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No. 1286

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December 3, 1940

MONOPOLY CHARGES STIR UP RUMPUS - MAYBE JUSTICE DEPT.

As the stormy oral argument on the 1800 page Federal Communications Commission Committee's report on alleged monopolistic practices in chain broadcasting got under way this week in the National Capital, there were reverberations in other quarters. Although the FCC monopoly report has not yet been passed upon by the full Commission, and will not be until the conclusion of the oral argument, it was said that Thurman Arnold, Assistant Attorney General in charge of the Anti-Trust Division was scrutinizing Communications Commission findings and might start an investigation of his own. The FCC sent the report to the Justice Department without recommendation, merely stating that it could be studied to determine if violations of anti-trust laws were involved.

This followed close upon the heels of the rumor so often repeated that the American Society of Composers might be inquired into by the Justice Department to see if the organization constituted an illegal copyright pool.

The Justice Department is trying to settle by a consent decree an anti-trust suit filed six years ago against the American Society of Composers, Authors and Publishers. A Justice spokesman said the Department hoped that an agreement can be reached to settle the civil suit, but, if a deadlock is reached, the Government is ready not only to proceed with the suit but to take the case before a grand jury. Conferences are being held here three times a week between Justice attorneys and representatives of ASCAP.

The case has lain dormant in the United States Court for the Southern District of New York for six years. It is believed the pending resistance of radio stations and the chains to a large increase in fees asked by ASCAP in a new contract has served to revive the anti-trust action.

As a real starter of the big battle a month hence between the Broadcasters and ASCAP, came the announcement that the Columbia Broadcasting System, beginning December 1 barred from its sustaining programs all music controlled by ASCAP.

The broadcasters are accused of a little "Fifth Column" work to have the Composers convicted of a monopoly of music whereas the Composers are accused of similar "Fifth Column" activities in endeavoring to have the Broadcasters brought to bar on the chain broadcasting charge. Each side in this controversy has complained to the Justice Department, it is said, that the other side has a monopoly.

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Quite another radio investigation - one to be undertaken by the Senate Interstate Commerce Committee, of which Senator Burton K. Wheeler, of Montana, prize Senate investigator is Chairman, has been proposed by Senator Gurney, Republican, of South Dakota, who bitterly scored the FCC Committee report.

Rising to the defense of the chain broadcasters, Senator Gurney declared that the report had been "severely criticized and generally discredited because of its inaccuracy and demonstrable bias" when the Senate refused to confirm the reappointment of Col. Thad Brown, one of the FCC members who had signed the report.

"The Committee proposals would strangle, if not impose a death sentence upon, the established networks which render such outstanding broadcasting service to the people of the country and which, in fact, are the backbone of all broadcasting service", Senator Gurney charged.

"What is our country coming to when a Commission proposes regulations in excess of its authority when it has made no finding of abuses?

"To the contrary, the public appreciation of the services rendered by the networks is probably greater and more widely spread than the public appreciation for any other industry.

"If the Commission adopts these rules, and thus strangles the service of broadcasting to the American people, it surely will have gone '10c0'. Apparently some of its members have eaten the loco weed and have construed its strange effects as giving the Commission power far in excess of that actually bestowed upon it by Congress."

It was said at the Communications Commission that Senator Gurney evidently misunderstood the situation or had not read carefully the text of the procedure for oral argument in the network inquiry report which the Commission had issued in mimeographed form last week.

"The Senator talked about the proposed FCC rules for the regulation of the networks", an FCC spokesman said. "Those were not 'proposed rules' but simple agenda to center argument on. The Committee report itself, 1800 pages in length, was so voluminous and so mixed up that the issues set forth by the Commission were merely something to shoot at."

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SORRY!

It was inadvertently stated in our last issue that FCC Chairman Fly ordered FCC Secretary Slowie to send that moot wire to the independent stations, about which Mark Ethridge and many others have complained. We have since learned the telegram was drafted and dispatched by the FCC "Monopoly" Committee (Commissioners Walker and Thompson) without the knowledge of the other members of the Commission.

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SEEKS INDUSTRY VIEW ON NETWORK CONTRACT CONTROL

At the opening of the Federal Communications Commission's argument on the Committee's network inquiry (so-called "Monopoly" report), Telford Taylor, FCC General Counsel, stated that the Commission desired that the discussion be pointed toward two particular matters:

(1) Should the Commission promulgate regulations under Section 303 of the Communications Act dealing with the provisions of contracts between networks and their affiliated stations, and

(2) If so, what should those regulations provide

This pointing of the discussion reflects the opinion of the chain broadcasting Committee, Mr. Taylor explained, as stated in the conclusion of its report, that the heart of the chain broadcasting problem is the network-outlet contract, and the recommendation in the Committee's letter of transmittal that regulations with respect to these contracts should be promulgated.

The Commission has set forth, for the consideration of counsel appearing at this argument, a series of draft regulations.

Regulations Nos. 1-A and 1-B deal with contract provisions for exclusive affiliation between networks and affiliates. No. 1-A is a general prohibition of such provisions. In support of such a prohibition, it is urged by one of the national networks that exclusive contracts prevent new national networks from securing adequate coverage, and thereby restrain competition among networks. The limited radio facilities in a number of large cities is called to the Commission's attention in order to support this argument. On the other hand, the two other national networks contend that the exclusive affiliation provision in their contracts is indispensable to sound network operation. They urge that a network should be considered as a cooperative enterprise, point to their expenditures for sustaining programs which build up the goodwill and advertising value of their affiliates, and conclude that the prohibition of exclusive provisions would undermine stable network operations.

It should be noted that drafts 1-A and 1-B are identical except for the addition of the proviso in 1-B. That proviso would make the regulation inapplicable in cities where five or more full time stations are rendering adequate primary service, on the theory that in such cities the restrictive effect of exclusive contracts is of far less significance.

Draft No. 2 proposes a limitation on the amount of time which a licensee may option to a network organization. In support of such a regulation, one of the national networks urges that the optioning to the established networks of the best hours of stations in markets where the available facilities are limited makes it extremely difficult for new networks to sell time to national

advertisers. It is also pointed out that the other two networks customarily option much more time than they actually use for commercial network programs.

The other two national networks oppose such a regulation on the ground that options are essential in order to make firm commitments with advertisers and thereby compete with other advertising media, such as newspapers and magazines.

The proposed regulation permits the optioning of more time in cities which have three or more stations than in cities which have only two stations or only one station. It also undertakes to limit the margin between the number of hours which may be optioned and the number of hours which are customarily utilized for commercial network programs.

Drafts Nos. 3-A, 3-B, and 3-C are alternative proposals dealing with the permissible duration of contracts between networks and their affiliates. Draft 3-A limits such contracts to the duration of the station license. Draft 3-C limits the duration to two years. Draft 3-B imposes no limitation on the length of the contract, but requires that any provisions with respect to renewal or cancellation shall be available both to the network and the affiliates -- in other words, it requires reciprocity in this respect.

The argument in favor of such regulations is that network-outlet contracts which run for a long period tend to lock up the better radio facilities in the various markets, and to restrain and hamper the efforts of new or more recently formed networks to compete with the old ones. The two largest national networks oppose such regulation on the ground that their willingness to spend money on equipment, and in building and developing fine programs and goodwill for their affiliates is dependent on the commercial stability afforded by long-term contracts.

Draft No. 4 relates to a provision found in the contracts of the National Broadcasting Company with its affiliates.

The brief for the National Broadcasting Company argues that the purpose of these clauses is merely to permit National to deal with its advertising clients upon terms not less favorable than those established by the station.

Draft No. 5 is directed to the control of two or more network organizations by a single company. As of the present time, this proposal, if adopted, would affect chiefly the National Broadcasting Company, which operates both the Red and the Blue networks. In support of such a regulation, one of the national networks contends that National's control of two different networks accentuates the restraint on competition which it finds to result from exclusive affiliation provisions, excessive option time, and lengthy contracts. It points out that the result of National's control of two networks is in many cases to tie up two outlets in principal markets to the National Broadcasting Company, and thereby reduce the outlets available to competing networks.

Opposing such a regulation, the National Broadcasting Company argues that its ownership of two networks has stimulated the development of broadcasting by making a wider variety of network programs available, and states that it has never changed a station from its Red to its Blue network over the opposition of the station.

Drafts 6-A, 6-B, and 6-C which are presented in the alternative, do not relate directly to network contracts, but rather to the ownership of station licensees by network organizations. Proposal 6-A would entirely prohibit such ownership.

The Committee Report, approaching the matter from another angle, urges that the ownership of powerful stations in the most important markets increases the dominant position of the networks in the radio picture, and also raises a problem of conflict of interest, in that the networks may concentrate their efforts on promoting the sale of time over their own stations rather than over the network as a whole.

The two largest networks deny that there is any such conflict of interest, and argue that the control of station operations at key points is indispensable to their stability.

The last draft, numbered 7, concerns the right of station licensees to reject programs offered by the networks.

Two of the principal briefs, and in particular that of the National Broadcasting Company, stress the existence of a supposed conflict between the Report of the Chain Broadcasting Committee, and the Report of another committee of the Commission which conducted the proceedings and, early in 1939, submitted a report which resulted in regulations governing standard broadcasting. There is no such conflict, for at least one good reason -- the two committees were considering different subjects.

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OUR SHORT-WAVE RECEPTION POOR IN CUBA

It is reported by Asst. Commercial Attache Charles S. Ducote, stationed at Havana, to the Bureau of Foreign and Domestic Commerce that short-wave reception from the United States and Europe is only partially satisfactory. Fading is usually bad, and reception seldom good for more than 2 hours of the time any particular frequency is used for Cuban reception. European stations are in general received more effectively than American. In the 49-meter band reception is poor at all times, and is marked by a high noise level. The 32-meter band is fairly satisfactory, especially after 7 or 8 P.M., the 25-meter band after 6 P.M., and the 19-meter band through the day up to 5 or 6 P.M. Reception on the medium band is good, from Cuban stations and from other North American stations on channels not used by Cuban stations. Many Cuban stations broadcast on broad bands, however, and few channels therefore are entirely clear for distant reception.

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FCC MONOPOLY COMMITTEE REPORT HIT

A large number of brick-bats were thrown by counsel for the National Broadcasting, the Columbia Broadcasting System and the Independent Radio Network Affiliates at the Federal Communications Committee report seeking to formulate regulations to curb the networks. An idea of the tone of the objections to the report may be gained by the opening remarks of Phillip J. Hennessey, NBC counsel, first of the network spokesmen to be heard, when the hearing began yesterday (Monday) morning.

"It is our conclusion that this report is inaccurate, distorted", Mr. Hennessey declared, "and contains conclusions unwarranted - " And as the speaker started to say a few other things, no doubt equally complimentary, he was interrupted by Chairman James L. Fly who suggested that he omit generalities. A little later, nevertheless, Mr. Hennessey referred to a financial portion of the report which contained an allegation that the NBC had lost a large amount of money on account of bad debts as a "statistical monstrosity". Sitting beside Mr. Hennessey and directing the presentation was Judge A. L. Ashby, Vice-President and General Counsel for NBC.

Mr. Hennessey said Congress did not confer on the FCC authority to enforce the anti-trust acts against broadcasters.

"Should the Commission consider the monopolistic element in granting licenses?" Chairman Fly asked.

"It should not", replied Mr. Hennessey.

The speaker asserted that the American system of broadcasting is rendering the world's finest service in broadcasting but that the proposal would greatly restrain it.

"If you adopt these rules and regulations, or anything like them", he said, "you will destroy the American system of broadcasting and dislocate the whole equilibrium of radio in relation to other advertising media."

Criticizing the Mutual Broadcasting System, which has sided with the FCC in some of its findings, Mr. Hennessey said:

"The Mutual brief argues not the virtue of the FCC report but rather of the short-comings of NBC and Columbia. It is strangely silent though on who owns Mutual. It is assumed that behind WGN is the powerful Chicago Tribune and WOR, R. H. Macy & Company, and so on."

"Do you think the name of every stockholder should be shown?" Commissioner Frederick I Thompson inquired.

"I do", was the reply.

Rejection of the report was recommended by John J. Burns, counsel for CBS, who supported the position of Mr. Hennessey. Mr. Burns argued at length constitutional questions involved by his contention that the suggested regulations not only were destructive in character but beyond the power and authority of the Commission to promulgate. He said the Commission can regulate only the physical side of broadcasting.

Mr. Burns added that he saw in one of the suggested recommendations an effort on the part of the Commission "to smuggle in the regulation of advertising rates".

Paul Segal, as attorney for the Independent Radio Network Affiliates, said that his group is opposed to all of the suggested regulations on the ground that they are "undesirable rather than illegal".

He argued that the affiliates did not desire to see networks ham-strung and he predicted that if the regulations were adopted that they would discourage the formation of new chains rather than provide greater competition.

"We oppose these regulations in their entirety", Mr. Segal said. "This is because the regulations deal with the business of broadcasting as distinguished from allocation and licensing."

Each witness was asked by Chairman Fly to suggest methods of enlarging the present opportunities of the Mutual Broadcasting System, which has approved substantially all the basic recommendations of the Committee, without sacrifice or interruption of other services.

Mr. Hennessey suggested, as two possibilities, the organization of networks through the licensing of additional stations within the present allocation setup, and the use of new facilities. Also, though he did not recommend it, he mentioned the breakdown of clear channels, which he said would do more harm than good.

Mr. Burns said he had no suggestions to make, and Mr. Segal said that Mutual already had demonstrated its ability to hold its own effectively in competition with older networks, and "if left alone will continue to expand and prosper in ever increasing degree."

"We believe it to be to the basic interest of the Mutual affiliates, just as it is to the affiliates of the older networks, to resist the intrusion of detailed Federal regulation of the network-affiliate relationship", Mr. Segal declared.

Joseph Raug, Jr., Assistant Counsel of the FCC had stated earlier in the hearing that there were no legal obstacles to prevent the issuing by the Commission of regulations to place restraints on chain organizations. Network counsel agreed that exclusive contracts, which would be forbidden under the proposed regulations were a fundamental of any competitive business, in no way harmful as between network and affiliate but of benefit to both and to the listening public.

Yet to be heard at this writing were the Mutual Broadcasting System, Don Lee, and others.

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DEFENSE BOARD ADVISORY COMMITTEE INVITATIONS EXTENDED

Executives of eight leading communication companies have been invited by the Defense Communications Board to constitute the latter's Industry Advisory Committee in connection with coordinating and preparing plans for the role of communications in the preparedness program. The officials to whom such invitations have been sent are:

Walter S. Gifford, President of the American Telephone & Telegraph Co.
 Jack Kaufman, Executive Vice-President of Globe Wireless, Ltd.
 Sosthenes Behn, President of the International Telephone & Telegraph Corp.
 Joseph Pierson, President of Press Wireless, Inc.
 David Sarnoff, President of the Radio Corporation of America
 W. E. Beakes, President of the Tropical Radio Telegraph Co.
 R. B. White, President of the Western Union Telegraph Co.
 E. F. Chinlund, President, Postal Telegraph Co.

The duties of the Industry Advisory Committee include the submission of expert advice to the Board on all problems of general concern to the communications companies incident to the proper carrying out of the Board's national defense mission. With the requirements of national defense as a primary consideration, the Industry Advisory Committee will submit recommendations to the Board on such problems as are referred to it by the Board. The Industry Advisory Committee will report directly to the Board but will have liason for the purpose of advice and consultation with a Coordinating Committee and a Labor Advisory Committee.

In addition to their own particular Advisory Committees - Domestic Broadcasting and International Broadcasting - the broadcasters may also be represented on the Industry Advisory Committee under the following supplemental provision:

"Whenever a problem involving domestic or international broadcasting shall arise, the Chairman of the Industry Advisory Committee shall notify the Chairman of the Domestic Broadcasting Committee or International Broadcasting Committee, as the case may be, and such Domestic or International Broadcasting Committee shall designate a delegate to act as a member of the Industry Advisory Committee on that problem."

At the same time the Board sped organization of its Labor Advisory Committee by inviting the following organizations to each recommend a member of this Committee to represent their respective affiliated communications groups:

American Federation of Labor
 Congress of Industrial Organizations
 National Federation of Telephone Workers.

Each of these committee members has the privilege of selecting such advisors as he may deem necessary. The Labor Advisory Committee will advise the Board on communications labor matters incident to the national defense, in liason with the Industry Advisory and Coordinating Committees.

Also, the Board invited the National Association of Broadcasters to nominate a representative to the International Broadcasting Committee, and Western Radio Telegraph Company, Bartlesville, Oklahoma, to appoint a representative to the Radio-communications Committee.

The above invitations are in addition to those announced November 25. Besides the Committees mentioned, there are other Committees representative of Amateur Radio, Aviation Radio, Inter-department Radio, Telegraph, Telephone, State and Municipal Facilities, and Government Facilities. All appointments to these advisory committees are pursuant to nomination or other recommendation by industries and groups concerned, on invitation from the Board. The initial task of the committees is to organize and select respective chairmen and secretaries.

James L. Fly, Chairman of the Board, explains that committee listing is not to be interpreted as exclusive, and that any responsible company or group which may consider itself overlooked can obtain representation upon adequate showing that it is concerned with the Board's planning for emergency coordination of radio, wire and cable facilities.

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URUGUAY DEMAND EXCEEDS SUPPLY

In view of the severe foreign exchange restrictions now in force which serve to handicap imports of sets and parts, the demand for radio sets and equipment in Uruguay is greater than the supply, Vice Consul Hector C. Adams, Jr., of Montevideo reports through the Bureau of Foreign and Domestic Commerce. No census of radio receiving sets in use is available, but the number is estimated at 145,000 to 155,000. It is further estimated that the average normal annual sale of receiving sets numbers 20,000. The growing restrictions of imports caused by exchange control were expected to limit the sales in 1939, but it is now estimated that they reached 22,000 and that 1940 sales about equal the 1939.

Imports of American radio receiving sets fell severely in 1939, dropping to 14 percent from 61 percent in 1938. Imports from the Netherlands practically doubled their percentage. The percentage of American parts, except tubes, increased to 54 in 1939 against 40 in 1938, although the value fell a third. The position of the United States as a supplier of radio tubes remained the same in 1939 as in 1938, both with regard to value and percentage of the total. The reputation in Uruguay of American sets and tubes is excellent and they are considered far superior to European sets and tubes, both as regards value and performance and

durability. The only reason American radio equipment does not dominate the Uruguayan market entirely is the restrictions on exchange.

Whereas the large percentage of sets came from Europe before the war, and even during the first half of 1940, the United State is now the country of origin of nearly all. Imports of sets are more than holding up during 1940, being at the rate of 23.8 percent above 1939. The United States share of the total rose from 14.0 percent in 1939 to 34.1 in the first 8 months of 1940 and will be higher for the entire year. The Netherlands share rose from 47.7 to 59.9 percent.

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 ::: TRADE NOTES :::
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A 10 percent increase in sales so far this year over the same part of 1939 and a "present backlog of orders 400 percent greater than at this time last year" were reported for the Stromberg-Carlson Telephone Manufacturing Company at Rochester, N.Y., by its President, Wesley M. Angle. Plans were under way, he added, "for an ambitious program in the radio division", which is active in the frequency modulation field.

 Blevins Davis, NBC Supervisor of Educational Programs, will preside over the radio section of the annual convention of the American Education Theater Association and National Teachers of Speech, in Washington, December 31.

 For the year to date, newspaper lineage is up about 2 percent, magazines about 4 percent and radio about 16.5 percent, according to the New York Times. Newspapers and magazines are obviously lagging behind retail advertising figures while radio is considerably ahead.

 WOR last week began broadcasting holiday-season announcements calling listeners' attention to the fact that the Radio Servicemen of America will gladly call for old unused radios, recondition them, and deliver them without charge to charitable institutions. Charitable organizations wanting reconditioned radios were advised to communicate with WOR, which will transmit the requests to the RSA.

 A report on the radio situation in Tonga by Consul George Bliss Lane was issued in the "Radio, Telephone, Telegraph" Bulletin of the Bureau of Foreign and Domestic Commerce.

 The Gilfilian Bros., Inc., radio plant was destroyed by fire last Saturday with a loss estimated by Fire Department officials at \$300,000. Seventeen fire companies, comprising 90 men, fought the blaze for two hours.

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ROY C. HOPGOOD, I. T. & T. PATENT ATTORNEY, DIES

Roy C. Hopgood, 54, General Patent Attorney of the International Telephone & Telegraph Corporation, died last week at East Orange, N.J. General Hospital after a brief illness. Mr. Hopgood served the telephone industry for 31 years as cable engineer and patent attorney for the Western Electric Company in Chicago and New York and for the past five years as General Patent Attorney for the I. T. & T. System.

Mr. Hopgood was appointed General Patent Attorney for the I. T. & T. System in 1936. He was regarded as one of the most astute lawyers in the patent field relating to electrical communications and was widely known and well liked in the communications industry in Europe as well as the United States.

He is survived by his widow, Mrs. Margaret Brown Hopgood, and two sons, Roy C. Hopgood, Jr., and Robert B. Hopgood, all of Glen Ridge, New Jersey.

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ZENITH ANNUAL PROFIT UP TO MILLION

Zenith Radio Corporation reports a consolidated operating profit for the first six months ended October 31, 1940, of its current fiscal year amounting to \$1,158,872, after depreciation, excise taxes and liberal reserves, but before provisions for Federal income taxes, as per the company's books. This amounts to \$2.35 per share on 492,464 shares outstanding.

"Assuming the present tax law will not be changed with respect to 1940 earnings, this profit would be subject to the present normal Federal income tax but not to excess profits tax in view of the company's annual average gross earnings over the past four years amounting to approximately \$1,400,000.00 per year", Commander E. F. McDonald, Jr., President, reports.

"Unit shipments during the six month period were the largest for any similar six month period in the company's history. Unfilled orders at October 31 and new orders received subsequently are sufficient to maintain the present rate of production until Christmas."

Deliveries of automobile radios to automobile manufacturers with whom the company has contracts are greater this year by a substantial margin than in any previous year. The company's new foot controlled radio, which was shown to the public for the first time at the New York Automobile Show, is being most enthusiastically received.

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