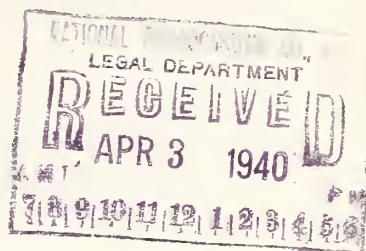


# HEINL RADIO BUSINESS LETTER

2400 CALIFORNIA STREET

WASHINGTON, D. C.



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No. 1222

*Handwritten signatures and initials at the bottom of the page, including "G", "M", and "H".*

April 2, 1940.

## LUNDEEN ASKS PROBE OF FCC ON TELEVISION ORDER

An investigation of the "confusion of orders" by the Federal Communications Commission was asked of the Senate Monday by Senator Lundeen (Farmer-Labor), of Minnesota, as the latest development in the FCC television controversy.

As editorial writers and columnists assailed the decision of the FCC to reopen the television case next Monday, the Commission stood firm.

Senator Lundeen's resolution, which was referred to the Senate Interstate Commerce Committee, follows:

"Whereas the Federal Communications Commission on February 29, 1940, issued an order permitting limited commercial sponsorship of television beginning September 1, 1940; and

"Whereas television interests immediately launched a manufacturing, advertising, and sales promotion campaign; and

"Whereas the Federal Communications Commission on March 22, 1940, rescinded its order of February 29, 1940, with resultant confusion in the minds of the public and causing abandonment of manufacturing, advertising, and sales programs which had, in effect, been authorized by the Commission's earlier ruling: Therefore be it

"Resolved, That the Senate Committee on Interstate Commerce is hereby requested to investigate the actions of the Federal Communications Commission in connection with the development of television and, in particular, to ascertain whether the Commission has exceeded its authority, and whether it has interfered with the freedom of public and private enterprise."

Another indication of Congressional interest in the FCC order was the placing in the Congressional Record appendix an article by David Lawrence, Washington columnist, attacking the television order. The insertion was made by Representative Stefan(R) of Nebraska.

Asserting that the FCC order, if sustained, will add to the unemployment problem, Mr. Lawrence charged the Commission with "usurpation of power" and "arbitrariness".

In a subsequent column Mr. Lawrence said that the Supreme Court decision in the Sanders case clearly showed that the FCC has no authority to regulate the business activities of the radio industry. The FCC, he added, should rescind its order immediately "and let the American people have television".

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David Sarnoff, President of the Radio Corporation of America, called at the White House last Friday and talked with President Roosevelt regarding the FCC order but made no comment. officials at the FCC expressed the belief that the President would back up the Commission.

As other pioneers in the television industry protested the FCC action, Lewis Allen Weiss, Vice President and General Manager of the Don Lee Broadcasting System, and Harry R. Lubcke, Director of Television for Don Lee, started for Washington to represent Thomas S. Lee's W6XAO, Los Angeles television station, at the hearing next week.

As editorial writers in the leading newspapers condemned the FCC action, Edgar Jones, radio news writer, in a letter to the Washington Post came to the defense of the Commission.

After pointing out that a television receiver might be made obsolete overnight by a change in the number of lines used in transmission, Mr. Jones said:

"If receivers in their present state were sold widely and such a change did come about - to blackout existing public investment - no doubt your editorial writer would dash off a piece on Government responsibility for preventing blue-sky sales.

"Television will have to forge ahead, but since it is an unknown and untried development and since its use depends upon a thumping public investment, it will have to go forward at a snail's pace. The FCC in this case appears to be right in its insistence for caution."

Industry observers generally regarded the FCC action as unwarranted. The Commission, meanwhile, was none too happy under the barrage of criticism. An observer close to the Commission commented that the members were "acting like a bunch of wild men" and there were indications that the FCC majority might "crack down" the harder on the Radio Corporation of America once the inquiry begins.

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#### WSAL LICENSE REVOCATION AFFIRMED

The Federal Communications Commission has affirmed its order revoking the license of radio station WSAL, Salisbury, Maryland, effective at 3 A.M., March 31. In doing so, it adopted its proposed findings of fact and conclusions of October 24, 1939, with supplement and modification.

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## FIVE RADIO PROGRAMS CITED ON LOTTERY CLAUSE

Five radio programs deemed to violate that section of the Communications Act prohibiting lottery broadcasts were last week referred to the Attorney General by the Federal Communications Commission.

They are "Musico", broadcast by Station WGN, Chicago; "Songo", broadcast by Station WIP, Philadelphia; "Especially For You", broadcast by Station WFIL, Philadelphia; "Sears' Grab Bag", broadcast by Station WISE, Asheville, N.C., and "Dixie Treasure Chest", broadcast by Station KRLD, Dallas, Texas.

"Musico" is sponsored by the National Tea Company, Chicago. Cards are supplied by National Food Stores and other sources. Each card has five rows of squares and five squares in each row. Names of songs are involved. To win a cash prize in this "game" one must be lucky enough to get a card with the songs listed that are broadcast, must listen to the program broadcast, and must fill out or check the correct names of the songs or musical selections broadcast, and must be the first to telephone the answer to the radio station.

"Songo" has similar characteristics, employing cards furnished by the Nevins Drug Company, Philadelphia.

In "Especially For You", a wheel is spun to determine from Philadelphia and suburban directories the person who is to be given a chance to win a Farnsworth radio. If the party selected has a telephone he is called. If he answers the phone and answers two questions satisfactorily, he receives a radio. If he does not respond correctly, he is given two tickets to "Mystery History", a network show.

"Sears' Grab Bag" involves a box of numbered slips of paper placed in front of the Sears' store in Asheville. The advertising manager of the store selects the numbers. If the holders of the numbers are in the broadcast audience they receive prizes. If they are not listening in the nearest numbers get the prizes.

In the "Dixie Treasure Chest" program the announcer selects a number from the Dallas telephone directory. If the party called answers the telephone he or she is asked, "What is the color of the border of the Dixie Margarine package?" If the party answers correctly, a prize of fifty dollars is the stake.

As in the case of Tums "Pot O' Gold" and the Mead's Bakery programs previously referred to the Department of Justice, complaints allege that such gifts by chance, and public announcements of them, violate Section 316 of the Communications Act which bans broadcast of "any advertisement, or information concerning any lottery, gift enterprise, or similar scheme."

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RADIO WOULD PAY ASCAP \$8,500,000 IN '41, SAYS MILLER

Acceptance of the terms of the American Society of Authors, Composers, and Publishers by the broadcasting industry would cost radio \$8,500,000 in 1941, according to an estimate by Neville Miller, President of the National Association of Broadcasters, in the current NAB Reports.

Due to several indefinite features of the ASCAP proposal it is possible only to estimate what it would mean to the broadcasters in dollars and cents, NAB said.

The radio industry paid ASCAP \$3,878,752 in 1937, the most recent year for which figures are available. Under the ASCAP proposal, broadcasters would have paid \$6,508,036.

Projected to the business reasonably expected in 1941, NAB estimated that the proposal would require payment of \$8,500,000 in that year.

In a "Letter to All Broadcasters", Mr. Miller said:

"In spite of the taunts and sneers of ASCAP, BMI, only recently organized, forced ASCAP's hand and proposals intended to be made public in December, 1940, were announced on March 21st. Although, upon first reading, these proposals may appear attractive, especially to the small stations, a careful study reveals that it is ASCAP's purpose to divide the industry so as to levy increased tribute. Also, by the continuation of the blanket tax on gross receipts, eliminate the incentive to the development of non-ASCAP music and thereby perpetuate ASCAP's monopoly in the music field.

"The proposal, although indefinite in many aspects, is sufficiently definite to outline ASCAP's general views concerning the terms for renewal of licenses, and the proposal, plus ASCAP's actions, clearly indicates that although lip service is given to the idea of negotiation, in effect, ASCAP has summoned its largest customer to another Munich and dictated the terms of surrender.

"In studying the proposal, it would be well to keep in mind at least the following facts. Briefly analyzed, ASCAP's proposal demands a payment of approximately \$8,500,000 for 1941. This means that, considering the reasonable expected increase in business, over the next ten years broadcasters will pay a total of at least \$100,000,000, not for the purchase of ASCAP catalogues, but merely for the use of same. Without consideration of the stations' views, operating problems or other interests, and without consultation with the industry, ASCAP rejects the 'per program' basis of payment. We shall continue to pay on news broadcasts, sports events, programs of classical music and other programs containing no ASCAP music. Regardless of the decline in the use of music, we pay the same percentage; regardless of the popularity or merit of ASCAP music or the development of other sources of music, we pay the same percentage of our gross to ASCAP.

"ASCAP recognizes the principle of clearance at the source, but without any consultation with the industry as to a feasible or equitable plan, announces a plan designed to divide the industry into warring groups. No one group within the broadcasters' ranks is obligated to fight the battles of any other group, yet we know that the interests of all are related, that an additional burden of \$3,500,000 placed upon the industry, regardless of where it first falls, later adjustments will spread the burden over most of the industry. The networks have definitely stated that they cannot accede to the terms and the question immediately arises of the value of an ASCAP license to the affiliates and even to the independents if ASCAP tunes are not played on the networks.

"Last July, the broadcasters decided to definitely solve the copyright problem, BMI has been incorporated, 284 stations have pledged \$1,253,189.05, a staff has been organized, contacts made within the music field, and we are on our way for once to really constructively solve one of our most troublesome problems. The real danger which threatens the industry today is that the apparent attractive features which are dangled before the industry in the ASCAP proposal may tempt some to accept temporary benefits rather than to continue the fight for a permanent solution.

"My advice to each broadcaster is to study the proposal carefully, especially regarding the effect upon affiliates in the absence of any agreement between networks and ASCAP, the effect upon independents in the absence of agreements with networks and affiliates with ASCAP, the effect upon our efforts to ever secure a 'per program' basis of payment and the opportunity to develop non-ASCAP music, and the effect upon BMI.

"In the future, we shall have other problems to meet on an industry wide basis. BMI has already produced some tangible results. Shall we grab the first benefits and live to regret not ascertaining the full possibilities of industry wide cooperation?"

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# NEW "SUN SPOT" ATTACK SCHEDULED APRIL 20

Stricken with a hangover from Easter's seizure of sun spots, short wave radio and telegraph lines Monday were reduced again to sporadic attacks of gibberish. The tangled communications were nothing, however, to what may be expected about April 20. Then, when the sun has made one of its 27-day revolutions, the agitated face it presented Easter Sunday will bear once more on the earth. Should the sun spots still be present, according to Dr. John A. Fleming, Director of the Bureau of Terrestrial Magnetism of the Carnegie Institution, a slightly milder repetition of the Easter disruption of communications will result.

Monday's surge of earth currents, which affected short-wave radio and all grounded wire circuits, followed what Dr. Fleming described as a "flare" on the sun Thursday.

Radio reception from Europe was disrupted and trans-Atlantic telephone service was silenced but regular broadcasting programs went ahead as usual. The telephone company reported no disturbance on its lines.

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## A. T. & T. FOREIGN COMMUNICATIONS SERVICES EXTENDED

The American Telephone and Telegraph Company has been authorized by the Federal Communications Commission to augment overseas point-to-point telephone service from its transmitting station at Lawrenceville, N. J.

The company's license was modified to permit the use of seven frequencies (7315, 10110, 10560, 14615, 15395, 18370 and 21310 kilocycles) to provide additional facilities for public service to Europe and South America, and a construction permit was issued for two additional transmitters and one power amplifier to enable that station to do this work.

Subject to provision to prevent interference to other stations, WMA-2 (7315 kc), WMA-3 (10110 kc), WMA-5 (14615 kc), and WMA-7 (18370 kc) will operate in transatlantic service, while WMA-4 (10560 kc), WMA-6 (15395 kc) and WMA-8 (21310 kc) will be used in South American service.

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REALLOCATION WORK STARTS AS TREATY IS FILED

Engineers of the Federal Communications Commission started work this week on drawing up preliminary reallocation orders for the FCC based on the Havana Treaty as the document became operative with the filing of a signed copy by Mexico at Havana last Friday.

Completion of the reallocation lists is expected within a few weeks although FCC engineers are still occupied with frequency modulation and television technical problems.

While the FCC has renewed all licenses of standard broadcast stations to expire as of August 1, it was predicted that because of the many variables involved this deadline could not be met. The date may be postponed until Fall or early Winter.

All of the nations parties to the Havana agreement, worked out in 1937, must submit their revised allocations to the Cuban Government before any final shake-up is effected. As conflicts in allocations are expected, an engineering conference probably will be held shortly after filing of their lists by Canada, Mexico, Cuba and the United States. With that accomplished, the nations can mutually agree upon an identical effective date, or time when all stations will assume their new assignments.

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## FARMER'S RADIO IN DANGER, CONGRESS IS TOLD

Calling attention to what he termed "a new type of bureaucratic domination now being attempted in Washington", Representative Andresen (R.), of Minnesota, this week inserted in the Congressional Record appendix an article from the April issue of the National Grange Monthly with the heading "The Farmer's Radio in Danger".

"Radio broadcasting service to American farmers is in jeopardy, according to reliable information in Washington", the article stated. "With more than 70 percent of the farm homes of the Nation dependent upon service from 'clear channel' radio stations, it is reported that there is a possibility that the Federal Communications Commission, the body that regulates radio, may curtail these stations in order to give more service to the big cities.

"It has well been said that 'eternal vigilance is the price of liberty'. This truth applies to the threat confronting the farmers and other remote radio listeners. While our liberty is not involved in the customary sense, the right and opportunity of farmers to hear the Nation's best radio programs at night is at stake.

"The danger to radio listeners living on many farms and in remote areas springs from the possibility that the Federal Communications Commission may abandon its heretofore consistent policy of having 'clear channels'; that is, certain channels on which stations of high power render radio service over wide areas....

"Under all the circumstances, farmers and others who dwell in the big open spaces of the country should become vocal. It would be entirely proper for residents of the rural districts to write the Federal Communications Commission, Washington, D. C. requesting that nothing be done to impair the fine radio service we now have. The point should be emphasized that clear-channel radio service for people living in small towns and in the rural sections is just as necessary today as it ever was."

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MONOPOLY REPORT'S APPROVAL DELAYED INDEFINITELY

Another postponement in the release of the Federal Communications Commission's Monopoly report was forecast this week as new complications arose. The report, already a year in the making, may be tied up indefinitely, it was learned.

Although the report has been back and forth between the Committee which conducted the inquiry and members of the FCC staff several times in the last few months, it is again before the Committee, and it will be at least a month before the Committee can meet on the matter again, it was said. The Commissioners are not inclined to discuss even the possible time of its completion.

Both Committee Chairman Thad H. Brown and Commissioner Frederick I. Thompson put it in the very indefinite future.

As originally written, it was learned, the report had a number of recommendations for obtaining control over operation of the broadcasting chains now outside the Commission's jurisdiction. One, it was learned, dealt with control of contracts between chains and their affiliate stations by requiring FCC approval.

The original draft of the staff report has been rewritten several times, it was said, and one of the drafts has even been to the White House, and now is back with Chairman James L. Fly, the only other FCC member to get a copy aside from Committee members.

One explanation of the delay on the report is that many collateral matters are being developed before the Commission, and results of these inquiries will give the report strength if and when it is presented. Former Chairman Frank R. McNinch promised it to Congress months before he resigned, and Mr. Fly, in the course of questioning before the Senate Appropriations Committee in January promised it in a few weeks.

Chairman Fly said, however, that many conditions had arisen which have prevented Committee consideration of the report. One was that matters requiring attention of the Commission had kept the Committee from meeting, and the other was that Commissioners had to be out of town on various other matters.

There have been changes in the Committee since the investigation, which included six months of public hearings, was started. The original committee consisted of Chairman McNinch, Commissioners Brown, Eugene O. Sykes and Paul Walker. Commissioners McNinch and Sykes resigned, and only one place on the Committee was filled, that of Judge Sykes, whose place was taken by Frederick I. Thompson.

The staff work was completed early last Fall. Because of the rather broad recommendations for controlling big business, it was said there have been wide differences in the Committee, with the majority, favoring broad control of the chains.

Commissioner Walker left last week for the Pacific Coast where he is to conduct hearings on telephone rate cases, and it was said it will be a month before he returns during which time there will be no consideration of the report. It was said the members are not disposed to consider such a drastic measure without having the full Committee present.

Without considerable revision of the Communications Act by Congress, it was asserted, the Commission is without authority to put into effect any reforms it might deem desirable to get control of the broadcasting chains. And this was emphasized in the Supreme Court opinion in the Sanders Bros. case in which Justice Roberts drew a rather close line as to the jurisdiction of the Commission.

## MILLER NAMES ASSISTANT; SPENCE QUILTS NAB

C. E. Arney, Jr., Public Relations Director of KOMO-KJR, Seattle, has been appointed as Assistant to Neville Miller, President of the National Association of Broadcasters, effective April 1, it was announced this week.

At the same time, NAB announced that Edwin M. Spence, Secretary-Treasurer of the NAB, has presented his resignation to the Board of Directors. The resignation is to become effective May 1.

Mr. Arney, who received his grade school and high school education in Pocatello and Boise, Idaho, and Washington, D. C., was graduated with an LL.B. degree from the University of Washington in 1915. He spent the next three years in the United States Attorney General's office in Washington. He then returned to the Northwest where he engaged in association work with various organizations until 1932 when he became editorial commentator and news reporter on Station KOL. Since then he has engaged in various radio activities, including the conducting of radio programs from the State Capitol.

Mr. Spence has been Secretary-Treasurer of the NAB since its reorganization in 1938. He is one of the oldest members of NAB and served as a member of its Board of Directors for many years and was Vice-President of the Association in 1930-31. He also has been Chairman of the Annual Convention Committee for the past fourteen years.

Recently in association with Stanley Horner and Dyke Cullum, both well-known Washington residents and business men, he formed the Capital Broadcasting Company and applied for a license to operate a local, full time station in the District of Columbia. Mr. Spence will be General Manager in charge of the station if the FCC grants the application.

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## THREE TYPES OF SHIP AUTO ALARMS APPROVED

As a result of extensive tests, the Federal Communications Commission has approved three types of ship auto alarms as complying with requirements promulgated by the Commission in 1935. They are Mackay Radio and Telegraph Company types 101-A and 101-B, and Radiomarine Corporation of America model AR-8600. The approval is effective April 1 for a period of seven years.

"The Commission recognizes that the art of radio communication is in a state of rapid development and that improvements to automatic alarm receivers may be expected", an FCC spokesman said. "For the time being, however, the alarms just approved are capable of meeting the requirements of the Commission applicable to such

equipment as used on board cargo ships in compliance with the Safety of Life at Sea Convention, London, 1929, and Title III, Part 2, of the Communications Act."

At the same time the Commission modified its Ship Service Rules 8.164 and 8.212 and adopted two new rules, 8.131 and 8.168, in connection with the final approval of existing ship auto alarm equipment.

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### LA GUARDIA THREATENS TO GO OVER FCC'S HEAD

Mayor Fiorella LaGuardia of New York on Friday threatened in an FCC hearing to "see Congress" if the Commission refuses to extend the operating hours of WCNY, New York's municipally owned radio broadcasting station.

The colorful mayor spoke caustically of some programs on the commercial stations.

Testifying at an FCC hearing, the Mayor surprised a packed room when he asked dramatically:

"What will happen if we go on the air anyway - without your permission?"

Trial Examiner R. H. Hyde appeared taken aback and offered no reply.

Station WCNY now has a temporary license for operation from 6 A.M. to sundown. Mayor LaGuardia, who testified that as Mayor he directed this non-commercial station in the interest of New York citizens, asked for an extension of the operating time to 11 P.M.

Opposing him at the hearing were attorneys for Station WCCO, of Minneapolis, a Columbia Broadcasting System outlet which is on the same operating frequency.

"A publicly owned station, operating in the public interest, should take precedence over a private commercial station", Mr. LaGuardia shouted, coincident with an attack on the big broadcasting companies for their "arrogance". "They need a good dressing down", he said of the major networks. "The quicker, the better for the American people."

Previously Mayor LaGuardia insisted on making a speech, which was stricken from the record at the instance of the opposing attorneys, eulogizing the public service rendered by his station in disseminating everything from market produce information to the housewife to broadcasting spiritually elevating and educational programs.

"Some of their programs are darn good, but some are terrible. In fact, they're lousy", he said of commercial programs. "Our programs are not connected with soap, toilet water or breakfast foods. We don't get a dime for our time."

Mr. LaGuardia came to the hearing armed with two copies of the Congressional Record, from which he read liberally.

"Like all former Congressmen", he cracked, "you'll notice I'm only quoting my own remarks. . . . I never thought any of this stuff would ever become useful." He read excerpts from his House remarks in 1926 dealing with governmental powers over radio.

In cross-examination, Mayor LaGuardia chided the Columbia-owned station for opposing him.

"You shouldn't be here in the first place", he replied to a pointed question from Attorney Duke Patrick. "It certainly is very bad taste for Columbia to come here to oppose the City of New York."

He described the whole procedure as contrary to the spirit and intent of the law.

"If the law doesn't suit you, then you claim you're going to take other action?" he was asked by Patrick.

"You bet I am", the Mayor replied. "I'm going to take it before Congress. It's the right of every American citizen."

The hearing was adjourned to April 10, when engineers will argue the technical aspects of the New York station's request.

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#### RADIO ADVERTISING HOLDS LEAD IN AD GAINS

"Despite the fact that the business indices which were soaring in the last quarter of 1939 have been declining, national advertisers appear to be regaining confidence rapidly and a fairly well-sustained spurt in ad expenditures is under way, agency men remarked yesterday", the New York Times, business page, commented this week. "The gains are still confined to the flexible media, newspapers, weekly magazines and radio, but April issues of the monthlies are making a better showing than did the March publications."

"Newspapers and radio had good gains in February and indications are that March will also show fairly substantial increases over a year ago. The automotive, electrical appliance and cigarette fields are contributing most to the upturn with sharply increased campaigns. Makers of toilet goods and foods are also expanding their budgets. The foreign situation and the so-called uncertainty of a presidential year still bother advertisers but they have apparently come to the conclusion that a considerable volume of business can be done, if they go after it, agency executives said."

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