

HEINL RADIO BUSINESS LETTER

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No. 1287

MONOPOLY SPLITS FCC BUT EARLY REPORT HOPED FOR

As far apart apparently as they were before the hearings on the oral arguments began, the members of the Federal Communications Commission are now nevertheless hard at work in an effort to reconcile their differences and to have the so-called Monopoly report on whether regulations should be enacted governing chain broadcasting, ready for the new Congress when it convenes in January. There may be further delay but the Commissioners are evidently in the mood to do their "derndest" to get the report to Congress which has already accused the Commission of stalling before the gentlemen on the Hill hurl any more over-ripe tomatoes at them. Although the two day FCC hearings of legal arguments on the monopoly report were finished on schedule time, final action cannot be taken until consideration has been given to additional briefs which may be filed until Monday, December 16.

The two big questions which are causing internal strife are (a) does the Communications Act give the Federal Communications Commission such commercial jurisdiction as the much discussed Monopoly report would have it take in, and (b) if it does, how shall it exercise that power?

It is the contention of one faction among the Commissioners that they very definitely do not have the power. If the Commission assumed jurisdiction that, it was pointed out, it would find itself dangerously close to the business side of chain broadcasting and in direct contact with the Supreme Court ruling in the Sanders' case which declared that the Act gives the Commission no control over the business of the stations or of their management or policy. It was further argued that if the chains were guilty of a monopoly that the FCC should turn over its evidence to the Department of Justice with the suggestion that anti-trust proceedings be inaugurated. It would not, in the opinion of those holding that belief, be up to the FCC to decide the guilt.

If the Commissioners decide they have the power to act to curb an alleged monopoly, then as one official put it "they must decide how to use this power intelligently and not in a way to destroy radio".

It was the opinion of one of the lawyers representing the chains in that a majority of the Commissioners favored some sort of restriction of the activities of the chains and that they believed they had the power to do it. He said he believed some regulations on contracts might be recommended in the final report. This man declared, however, that the recommendations in the Committee report were much more severe and went much farther than most of them would want to go. After all, he concluded, the Committee report was simply something to shoot at.

It was learned on excellent authority that there wasn't a chance of the Commission adopting the Committee report as it now stands. "This report is too full of errors", he added, "and will be entirely rewritten."

Louis G. Caldwell, counsel for the Mutual Broadcasting System, following representatives of NBC and CBS who had been heard previously, expressed the opinion that the Commission has the authority to enact regulations governing chain broadcasting. Mr. Caldwell insisted that affiliated stations should be kept free of network or contractual relations. The Counsel favored regulations designed to prevent interference and the development of monopolies.

There should be such restraints, Mr. Caldwell told the Commission, and for the "public interest, convenience and necessity", they should be imposed by the Commission in the exercise of its obligation under the Communications Act; but he criticized as too far-reaching and "unnecessarily prolix" the draft proposals presented for discussion on the basis of network inquiry by the Commission's Monopoly Committee.

"The situation is not serious, nor are serious difficulties involved in larger cities", Mr. Caldwell said.

At the request of the Commission and for the correction of evils which he argued had resulted from holdings of major chains of station facilities in strategic marketing areas, Mr. Caldwell submitted suggested special regulations applicable to standard broadcast stations engaged in chain broadcasting. The proposals were listed under the following heads: "Definitions", "Licensing of Standard Broadcast Stations to Network Organizations", "Contracts Between National Network Organizations and Station Licensees" and "Contracts Between Regional Network Organizations and Station Licensees".

The Mutual Broadcasting System sought to buy contracts of certain affiliates of the National Broadcasting Co. Blue network about a year and a half ago, the FCC was informed by Philip J. Hennessey, counsel for NBC, during rebuttal arguments on the Monopoly report. He said the sale, if consummated, would have left the network without sufficient stations to carry on a chain.

Questioned as to the reason for NBC maintaining an Artists' Bureau for retaining the exclusive services of talent, Judge A. L. Ashby, General Counsel for NBC, said the company found many problems in the artists' service field. For example, he said a program for services of an artist will be sold and later it would develop that the artist had sold his time to some one else. He said that artists sought the services of the Bureau voluntarily and that there were 200 other organizations they could choose to handle their services.

Speaking for the Associated Music Publishers, Inc., W. C. Herdman told the Commission that his organization approved all the draft regulations advanced by the network inquiry committee as a basis for discussion.

Ben S. Fisher, representing the Association of Radio Transcription Producers of Hollywood, Inc., urged further modification of FCC regulations respecting transcription announcements by omitting announcement at beginning of transcribed programs.

Transcriptions, Mr. Fisher said, are the life blood of small radio stations and their only remedy against competition from networks and larger stations.

Martin Gang, of Independent Artists Representatives, asked the Commission to take steps to keep the networks from destroying free competition in the artists' agency field. He declared that the establishment of Artists' Bureaus by the networks constituted unfair competition and threatened to destroy the independent bureaus.

Waddill Catchings, Chairman of the Board of Associated Music Publishers, Inc., commended the Monopoly report but expressed the opinion that it does not go far enough. He admitted that chain broadcasting was performing a good service, but he contended that because it is dominated by NBC and CBS, it constitutes a monopoly.

The two networks, he charged, have a stranglehold on the industry by being able to make a "package offer" of talent and time or transcriptions. He argued that the FCC should not allow broadcasters to engage in the transcription business.

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FLAMM REPORTED SELLING WMCA FOR \$1,000,000

There was no comment at the Federal Communications Commission regarding the report that Donald Flamm had sold WMCA in New York for \$1,000,000 to a group headed by Edward J. Noble, former Under Secretary of Commerce. The record showed, however, that an application had been received from the Knickerbocker Broadcasting Company, operators of WMCA, for transfer of the corporation from Mr. Flamm to Mr. Noble, along with 100 shares of common stock. Mr. Flamm was quoted in New York as saying that he wouldn't issue any statement while the approval of the petition was pending before the Communications Commission.

Some political significance was attached to the deal owing to the fact that Mr. Noble was a strong backer of Wendell Willkie and his buying one of the largest broadcasting stations in New York was construed as another move on the part of Willkie's friends to strengthen themselves for the next campaign. Mr. Noble, a man of great wealth, having made his money through the manufacture of "Life Savers" candy, of which corporation he is still Chairman, and a Republican, was appointed Under Secretary of Commerce by President Roosevelt when Harry Hopkins became Secretary.

Mr. Noble had previously served as Chairman of the Civil Aeronautics Authority. Mr. Noble resigned just before the campaign

to run for the Senate in Connecticut and to work for Wendell Willkie. It was pointed out that WMCA might prove very useful for Mr. Noble to keep in touch with his friends in Connecticut in case he should decide to run for the Senate again, as the station is heard very well in that area.

Like Willkie, Mr. Noble served in the World War. He is 58 years old, a graduate of Yale, and a member of the Industrial Advisory Committee of the Federal Reserve Bank of New York.

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CHARGES FCC GOING BEYOND AUTHORITY

Hammering away on the argument that the Federal Communications Commission network investigation Committee has no jurisdiction over the business end of radio, Senator Gurney (R.), of South Dakota, declared in the Senate:

"What is our country coming to when a Commission proposes regulations in excess of its authority, though it has made no finding of abuses? To the contrary, the public appreciation of the service rendered by the networks is probably greater and more widespread than the public appreciation for any other industry.

"How does the Commission, in proposing these rules, square its thinking with the decision of the Supreme Court of the United States given in the Sanders Brothers case only a year ago, in which it said:

"'But the Act does not essay to regulate the business of the licensee. The Commission is given no supervisory control of the progress of business management or of policy.'

"And how does the Commission square its thinking with the statement it made in its brief in the Supreme Court case I have just mentioned, when it said:

"'But the Act confers on the Commission no jurisdiction whatsoever on the business in connection with which the transmitting equipment is used.'

"How does the Commission square its proposals with the further statement of the President of the United States in his letter of only last Tuesday to the broadcasting industry congratulating it on its twentieth anniversary? In that letter the President said:

"'Your Government has no wish to interfere or hinder the continued development of the American system of broadcasting. Radio was born and developed in the real American way, and its future must continue on that basis.'

Senator Gurney's interest in radio is that he formerly owned Station WNAX, at Yankton, S. D.

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McGRADY CALLED TO HELP END DEFENSE STRIKES

Turning to him as perhaps the one man who could do the job, Secretary of War Stimson has enlisted the services of Edward F. McGrady, former Assistant Secretary of Labor, now Vice-President in Charge of Labor Relations for the Radio Corporation of America, to help put an end to the airplane factory and other National Defense project strikes which have so seriously been embarrassing the Administration. Mr. McGrady nominally will have the title of Consultant on Labor Matters to Secretary Stimson.

In reality Mr. McGrady, who has been released from part of his RCA duties by David Sarnoff and will serve the Government without pay, will be the War Department's No. 1 Trouble Shooter. In this capacity he will be right at home, having been a labor trouble shooter for the past 40 years. His biggest task in this line was when he was Assistant Administrator of the NRA, when his understanding of the labor point of view and direct approach enabled him to settle labor disputes in the field.

Mr. McGrady is expected to work in with Sidney J. Hillman, labor member of the National Defense Advisory Commission.

Mr. McGrady worked as a newspaper pressman in Boston, became President of the Boston Printing Pressmen's Union and later was elected President of the Boston Central Labor Union and the Massachusetts State Federation of Labor.

For many years he played a large part in the organizational and legislative work of the American Federation of Labor. He is the author of the Toledo Peace Plan for averting labor strife through employer-employee cooperation.

He was called to a post similar to his new one when he became Special Adviser on Labor Relations to Secretary Baker in 1917 and 1918.

Besides his governmental work under Secretary Perkins and General Hugh S. Johnson, Mr. McGrady, earlier in his career, was a member of the Boston Common Council and of the Massachusetts House of Representatives.

In recent years Mr. McGrady frequently has advised the War Department on labor relations and has often lectured at the Army Industrial College.

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FCC OUTLINES ADMINISTRATIVE PROCEDURE

The Federal Communications Commission has just issued a 12-page statement of that body's administrative procedure. It begins by explaining that the Federal Communications Commission is composed of seven Commissioners appointed by the President, subject to Senate advice and confirmation. The President also designates the Chairman. The normal term of a Commissioner is seven years. A Commissioner is not permitted to engage in any other business during such tenure. Under terms of the creative act, "not more than four Commissioners shall be members of the same political party".

The Commission functions as a unit in administrative matters. It retains direct supervision of all activities but delegates certain routine responsibilities. Committees, consisting usually of three members, have made special studies and supervised particular undertakings. A case in point was the report last June by such a committee which investigated chain broadcasting methods. As the result of two years of inquiry, this committee rendered a 13000-page report. The latter was based upon more than 10,000 pages of testimony and nearly 800 exhibits, obtained largely through hearings which continued for 73 days.

The Commission normally holds at least two en banc meetings each week. On Tuesdays it acts on various matters relating to radio, and telegraph and telephone. At such time the Commission considers -

Applications for construction permits for new stations or modifications of existing construction permits or licenses involving changes in frequency, power, transmitter and studio sites, or change in name of licensee.

Applications for voluntary or involuntary control of company or corporation holding license.

Also, Petitions for rehearing; Dismissal of applications; Retiring of Applications to closed files; Adoption of new rules or amendments to existing rules; Suspension of amateur or operator licenses; Authority to supplement existing facilities of telephone or telegraph companies; Extension of temporary authority to common carriers to communicate with foreign countries; Other common carrier matters, such as investigation and suspension of tariffs, and Admissions to practice.

On Wednesdays the Commission acts on docket cases, that is to say, cases which have been accorded public hearings. Where the Commission, upon examination of a particular broadcast application, is unable to determine that a grant will serve the public interest, the case is designated for formal hearing upon specific issues, and all persons interested are given opportunity to be heard. After a hearing has been held, "Proposed Findings of Fact and Conclusions" are issued by the Commission. The parties are allowed additional time in which to file exceptions and to request

oral argument before final decision is made. If no exceptions or requests for oral argument are received, the Commission generally issues an order adopting and making effective its proposed decision. If exceptions are filed, the Commission may, after oral argument, affirm, modify, or reverse the proposed findings. This is the final determination unless there is a petition for rehearing or unless there is litigation.

The work of the Special Commission Board is defined. Also that in addition to en banc meetings, the Commissioners individually preside at particular hearings when designated to do so by the Commission. Each month the Commissioners, in rotation, are allocated other specific duties. These assignments are changed, thus permitting each Commissioner to be directly informed on various phases of Commission activity, at the same time conserving the principal portion of each Commissioner's time for consideration of matters involved in action by the Commission as a whole. In any month one Commissioner will act upon applications for requests for special temporary broadcast authorizations. Another will consider motions or petitions in cases designated for formal hearing, final disposition of which is, of course, reserved for the Commission as such.

The functions of the Law Department, Engineering Department, Accounting, Statistical and Tariff Department and the Secretary's Office are set forth in great detail. It concludes with an explanation of the hearings and motions docket in part as follows:

The Communications Act requires that the Commission grant radio authorizations without hearing if it is able to determine from the information before it that the authorization would serve public interest, convenience and necessity. Under present practice, when the Commission is satisfied from the information before it that a grant is warranted, it proceeds to authorize the issuance of the license, which grant is final rather than conditional in its terms. The rules fully protect the interests of persons other than the applicant by providing for the filing of petitions for reconsideration within a 20-day period. The Commission then undertakes the burden of determining and specifying the controversial issues and on which the result of the hearing must depend. In order to save time and money, both for the applicant and for the Commission, effort is now made to eliminate issues which would unnecessarily complicate the hearing.

The Commission's rules now require all parties who desire to appear in opposition to an application to file petitions to intervene, by means of which their interests may be tested, and parties are required to make a showing that the requested intervention will be in the public interest.

In 1939 the Commission made provision for the holding of oral argument on all interlocutory motions, pleadings and matters of procedure which arise in cases pending before it. These interlocutory matters are now placed on a Motions Docket presided over by an individual Commissioner, which is called Friday of each week. Provision has also been made for the disposition in chambers of emergency motions, after proper notice to all parties.

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FORT INDUSTRY ESTABLISHES TOLEDO RADIO CENTER

The first move in a plan to establish a radio center in Toledo was made recently when The Fort Industry Company, operators of WSPD, moved its executive offices into the firm's own building at 136 Huron Street.

The building was purchased by The Fort Industry Company as the first step in a program to centralize the broadcasting activities of WSPD and the operations of The Fort Industry Co., which controls five other stations, under one roof.

Thus far, only J. H. Ryan, Vice-President of The Fort Industry Co., and General Manager of all stations, and his Accounting Department have moved to the Broadcast Building. The studios and general offices of WSPD, which have been located atop the Commodore Perry Hotel for a number of years, will also occupy the Broadcast Building within a year.

Mr. Ryan's office, with that of George B. Storer, President, the accounting offices and an audition room are situated on the Broadcast Building's second floor. WSPD's studios and offices will eventually be located on the first floor. The remaining offices will be planned to let to tenants whose business is allied to the industry.

The Broadcast Building has been completely remodeled, outside and in. General architects were Mills, Rhines, Bellman & Nordhoff. Executive offices were designed by Robert Deigert, Toledo architect. Furnishings by Stow-Davis, Inc., Grand Rapids, Mich.; F. S. Myers and Son Furniture Company, Toledo; J. F. Bennett Studios, Toledo.

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STATION WAR OPENED TO AMATEURS

Radio amateurs can communicate now with Station WAR, the War Department's radio net control station, during certain specific periods, it was announced. The program will expand activities of the Army amateur radio system, which would be utilized in an emergency.

Station WAR will use a 4,025 kilocycle frequency every Tuesday, Wednesday, Thursday and Friday between 7 and 8 P.M., EST, to communicate with amateurs on the 3,500-4,000 kilocycle frequency band.

WAR will operate on 13,320 kilocycles between 10 and 11 P.M. on the same nights to pick up calls from the amateurs on 14,000-14,400 kilocycles.

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SEVEN STATIONS GRANTED POWER INCREASES

Power increases have been granted to Station WFEA, Manchester, N. H., from 500 watts to 1 KW., WBIG, Greensboro, N.C., 1 to 5 KW; WNAX, Yankton, S. D., 1 to 5 KW; KSRO, Santa Rosa, Cal., 250 watts to 1 KW.

Also, WTRY, Troy, 950 watts to 1 KW; KGEZ, Kalispell, Mont., 100 watts to 1 KW, and KUTA, Salt Lake City, 250 watts to 1 KW.

Power increases have been applied for by KDRO, Sedalia, Mo., which seeks 1 KW; WAKR, Akron, Ohio, 5 KW; WMBR, Jacksonville, Fla., 10 KW., and KLCN, Blytheville, Ark., 1 KW.

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RULES WAIVED FOR DRAFTED RADIO OPERATORS

As a particular convenience to licensees drafted or otherwise called into military service, the Federal Communications Commission suspended until January 1, 1942, that part of its rules and regulations requiring proof of satisfactory service in connection with renewal of commercial and amateur radio operators. This blanket exemption pertains to nearly 100,000 operators of both classes.

General waiver of these provisions was considered at a conference of Commission officials with representatives of interested labor organizations, including the International Brotherhood of Electrical Workers, Commercial Telegraphers Union of North America, American Communications Association, Maritime Committee of the C.I.O., National Federation of Telephone Workers, Federation of Long Lines Telephone Workers, and the Association of Technical Employees of N.B.C.

The controlling factor in the formulation of this broad and simple procedure was the mutual desire to relieve those called into service of routine details. The Commission is aware of the importance of maintaining the present high standards of proficiency of licensed operators, and also of guarding against a shortage of such skilled workers. It will, accordingly, continue to give these problems careful attention, and should experience indicate the need for change the Commission will act accordingly.

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 ::: TRADE NOTES :::
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The Colonial Broadcasting Company at Norfolk, Va., has applied to the Federal Communications Commission for a new station to be operated on 1200 kilocycles, 250 watts, unlimited time.

The Columbia Broadcasting System has been granted special temporary authority to transmit Sunday concerts of N. Y. Philharmonic Orchestra to Mexican Station XEQ and other stations located in the Republic of Mexico.

Station KFBC, Cheyenne, Wyoming, becomes an affiliate of the National Broadcasting Company December 7. KFBC joins the Blue Mountain Group as a bonus outlet, bringing the total number of NBC affiliates to 219 as of December 15.

Two new stations will go on the air soon, one at Lawton, Okla., operated by Willard Carver, and the other at Harlan, Ky.; Blanfox Radio Company. Both will be 250 watters.

The Commission has amended its Rules Governing Coastal and Marine Relay Services (Part 7) and Rules Governing Ship Service (Part 8), effective March 1, 1941.

The NBC Radio-Recording Division has just released, with its regular weekly Thesaurus continuity, a special script for a series of thirteen fifteen-minute participation shows entitled "The Christmas Calendar." Program is timed to include three minutes of copy, eight-and-a-half minutes of music, and three one-minute commercials.

WOR was awarded one of the 1940 plaques for "Showmanagement" by the trade publication Variety. "Showmanagement" is defined as "the art of shrewdly blending the best practices of modern business 'management' and 'showmanship' in terms of the public, the Government, and the advertiser."

Robert Henderson of the NBC News and Special Events Department, a Lieutenant Senior Grade in the Naval Reserve, is the first NBC employee to be called for duty.

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PHILIPS RADIO PUTS NEW PORTABLE ON THE MARKET

The Philips Radio N.V., of 'Eindhoven, has recently brought on the market a new portable 4-tube set, Model 122 A-B-C, which is constructed for universal AC-DC and battery operation, U. S. Consul George R. Canty, of Amsterdam, reports through the Bureau of Foreign and Domestic Commerce. There are two operating knobs, one for tuning and the other for both volume regulation and contacting. It has a tuning range of 200 to 595 meters.

The set weights 6 kilograms, including batteries, and is 28 c.m. high, 26.7 c.m. wide, and 18 c.m. deep. It retails for 75 florins, including batteries.

According to the local press, the case has been fitted for use abroad by a special paint process. The tubes have been especially designed in the Philips' laboratory so as to operate on a very small current apparatus, which is entirely adapted to the sensitive superheterodyne, while the quality of reception may be enhanced through the use of a common antenna connected to the set.

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NEW PUBLIC NOTICE NUMBERING

Since the recent revision of the Federal Communications Commission's mailing list, it appears that Public Notices of actions taken by the Commission on broadcast, telephone and telegraph matters, now numbered consecutively, should be segregated into two separate series.

Therefore, as a convenience to keeping such record, starting December 2, Public Notices of actions taken on broadcast matters were designated as follows: ACTIONS OF THE COMMISSION, Report No. 1 (Broadcast). The same system will apply to Public Notices of actions on telephone and telegraph matters, i.e., ACTIONS OF THE COMMISSION, Report No. 1 - (Telephone and Telegraph).

The last report which will appear under the old system of numbering was No. 1210.

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"What procedure should be followed in the event of the death of a station licensee?" inquires a Chattanooga. In such cases the administrator of the estate should make application to the Federal Communications Commission for an assignment of license to be exercised pending settlement of the estate. When the estate is settled, the administrator should make application for assignment of license to the party who is to carry on station operation.

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