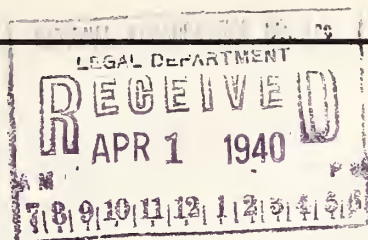


HEINL RADIO BUSINESS LETTER

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No. 1221

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FCC COURT VICTORY ALSO COMFORT TO BROADCASTERS

Despite the fact that the Federal Communications Commission was sustained by the U. S. Supreme Court in the Duguque, Iowa, case, as reported in the previous issue of the Heintz Service, the text of the decision gave comfort this week to broadcasters who have feared encroaching Government control of their business.

The Supreme Court, while holding that the FCC does not need to recognize the economic consequences of the licensing of radio frequencies, went further in its interpretation of the Communications Act and pointed out that the law gives the FCC "no supervisory control of the programs, of business management, or of policy" of licensees.

After reviewing the history of the case, the Court commented on its significance thus before announcing its decision reversing the Court of Appeals and upholding the FCC.

"We hold that resulting economic injury to a rival station is not in and of itself, and apart from considerations of public convenience, interest, or necessity, an element the petitioner must weigh and as to which it must make findings in passing on an application for a broadcasting license.

"Sec. 307 (a) of the Communications Act directs that 'the Commission, if public convenience, interest, or necessity will be served thereby, subject to the limitations of this Act, shall grant to any applicant therefor a station license provided for by this Act.' This mandate is given meaning and contour by the other provisions of the statute and the subject matter with which it deals. The Act contains no express command that in passing upon an application the Commission must consider the effect of competition with an existing station. . . .

"In contradistinction to communication by telephone and telegraph, which the Communications Act recognizes as a common carrier activity and regulates accordingly in analogy to the regulation of rail and other carriers by the Interstate Commerce Commission, the Act recognizes that broadcasters are not common carriers and are not to be dealt with as such. Thus the Act recognizes that the field of broadcasting is one of free competition. The sections dealing with broadcasting demonstrate that Congress has not, in its regulatory scheme, abandoned the principle of free competition, as it has done in the case of railroads, in respect of which regulation involves the suppression of wasteful practices due to competition, the regulation of rates and charges, and other measures which are unnecessary if free competition is to be permitted.

"An important element of public interest and convenience affecting the issue of a license is the ability of the licensee to render the best practicable service to the community reached by his broadcasts. That such ability may be assured the Act contemplates inquiry by the Commission inter alia, into an applicant's financial qualifications to operate the proposed station.

"But the Act does not essay to regulate the business of the licensee. The Commission is given no supervisory control of the programs, of business management or of policy. In short, the broadcasting field is open to anyone, provided there be an available frequency over which he can broadcast without interference to others, if he shows his competency, the adequacy of his equipment, and financial ability to make good use of the assigned channel.

"The policy of the Act is clear that no person is to have anything in the nature of a property right as a result of the granting of a license. Licenses are limited to a maximum of three years' duration, may be revoked, and need not be renewed. Thus the channels presently occupied remain free from a new assignment to another licensee in the interest of the listening public.

"Plainly it is not the purpose of the Act to protect a licensee against competition but to protect the public. Congress intended to leave competition in the business of broadcasting where it found it, to permit a licensee who was not interfering electrically with other broadcasters to survive or succumb according to his ability to make his programs attractive to the public.

"This is not to say that the question of competition between a proposed station and one operating under an existing license is to be entirely disregarded by the Commission, and, indeed, the Commission's practice shows that it does not disregard that question. It may have a vital and important bearing upon the ability of the applicant adequately to serve his public; it may indicate that both stations, - the existing and the proposed - will go under, with the result that a portion of the listening public will be left without adequate service; it may indicate that, by a division of the field, both stations will be compelled to render inadequate service. These matters, however, are distinct from the consideration that, if a license be granted, competition between the licensee and any other existing station may cause economic loss to the latter. If such economic loss were a valid reason for refusing a license, this would mean that the Commission's function is to grant a monopoly in the field of broadcasting, a result which the Act itself expressly negatives, which Congress would not have contemplated without granting the Commission powers of control over the rates, programs, and other activities of the business of broadcasting.

"We conclude that economic injury to an existing station is not a separate and independent element to be taken into consideration by the Commission in determining whether it shall grant or withhold a license."

FM HEARING ENDS; FREQUENCIES ARE ISSUE

After eight days of testimony, the Federal Communications Commission concluded the frequency modulation hearing Thursday and asked all parties to submit briefs by April 15 as it took the case under advisement. No decision is expected before May.

While observers agreed that FM sponsors had made a good case for the new technique of radio transmission, the two major practical problems were left unsolved, i.e., whether wide or narrow bands are to be used and where the additional FM frequencies are to come from.

Major Edwin H. Armstrong, inventor of frequency modulation, and the FM Broadcasters, Inc., made a strong plea for wide bands and urged that additional channels be allocated to FM between 42 and 50 megacycles, which includes television's No. 1 channel, 44 to 50 megacycles.

The Radio Corporation of America, on the other hand, urged the Commission to approve narrow band transmissions and opposed invading television territory. As a compromise RCA witnesses suggested that television transmissions continue on present channels in New York, Chicago and Los Angeles, and that the frequency be used for FM broadcasting in other parts of the country.

Should RCA be forced to adopt a new wavelength for its television broadcasting in New York, witnesses said, it would be forced to build a new transmitter.

John R. Howland, Assistant to the President of the Zenith Radio Corporation, endorsed FM broadcasting as a supplemental service to standard or AM broadcasting but suggested that the FM broadcasters put the brakes on their enthusiasm. High fidelity broadcasting is not needed for children's programs, such as "Heigh ho, Silver", he said.

Frequency modulation broadcasting should be developed as an adjunct to AM broadcasting, he said, especially in areas that are not now served adequately.

Mr. Howland warned against any move that would make obsolete millions of present-day radio receivers, but he predicted that the home of the near future will be equipped with an FM receiver as well as a standard set.

J. E. Brown, Zenith engineer, disclosed that Zenith is preparing to market a combination AM and FM receiver for \$125.00. He predicted that with increased production the prices of FM receivers will come down.

The FCC was urged Wednesday to let the public decide whether "frequency modulation" radio stations - claimed to be free of static - are better than those using standard broadcast channels.

The Radio Corporation of America and its associated companies believe the new method is ready for commercial use, Frank W. Wozencraft, RCA counsel, told the Commission.

"We believe that it is impossible for any one to predict with any certainty the future of this new service", said Mr. Wozencraft. "Naturally, ultra high frequency, also known as high fidelity sound broadcasting will be in competition with standard band broadcasting, and only the public can determine which the public will prefer, and for which it is willing to pay, through the purchase of new receiving sets."

Major Armstrong and the F.M.B.I. asked for the television channel, now used by S2BX, operated by the National Broadcasting Company, a subsidiary of RCA. RCA offered a compromise plan under which channel 1 would be left to New York, Chicago and Los Angeles, where transmitters are working but would be given to FM elsewhere.

E. K. Jett, Chief Engineer for the FCC, pointed out that this arrangement would permit only five FM stations in New York, provided the Armstrong wide-band transmission was used. Already in New York there are four wide-band transmitters working with applications for more than twice as many.

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CHICAGO TELEVISION IS ONE YEAR OLD

Today (Friday, March 29) marks the first anniversary of Chicago's only television transmitter, W9XZV, owned and operated by the Zenith Radio Corporation. Experimental television programs have been transmitted from this station five days each week for the last year. A number of television receivers manufactured by Zenith have been loaned to experimenters and technicians in the Chicago area for observation and suggestion.

Continuous practical experiments under actual field conditions have resulted in a variety of improvements to both transmitter and receivers. However, Commander E. F. McDonald, Jr., President of the Company, announces that it is not entering into the manufacture of television receivers for sale to the public during the present stage of television development.

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The Western Division of the National Broadcasting Company will celebrate its thirteenth birthday Friday, April 5. The first Pacific Coast NBC Network program was heard April 5, 1927, over a network which linked five cities: San Francisco, Seattle, Portland, Spokane and Los Angeles. Today the Western Division of the National Broadcasting Company serves the eleven Western States and Hawaii through 36 stations of the NBC Red and Blue Networks.

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ASCAP AND CBS EXCHANGE CURT LETTERS

As the current battle between the American Society of Composers, Authors and Publishers and the National Association of Broadcasters continued this week, the ASCAP and the Columbia Broadcasting System exchanged curt notes.

John G. Paine, ASCAP official, wrote a letter to William S. Paley, President of the Columbia Broadcasting System, complaining that Edward Klauber, CBS Vice President, had walked out of a conference on the proposed new music copyright rates for radio.

Mr. Paine explained that a meeting of representative broadcasters had been called to get a "cross-section" view from the radio industry. After he had read a prepared statement and invited questions, Mr. Paine said, Mr. Klauber rose and "after delivering himself of a few mumbled remarks, indistinct and unclear, peremptorily left the room.

"The Committee feels that this man's conduct was unbecoming a gentleman and completely discourteous and certainly an abuse of the invitation extended to your Company", the letter continued. "We are certainly reluctant to believe that this discourtesy reflects in any degree the spirit of your Company.

"In view of the above, the Committee will be personally grateful to you if your Company will be represented by some person other than Klauber in any future discussions between us.

"You will be interested in knowing that this is the first letter of this character that has been written in the twenty-five years of our existence."

To this Mr. Paley replied, as follows:

"I am very sorry to hear from your letter that you regard Mr. Klauber's actions at your meeting yesterday as being discourteous. I have worked with Mr. Klauber for many years and know that it is impossible for him to behave in the manner interpreted by you in your letter.

"Having heard accounts of this meeting not only from Mr. Klauber but from Mr. Ream (Joseph Ream, CBS staff attorney), I am amazed that you should write such a letter or try to tell one of your largest customers who shall or shall not be delegated to have business dealings with you.

"Mr. Klauber was very much disturbed at the obvious attempt to eliminate the National Association of Broadcasters from the discussions with you, and stated clearly that so far as his company was concerned, your proposals would be referred to the negotiating committee of the National Association of Broadcasters. I am heartily in accord with his determination to resist all attempts to split our industry into hostile camps.

"Mr. Klauber, as Executive Vice-President of this Company, has complete charge of such business matters as may arise between your Society and this Company. If at any time he chooses to delegate this function to some one else, that is wholly a matter for his own decision."

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INQUIRY OF "PICK-UP" AND "DELIVERY" SERVICES ORDERED

The Federal Communications Commission this week announced that, on its own motion, it had instituted inquiry into the ramifications of the "pick-up" and "delivery" services furnished by the various telegraph companies.

Twelve telegraph carriers were ordered to show cause, at a hearing at a date to be set later, why the Commission should not find that:

"1. The furnishing, free of charge to certain customers or classes of customers, and not to others, of printer tie-lines, Morse tie-lines, telephone tie-lines, messenger call boxes, pneumatic tubes, messenger service, or other service or service equipment, or the making of allowances in lieu thereof, results in unreasonable discrimination;

"2. The doing of any of the things described in paragraph 1 above, except as specified in schedules duly published and filed with the Commission, constitutes an unlawful rebate or refund;

"3. The classifications, regulations, and practices of the carriers in connection with the things described in paragraph 1 above, or some of them, are unreasonable or otherwise unlawful; and

"4. The furnishing of special services, or special classifications of service, at special rates, such special services or classifications being conditioned upon the doing by the carriers of any of the things described in paragraph 1 above, is unreasonable, unreasonably discriminatory, preferential, prejudicial, advantageous, or disadvantageous; and why the Commission should not enter an order or orders directing the carriers, or any of them, to cease and desist such violations of the law, or such other order or orders as may appear to be appropriate in the premises."

The respondents are: The Western Union Telg. Co., New York City; Postal Telegraph Cable Co., New York City; R.C.A. Communications, Inc., New York City; Mackay Radio & Telg. Co. (Del.), New York City; Mackay Radio & Telg. Co. (Cal.), New York City; Globe Wireless, Ltd., San Francisco, Cal.; Press Wireless, Inc., Chicago, Ill.; Pacific Tel. and Telg. Co., San Francisco, Cal.; Commercial Cable Co., New York City; Commercial Pacific Cable Co., New York City; All America Cables & Radio, Inc., New York City; French Telegraph Cable Co., New York City.

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POLICE RADIO "CHASING" TO BE PROSECUTED, SAYS FCC

It has been brought to the attention of the Federal Communications Commission through complaints from police departments and other parties that certain automobile repair men, ambulance operators, and other unauthorized persons are making a practice of intercepting police shortwave radio messages relating to automobile accidents, crimes, etc., and using them for their own benefit, or for the benefit of other parties not entitled thereto, with the result that police investigation of mishaps and crimes is being hampered.

The United States Supreme Court in Weiss et al v. United States, 308 U.S. 321, decided December 11, 1939, that clauses 2 and 4 of Section 605 of the Communications Act of 1934 protect local intrastate communications as well as interstate and foreign communications from interception and divulgence. This section reads as follows:

"Sec. 605. No person receiving or assisting in receiving, or transmitting, or assisting in transmitting, any interstate or foreign communication by wire or radio shall divulge or publish the existence, contents, substance, purport, effect, or meaning thereof, except through authorized channels of transmission or reception, to any person other than the addressee, his agent, or attorney, or to a person employed or authorized to forward such communication to its destination, or to proper accounting or distributing officers of the various communicating centers over which the communication may be passed, or to the master of a ship under whom he is serving, or in response to a subpoena issued by a court of competent jurisdiction, or on demand of other lawful authority; and no person not being authorized by the sender shall intercept any communication and divulge or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communication to any person; and no person not being entitled thereto shall receive or assist in receiving any interstate or foreign communication by wire or radio and use the same or any information therein contained for his own benefit or for the benefit of another not entitled thereto; and no person having received such intercepted communication or having become acquainted with the contents, substance, purport, effect, or meaning of the same or any part thereof, knowing that such information was so obtained, shall divulge or publish the existence, contents, substance, purport, effect, or meaning of the same or any part thereof, or use the same or any information therein contained for his own benefit or for the benefit of another not entitled thereto; Provided, That this section shall not apply to the receiving, divulging, publishing, or utilizing the contents of any radio communication broadcast, or transmitted by amateurs or others for the use of the general public, or relating to ships in distress."

"It would appear from the Court's construction of those clauses that any person who intercepts a local intrastate message and divulges the existence of same or uses the same for his own benefit or for the benefit of another not entitled thereto acts in violation of this section", an FCC spokesman said.

"The Commission's inspectors are being instructed to investigate complaints alleging violations of this nature in order that the Commission may refer to the appropriate United States Attorney for prosecution the cases in which it appears an indictment should be sought."

Heavy penalties are provided in Section 501 of the Communications Act for violations of its provisions. That particular section reads:

"Sec. 501. Any person who willfully and knowingly does or causes or suffers to be done any act, matter, or thing, in this Act prohibited or declared to be unlawful, or who willfully and knowingly omits or fails to do any act, matter, or thing in this Act required to be done, or willfully and knowingly causes or suffers such omission or failure, shall, upon conviction thereof, be punished for such offense, for which no penalty (other than a forfeiture) is provided herein, by a fine or not more than \$10,000 or by imprisonment for a term of not more than two years, or both."

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TELEVISION NEWS TEST HELD DISAPPOINTING

"Television's swaddling clothes effort at sponsored news broadcasting Wednesday night left something to be desired", Robert U. Brown wrote in last week's Editor & Publisher. "The highly touted attention-holding quality of the medium was not what it should have been, which might be explained by the fact that the spot news field is something radically new for television."

"Although FCC dictum prohibits television time from being sold until September, this was the first sponsored news broadcast. Esso Marketers, long sponsors of the Esso Reporter on regular broadcasts, paid for the out-of-pocket expense of the broadcast, its radio agency, Marschalk & Pratt, arranging all the details. The program, broadcast over NBC's W2XBS, was the first of a series to be sponsored by Esso every Wednesday night."

"Previewed by approximately 80 representatives of newspapers, trade press, and advertising, the 10-minute broadcast was good enough to provoke the imaginative mind to see the vast possibilities of the medium. Improvement, in control of static and finer screening, during the last year when this writer last saw television, was particularly notable."

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FLY TO ADDRESS RADIO EDUCATION SESSION

A program including Chairman James Lawrence Fly, of the Federal Communications Commission, Lyman Bryson and his CBS "People's Platform", George V. Denny, Jr., of Town Meeting of the Air, and Ed Kirby, NAB Public Relations Director, has been arranged for the Eleventh Institute for Education by Radio at Ohio State University, Columbus, Ohio, April 29 to May 1.

Chairman Fly will address the Institute at the annual dinner meeting Tuesday, April 30. He will be introduced by Judith Waller, Western Division Educational Director of the National Broadcasting Company.

For the first time, announcement of awards for the Fourth American Exhibition of Recordings of Educational Radio Programs will be made on the opening day. The announcement will come at the close of the morning session.

The National Association of Educational Broadcasters and the National Association of Teachers of Speech will hold closed meetings Monday evening. Ed Kirby will preside at a joint session of the National Association of Broadcasters, and the educational directors of CBS and NBC stations.

George V. Denny, Jr., and Frank E. Mason, NBC Vice-President and Assistant to the President, will be Chairman of two sections devoted to special problems. These will be held Monday evening. Mr. Denny is to preside at a discussion on Adult Education by Radio, and Mr. Mason will be Chairman of the section Pre-Professional Training of Radio Personnel.

Following the dinner Tuesday evening, round-table discussions will be held on eight general topics. Ed Kirby of the National Association of Broadcasters, will lead the discussion on Handling Controversial Issues. The section on News and Special Events will have as chairman A. A. Schechter, NBC News Editor and Special Events Director.

Subjects of other round-table discussions are Writing for Radio, Radio Production, Radio Workshops, Educational Script Exchanges, Recordings for School Use and Engineering Quiz Section.

On Wednesday morning the Institute will hear Guy Hickok, Manager of the International Division of NBC, who is to speak on "Developments in International Broadcasting". At the same session, Leonard Power, coordinator of research for the Federal Radio Education Committee, will discuss the activities of the FREC.

As in previous years, proceedings of the Institute will be published in a yearbook, "Education on the Air". All sessions will be held in the Deshler-Wallick Hotel except on Tuesday and Wednesday mornings, when meetings will be held at the Social Administration Building on the campus of Ohio State University.

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DIAL-PLATES OF TIME

The period of the vernal equinox this year has brought with it a new problem for New York's Overseas telephone staff.

Flanking the A. T. and T. Company's "precision clock" in the window of its headquarters at 195 Broadway are eight other clocks, showing the time of day in other cities throughout the world. The clock times now shown are those for London and Paris, Berlin and Rome, Honolulu, Tokyo, Buenos Aires, Rio de Janeiro, Sydney, and San Francisco. The Overseas staff has assumed the duty of keeping these correctly set. This is no very great burden for people who handle calls to a score of remote countries daily, in which they must learn to convert clock-times with the east of an international trader dealing in dollars and sterling. The element requiring particular attention at this time of the year is the practice now common in many countries of changing the clock to get more sunlight hours for the working day.

This is not as simple as it sounds, because there is no international accord as to the date for changing the clock. It is, in fact, a gradual process spread over a considerable period:- beginning this year early in February, when London and Paris went on summer time on account of their nightly black-outs, and continuing through April, with America about the last to push its clocks ahead for the summer.

This is not entirely a period of one-way changes. If our days get longer, somebody else has to pay for it. In this case it's the people in the southern hemisphere. That is why Buenos Aires recently changed from summer time to standard. The result was to change the clocks of Buenos Aires so that they now read one hour ahead of New York, instead of two hours. This, it might be added, is only a temporary condition. When New York goes on daylight-saving time, the watches and steeple-clocks of the two cities will read the same. Thus there is a two hour spread in the course of a year.

These are among the shorter time intervals featured in the window at "195". For example, the Honolulu clock sometimes shows yesterday's time. Again, the hands on the Tokyo and Sydney clocks may mark tomorrow's time. Fortunately, however, the change due to daylight-saving schedules is not proportional to the distance, but is in all cases an hour.

There is one other feature which is encountered where one deals with standard time throughout the world. The selection of the reference meridian is sometimes a matter of local taste or convenience, and the variation from New York time is not always measured in even hours. Honolulu, for example, is five and a half hours behind New York; and when it's noon in New York, it's 5:20 P.M. in Amsterdam.

It is not probable that this task of the Overseas staff will be reduced to routine, as the company plans to change the

list of cities, and consequently the hours shown, now and again - that is to say, from time to time.

Except for these changes it will probably not be necessary for the Overseas staff to give much attention to the clocks at "195" after the end of April. At the end of the summer, however, when the sun is nearing the equator again on its southern slant, the hands of practically all of the clocks will go through the reverse motions, with the northern hemisphere going back to standard time and the southern hemisphere seizing daylight by the forelock.

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TELEVISION PROGRAM CARRIED 250 MILES

A record distance reception of a regular television network program brought New York City Easter services to the peak of Whiteface Mountain near Lake Placid in a weather observatory where hurricane winds and 18-below-zero cold greeted Easter morning, General Electric Company reports.

The television signal was carried 250 airline miles by relay from New York City through General Electric's relay television transmitter near Schenectady. G-E television engineers and four weather men saw the Fifth Avenue Easter parade in the midst of one of the winter's severest onslaughts on the top of the third highest peak of the Adirondacks.

The G.E. relay station is about midway between the transmitter of the NBC in New York City and Whiteface. It was the longest test made of the reception of the relayed signal since the beginning recently of regular network television programs.

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Telephone operating companies of the International Telephone and Telegraph Corporation in nine foreign countries report aggregate net gains of 5,393 telephones in February and 12,348 in the first two months of 1940. The two months increase compares with gains of 8,400 in 1937, 10,900 in 1938 and 11,000 last year and the February figure also represents a steady increase. These companies operate in Argentina, Brazil, Chile, Cuba, Mexico, Peru, Puerto Rico, Rumania and the international settlements of Shanghai, China.

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Printed copies of a broadcast by Gabriel Heatter on the occasion of the eighteenth anniversary of Station WOR, New York, February 22, were being distributed this week.

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