of affiliated stations in the history of the company, according to William S. Hedges, NBC Vice-President in Charge of the Stations Department. WSAV is licensed to WSAV Inc., and operates full time on 100 watts power on a frequency of 1310 kc.

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THREE TO FIVE YEAR LICENSE EXTENSION PROPOSED

An extension of broadcasting station licenses from three to five years and many other important amendments to the Communications Act were proposed in a bill introduced in the House last Friday afternoon by Representative J. William Ditter, Republican, of Pennsylvania "in order to preserve and protect liberty of expression in radio communication". The bill was instigated by the National Committee to Uphold Constitutional Government, of which Frank Gannett, New York publisher and Republican presidential candidate is Honorary Chairman. Former Representative Samuel Pettengill, Democrat of Indiana, is Chairman of the group and Dr. Edward A. Rumely, noted publicist of New York, is Secretary.

"This bill", according to Representative Ditter, "consists of a series of amendments designed, so far as possible, to protect broadcasting against any encroachment on liberty of expression, including freedom of speech and of the press guaranteed by the First Amendment to our Constitution and freedom from censorship generally. It is unnecessary that I point out how vitally important it is that the public be afforded this protection. Broadcasting rivals the press as an agency of mass-communication. Freedom of expression is the cornerstone of democracy. Government control of what is printed or said is the antithesis of democracy and is a characteristic of autocracy and totalitarianism.

"Notwithstanding the express intent of Congress, the Commission has found an Achilles' heel in the law. The vulnerable spot is the broad statutory standard of 'public interest, convenience or necessity' which is the criterion applied to the granting or denying of applications. The Commission has construed this formula as giving it power to censor programs by the back-door method. Taking advantage of the procedural provisions in the Act, they have limited licenses to the short period of six months, recently increased to one year (although the law permits a period of three years), and have regulated programs through actions on renewal applications. The theory is that this Commission has power to deny a renewal application and put a station out of existence if the station has been broadcasting programs which do not meet the standard of 'public interest, convenience or necessity', whatever that means, depending on a whim of the majority of the Commission at any particular moment. I say the Commission. Fortunately, there is a minority which still understands fundamental American principle. Obviously, this is a far more dangerous form of censorship than if the Commission would promulgate standards in advance, which it concedes it does not have power to do. The present method is just plain ex post facto censorship and is too powerful a weapon to be entrusted to any such agency.

"Everyone recognizes, of course, that there are legitimate limitations on freedom of speech. These are for Congress to decide, however, and not for a bureaucratic board in Washington. In the Communications Act as it now stands, we have expressly forbidden several kinds of utterances, such as obscene, indecent

or profane language in Sec. 326 and lottery information in Sec. 317. Violation of either of these provisions is subject to heavy criminal penalties by way of fine and imprisonment after appropriate proceedings in the courts. This is the way such matters should be handled. There may be other types of utterances, which ought to be, and can constitutionally, be forbidden. If this be the case, let us learn about them and enact legislation accordingly. But we certainly never intended to delegate to this Commission the power to impose their judgment as to what are good programs and what are bad programs on the American people. The Commission was established primarily to deal with a technical problem in order to prevent interference, assure an orderly and efficient use of the ether, and effect a fair, efficient and equitable distribution of broadcast facilities over the country. From all I can find out, it is to these primary duties they pay the least attention while they fritter away their time on forbidden and, I believe, unconstitutional fields of activity.

"Time after time during recent years, an effort has been made to bring about an investigation of this Commission. For one reason or another, these attempts have failed. Pending the time when a successful attempt is made, I urge that this, the most precious of our liberties, be made absolutely secure. No useful purpose would be served by attempting to recite at length the usurpations of power by this Commission in this field during recent years. Congress has been made thoroughly familiar with them."

The law also, Representative Ditter believes, gives altogether too much power to the President to reach the same result as the Federal Communications Commission. He may put a station out of existence or severely cripple it by simply assigning its frequency to a government station without any statement of reasons or hearing. Also, he may do about anything he chooses with a station, even including taking it over and letting a government department operate it, by simply declaring that there exists a "national emergency or in order to preserve the neutrality of the United States".

In seeking to cure the defects in the existing law, the following are specific provisions of the bill which Congressman Ditter has introduced.

Section 1 inserts a clear statement of the purpose of Congress to secure liberty of expression for radio so there may be no doubt in the matter.

Section 2 places a limitation on the power of the President to assign a frequency used by a privately-owned station, to a government station, by requiring that either an equally desirable frequency be given to the privately-owned station or that there be a hearing.

Section 3 prescribes a minimum license period of three years for broadcasting stations, with a maximum of five years, and eliminates a clause which might otherwise be susceptible of

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an interpretation giving the Commission power to consider program service on renewal applications.

Section 4 removes an ambiguity in the hearing provisions of the Act under which the Commission is now claiming the power to take action adversely affecting existing stations without giving their owners any right to be heard.

Section 5 eliminates an unduly harsh section of the provisions governing revocation of license so as to make it clear that the hearing is to be held before and not after the order of revocation.

Section 6 is the most important provision of this bill. It states in language which I hope is too clear to be misunderstood that the Commission is not to refuse renewal applications or take any other action against licensees on the ground that a station's programs do not meet the Commission's ideas of what constitutes "public interest, convenience or necessity". Mr. Ditter believes Section 6 to be the basic provision of his bill which would amend Section 326 of the Communications Act. "The only leeway left to the Federal Communications Commission is in the case where a licensee has been finally adjudged guilty by a Federal court of one or more violations of specific provisions of the Act (such as the prohibitions against obscenity and lottery information) and then only where the offense is of so serious or repeated a nature as to show clearly that the licensee or applicant is not qualified in character to operate a station. We do not put newspapers out of business because of occasional infractions of laws against lotteries, obscenity, defamation, or any other improper utterances. We punish the persons responsible by fines, imprisonments or damages. Why should any other principle apply to radio station licensees. A bureau in Washington should not have the arbitrary power to try such matters or to appraise their seriousness. This can best be done in the district and the court where the licensee lives. To give the power to a board in Washington means simply that it has an additional weapon with which to persecute those whom it dislikes while not molesting those who have its favor."

Section 7 limits the power of the President to take over stations to cases of imperative military need during actual war or a state of insurrection equivalent to war.

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