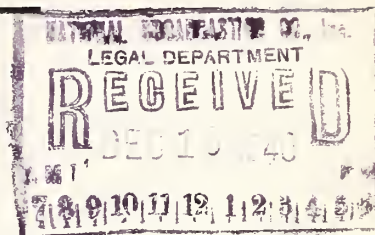


# HEINL RADIO BUSINESS LETTER

2400 CALIFORNIA STREET

WASHINGTON, D. C.



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No. 1289

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## WARN AGAINST BREAKING DOWN CLEAR CHANNELS

A sharp warning of the consequences of breaking the clear channel rule in the Federal Communications Commission proposing to permit WHDH at Boston, and KOA in Denver, to operate simultaneously on 830 kilocycles was conveyed in a 10 page minority report by Commissioners T. A. M. Craven and Norman S. Case. The action to allow these two stations to operate at the same time on a clear channel taken earlier in the week split the Commission by a vote of 3 to 2, Commissioners Thompson, Walker and Payne concurring; and Commissioner T. A. M. Craven, the only radio engineer and technical man on the Commission, and Commissioner Case, the most conservative member, voting in the negative. Chairman Fly did not vote.

It was said that thus breaking down a clear channel would be a very bad precedent which would result in poorer service to the great farm areas. This would also work to the disadvantage of radio set manufacturers. The poorer the farm service, the less desire on the part of the millions of farmers to buy sets. It was said that the entire radio industry might suffer as a result of the breaking down of the clear channels.

Also it was argued that the good accomplished by the North American Regional Broadcast Agreement clearing out a lot of stations which had caused interference would be offset by the FCC breaking down the clear channels and putting more back on. Interference from such stations would play havoc with the farm areas between the cities.

Important conclusions of Commissioners Craven and Case are:

"If proper weight is given to all of the factors discussed herein it must be concluded that Station WHDH has not proved that any advantage which may accrue to him or to the people of the metropolitan district of Boston outweighs the disadvantages of:

- "A. The application of unsound engineering in the solution of the rural broadcast problem of the nation.
- "B. The establishment of a precedent which may ultimately result in a discrimination against rural listeners in favor of those listeners living in metropolitan centers.
- "C. The establishment of a precedent which may result ultimately in handicapping the United States in providing for its people any desirable change in the organization of radio broadcast facilities designed to improve rural coverage.

"If the Commission desires to degrade any or all of the few clear channels provided in Rule 3.25 (a), it would be far better to do so in a manner which benefits some of the underserved rural population of the nation rather than to favor any metropolitan center already surfeited with radio service."

Other excerpts from the Craven-Case minority report follow:

"The applicant contends that operation of WHDH nighttime, simultaneously with KOA would not cause interference to the latter, but the testimony on this question is not in agreement." . . . . .

"Upon consideration of all the evidence material to the issue, it is concluded that operation of WHDH as proposed would cause interference to the reception of service rendered by Station KOA in its extended secondary service area." . . . . .

"Many radio listeners in the nation must not only rely upon secondary service from clear channel stations for the only broadcast service available to them but also millions of listeners now rely upon a low grade of secondary service in order to enjoy any broadcasting whatsoever. The most important problem confronting the Commission is to provide an improved radio service to these rural listeners. It appears that in any successful solution of this problem of rural broadcast coverage the Commission must rely primarily upon clear channel stations operating in accord with both Rule 3.25(a) and Rule 3.25(b), which now limit the use of the frequency 830 kc., by one full-time station". . . . .

"All the clear channels now provided are barely sufficient to provide service for the rural areas of the country at night. Much of the rural areas receive no service in the daytime. Therefore, any reduction in the number of either of these classes of clear channels would handicap the Commission in providing the much needed improvement in rural coverage. This becomes obvious when it is assumed (1) that the listeners in rural areas are entitled to a choice of a minimum of four different programs, such as now provided to radio listeners in most of the metropolitan centers of the nation; (2) that the engineers of the country are correct in their assertion that each rural listener having available only secondary service must have signals available from at least two stations transmitting the same program in order to obtain a reasonable degree of continuity of service; and (3) that to secure the most ideal geographical distribution of clear channel stations from the standpoint of rural coverage, it would be necessary to disregard natural economic laws and establish such stations in places remote from markets and the centers of talent.

"The technical quality of radio service in our cities is superior to that now rendered rural areas throughout the nation. Therefore, any course of action which handicaps the future ability of the Commission to equalize quality of service between cities and rural areas would be classed as discrimination against the rural population. A reduction of the number of clear channels may easily



result in real discrimination against rural listeners in favor of the population living in metropolitan centers.

"In the consideration of the important rural phase of the national radio broadcasting problem, the Commission must balance the effect of Paragraph B, 8(d) of Part II of the North American Regional Broadcasting Agreement, which reads as follows:

"(d) If within the period of this Agreement the country to which a clear channel has been assigned shall have made use of the channel but not in the manner above prescribed or not to the extent required by the provisions of this Agreement, such country shall be considered as having relinquished that portion of the rights which it has not used and at the expiration of this Agreement the other countries party thereto shall have the right, if they see fit, to withdraw the unused privileges from such country and to reassign them to any or all of the other interested countries."

"This means that if the United States should degrade the service on a particular class of radio channel on which it now has prior rights, the United States would lose its right to protection against the use of such channel in like manner by other nations. For example, if the United States now designates a station to operate in accordance with the Commission's Rule 3.25(a), other nations must not permit stations within their borders to operate in such a manner as to cause interference to the service of the United States' station within the borders of the United States." . . . .

"Listeners in these western areas of the country do not receive either the quality or the variety of service now available to the citizens of Boston. Therefore, to degrade further the service of rural listeners dependent in whole or in part upon KOA and other clear channel stations is an injustice. Moreover, favorable Commission action in an isolated instance of this nature creates a precedent, the mere existence of which may handicap future ability to secure improved broadcast service to rural areas. Therefore, such favorable action in this case would constitute an action resulting ultimately in the establishment of an unsound policy for the nation as a whole. An unsound public policy of this nature obviously would not benefit the listening public. Furthermore, this deterioration of radio service is bound to result in repercussions against the entire radio industry.

"In this instance, granting in full the application of WHDH would limit the future freedom of action of the Commission in two ways, to wit., (1) it would reduce the needed number of clear channels under Rule 3.25(a), and (2) it would ultimately accord rights to other nations which rights are not now conceded in the North American Regional Broadcast Agreement."

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## NEW COMMISH STUMPS 'EM

It is hoped that when President Roosevelt returns to Washington Monday from his fishing trip in the Caribbean, that he will appoint the new member to the Federal Communications Commission to succeed Col. Thad H. Brown. Although communications are supposed to be paramount in the National Defense emergency, the position has been vacant for six months - since June 30th to be exact.

Although numerous names have been mentioned, people usually well informed seem to be in the dark as to who it may be. Except that it must be a Republican and that, as usual, the appointment will probably be political rather than anyone particularly qualified or acceptable to the industry, nothing is known as to the appointee.

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## MONOPOLY BRIEF FILING EXTENDED TO XMAS

The FCC has extended the time of filing supplementary briefs in the so-called Monopoly hearings, on whether regulations should be enacted governing chain broadcasting to Tuesday, December 24. The original date set was December 16th.

The extension was asked for by the National Broadcasting Company which request was granted by Commissioner T. A. M. Craven, who was acting for the Commission at that time. The NBC asked for a further extension until Thursday, January 2, 1941, and this additional request has been referred to the full Commission for action.

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## MAJ. HORTON - TWO-WAY AIRPLANE RADIO INVENTOR, DIES

Maj. Harry Mack Horton, U.S. Army, retired, inventor of the two-way airplane radio, died last Monday in Walter Reed Hospital in Washington, D. C., at the age of 63.

He devised and perfected the first method of radio communication from airplanes to the ground shortly before entering the Army as a World War Air Corps Captain, and the United States Government paid him \$75,000 for its use during the war.

In Europe at the time as chief assistant to Dr. Lee deForest, who is considered one of the outstanding pioneers in radio, Major Horton worked in his spare time on a "trailing antenna" that is still in use. Perfecting the antenna in two years' work, he offered it to Dr. de Forest, but his employer declined to take any credit for its invention. Dr. deForest and Maj. Horton were honored jointly last year at the New York World's Fair with a testimonial dinner in recognition of the device.

During the war, Major Horton was an instructor of airplane pilots and radio operators in California.

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## ASCAP-NAB SCRAP WASHINGTON BOOMERANG

If the music war were settled tomorrow - and indeed there is no such prospect at this writing - a tremendous amount of damage will already have been done in Washington to both sides. It has been a regrettable squabble between, as Sigmund Spaeth puts it, the biggest wholesaler of musical compositions with the biggest retailer. This has called the attention of Congress and the nation to how much money both sides were making doing business in the public domain, without paying for the privilege.

Unless this writer is much mistaken, regardless of how the copyright war is settled, it will serve to pull the temple down on the participants who will most certainly suffer at the hands of the new Congress. It is my belief that not only is there a possibility of a Congressional investigation in an effort to fumigate the past record of the Federal Communications Commission and other things beginning where the Thad Brown Senate hearings left off, but an inquiry into the monopoly and profit-making angles of chain broadcasting. This to be followed in the new Congress by proposals of tax on broadcasting stations such as the 10-20% levy which will be urged upon the members of the forthcoming Congress by the International Allied Printing Trades Association.

Much of this could have been avoided had the Composers and the Broadcasters gotten together without the sound effects. As it is now, it is becoming noisier every day and don't think for a minute that Congress, the Department of Justice, the FCC, and official Washington in general aren't taking it all in.

One excited band-leader went so far as to write a personal letter to the President suggesting that WPA funds be used to pay ASCAP, thus relieving the Broadcasters of the differential and settling the fight.

During the week there were several other developments at the Washington end of the line. One of these was the U. S. Supreme Court accepting for review a case that may determine whether ASCAP is an illegal monopoly as charged in Nebraska litigation growing out of a battle there over control of prices charged for music played for public entertainment.

Officials of Nebraska sought a review by the highest Court of a decision holding invalid a State anti-monopoly law aimed at ASCAP which permitted public playing of music upon payment of the original purchase price. This would break down the ASCAP charge for music publicly played.

A three-judge Federal Court held that the legislation violated the national copyright law by depriving the copyright owner of the right to sell or withhold from sale as he might choose.

The legislation was challenged by the American Society of Composers, Authors and Publishers, which controls the copyrights on



some 90 percent of the music played in this country. It contended it was entitled to extra payment for music publicly played.

The Federal Communications Commission rejected the plea of Frank Hummert, Vice-President of a New York advertising agency that spends about \$10,000,000 a year on radio programs, that the Commission mediate the controversy. The refusal was on the ground (a) that the FCC had no jurisdiction over programs and (b) that it had not been asked to mediate by either of the principal parties concerned - the Broadcasters or the Composers. It was the contention of Mr. Hummert that it would take twenty years to develop enough music to replace the familiar tunes now controlled by ASCAP, adding that "familiar music is the backbone of most of the successful musical programs and 90% of the best familiar music is controlled by ASCAP".

A possible settlement by consent decree of the six-year-old anti-trust suit against the ASCAP, which might lead to a reconciliation of the Society's current differences with the radio industry, was reported by the Department of Justice in Washington. The Department's statement was denied in New York, however, by E. C. Mills, of ASCAP's Administrative Committee, who said that there had been no negotiations looking toward a decree.

Speaking at Frederick, Md., which is almost a suburb of the National Capital, where a group of famous composers went to stage a musical festival in the home of Francis Scott Key, author of the "Star Spangled Banner", John G. Paine, General Manager of ASCAP said that WFMD at Frederick is regarded by ASCAP as a typical broadcasting station and in signing its contract to furnish the station with the music of the great and familiar composers, he declared, "We feel we are honoring some 350 stations throughout the country, and that the work of our composers is being played for the people of Maryland and not at the whim of the chain operators in New York".

Mr. Paine challenged the right of the networks to "boycott us just because we have the temerity to say, 'If you want to use our music you should share with us in the profits you make from its use'."

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Annoyance caused by his neighbors' radios "turned full volume" is cited by a Piqua, Ohio, resident. Such things are outside the Federal Communications Commission's jurisdiction. Many cities have anti-noise ordinances intended to meet this situation.

The Commission also advises it cannot accommodate a New York listener who would compel the major networks to discontinue identical programs.

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## F.D.R. WOOS BUSINESS IN SARNOFF LETTER

After confining business and industry to the dog-house for some years, President Roosevelt assumed an entirely different attitude in a message to the Economic Club of New York, assembled last Monday night to discuss "National Unity for Defense".

The text of the President's message, sent from the cruiser "Tuscaloosa" in the Caribbean, and addressed to David Sarnoff, President of the Radio Corporation of America, who is also President of the Economic Club, follows, in part:

"Dear David:

"I regret exceedingly that I cannot be with you on the occasion of the one hundred and thirty-fourth dinner of the Economic Club of New York and the first under your guidance as president. A tremendous opportunity for useful service is yours.

"I know of no greater objective any organization can have than the stated purpose of your club 'to aid in the creation and expression of an enlightened public opinion on economic and social subjects.' I like particularly the inclusion of social subjects in the discussion of economics. The two belong together. You and I know that in order to maintain our American system of private initiative and private enterprise, it must function as a system that will do the greatest good for the greatest number. It is only by keeping our economy socially conscious that we can keep it free. . .

"There can be no real unity where the people have no voice. In a democratic order, national unity is the voluntary expression of the mind and spirit of a free people. Such unity gives our democracy an unshakeable strength.

"The freedoms that we must and will protect in the United States are the freedoms which will make the individual paramount in a true democracy. In our American way of life political and economic freedom go hand in hand. Our freedoms must include freedom from want, freedom from insecurity and freedom from fear. I firmly believe that we can best secure these freedoms by government and private enterprise working together for these common objectives. In this joint effort there must be provided proper reward for labor, proper incentive for enterprise and a proper return on investment.

"Today the challenge which we as a democracy must meet is the challenge to make the best possible use of our vast resources, and to achieve speedily the common purpose of national defense and national progress. It is a challenge to government, to labor, to industry, and to capital alike. I have unbounded faith that we shall succeed in this task."

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## NEW WASHINGTON RADIO STATION ON AIR

WINX, newest radio station in Washington, D. C., was officially tested last Tuesday evening by the FCC. It is the Capital's fifth station, the others being WMAL and WRC, of the National Broadcasting Company; WJSV, of the Columbia Broadcasting System, and WOL, of the Mutual Broadcasting System.

An additional transmitter of WINX is located on the campus of American University overlooking the city, while the main transmitter - a 180-foot tower - is at the studios and offices at Eighth and I Streets, N.W. The 50-watt booster is synchronized to pick up the main transmitter of 250 watts and to reamplify it, thus blanketing the District and its suburbs, a potential audience of more than a million.

At his offices, Lawrence J. Heller, owner and operator of WINX, was jubilant that his opening day would be the fateful Friday, the thirteenth:

"The thirteenth has been a significant number in my career", he said. "My law office is on Thirteenth Street; my radio frequency is 1310; the FCC gave me my construction permit on February 13. I'm therefore very optimistic about the future."

Reggie Martin, formerly General Manager of WJNO, West Palm Beach, holds the same post with WINX. His staff includes Helen K. Mobberley, formerly with the NBC staff in Washington, Commercial Manager; Robert Callahan, also formerly of the local NBC, Musical Director; Ralph E. Cannon, designer, builder and Chief Engineer of KFDA, Amarillo, Tex., Chief Engineer; Pete McEvoy, News Editor, and Jack B. Creamer, Continuity and Publicity Director.

The Program Department includes Anson S. Carpenter, production; Elain Shreve, traffic; Sam Lawder, Charles Murphy, Leonard Meakin, Maj. Robb and Milton Shoemaker, announcers. The engineering staff includes Ross Beville, Henry Meisinger, Blair Jones and William Brubaker. In the Commercial Department are Ethel Davis, C. Merritt Trott, Frances McKeown, Douglas Hall and Paul Heller.

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It is reported by Leonard Lyons in the syndicated column, "The New Yorker" that "Senator Mead wants to recommend Louis Ruppel for the commissionership in your Federal Communications Commission. Ruppel, now publicity director for C.B.S., is rated one of the most efficient men in radio."

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RADIO LAWYERS PREPARE XMAS GRIDIRON

The following notice in keeping with the holiday season was served on members of the radio bar by Louis G. Caldwell, noted far and wide for his hospitality and wit:

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Before the

FEDERAL COMMUNICATIONS BAR ASSOCIATION

A Quasi-Legal Tribunal

In the Matter                    )  
      of                                )  
Herbert M. Bingham, et Uxor)   ORDER TO SHOW UP

NOTICE OF HEARING

Please take notice that on Sunday, December 22, 1940, at the hour of 5 P.M. and thereafter until the game is called for darkness, a hearing will be held at the home of the undersigned at 2900 Cleveland Avenue, N.W., Washington, D.C., for the following purposes:

1. To note the expiration of the term of office of Philip J. Hennessey, Jr., Esq., retiring president of the Federal Communications Bar Association, and to deplore the fact that, notwithstanding his campaign pledges, hearings before the FCC have become even more rare than they were before he took office;
2. To determine whether the recent election of Herbert M. Bingham, Esq. to the presidency of said Association can possibly contribute to improving the situation or otherwise meet the statutory requirement of public interest, convenience or necessity,

and such other lawful purposes as the guests may deem meet, including discussion of the issues in an appropriate forum at the tea-table and/or in the cocktail lounge.

You are hereby requested

- a) to be present,
- b) to file your appearance (R.S.V.P.) by addressing it to the undersigned, and
- c) entirely at your option, to accompany your appearance with a brief statement of reasons in support of the position you intend to take in oral argument.

This proceeding will be exempt from the requirements of the Walter-Logan bill. Furthermore, anyone detecting any representative of the Attorney General's Committee on Administrative Procedure making notes about members of the Association will please report to the management.

(Signed) LOUIS G. CALDWELL

(My commission expired three years ago)

2900 Cleveland Avenue, N.W.  
Washington, D. C.

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 : : : TRADE NOTES : : :  
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Station WCAP at Asbury Park, N. J., will remain silent on Christmas Day.

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Glenn W. Payne, veteran NBC commercial engineer, has been appointed Budget Officer. Mr. Payne has been with NBC since the company was formed.

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A thirty-day tryout is now being made by the new 50 KW Westinghouse International Station recently moved from Pittsburgh to Hull, Mass.

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R.C.A. Communications, Inc., has been granted authority by the Federal Communications Commission to communicate with the Government of Greenland, Godhaven and Julianehaab, Greenland, for a period not to exceed three months.

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A new 250 watt daytime station on 680 kilocycles will be built at Butler, Pa.

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Station WINN, Louisville, Kentucky, is the latest affiliate of the National Broadcasting Company.

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The Federal Communications Commission has repealed existing sections 8.22 and 8.23 of the Rules Governing Ship Services, effective March 1, 1941, inasmuch as the definition of "ship service" which becomes effective on that date, will conflict with existing sections 8.22 and 8.23 defining "public ship service" and "private ship service" respectively.

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The RCA Manufacturing Company will use radio and national magazines to inform radio users of the necessity of having their automatic push-button receivers readjusted next March, when all frequencies above 730 kilocycles are to be re-allocated to conform to the North American Regional Agreement.

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The following applications of attorneys to practice before the Federal Communications Commission have been approved:

William J. Anderson, Pittsburgh, Pa.; H. Lee Boatwright, Jr. David W. Byron and Levi H. David, all of Washington, D. C., and Bernard A. Grossman and Joseph Trachtman, both of New York City.

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## TRAMMELL MAKES MANY CHANGES

Increased emphasis on the public service broadcasting activities of the National Broadcasting Company was announced by Niles Trammell, President, when general supervision of policies and developments in this field was given to Dr. James Rowland Angell, who now, in addition to his previous duties, becomes NBC Counsellor for Public Service programs. Included in this category are all talks, religious, educational, agricultural, and children's programs, as well as others of a public service character.

Mr. Trammell also announced a realignment in the artists service work in which the NBC Artists Service was discontinued and the NBC Concert Service formed. George Engles, Vice-President, was placed in charge of the Concert Service, which will handle the management, sale, and promotion of all artists appearing in the concert and operatic fields. The radio talent section of the former Artists Service was transferred to the Program Department of the company.

Phillips Carlin was appointed to head the Red Network as Program Manager, and William Hillpot was appointed Blue Network Program Manager.

A new Program and Talent Sales Division of the Program Department was created. Miss Bertha Brainard becomes Manager of this new division. She will supervise all booking of artists for radio, motion picture and personal appearances.

A Central Booking Office with Miss Helen Shervey as Manager will schedule all network and local programs under the direction of the Red and Blue Program Managers. Charles A. Wall, of the Treasurer's office, has been appointed Business Manager of the Program Department.

The New York Production Division has been expanded. Wilfred Roberts continues as Manager.

A Music Division of the Program Department has also been established with Samuel Chotzinoff, Director of Serious Music, as Manager. The Musical Director, Dr. Frank Black, and Leo Spitalny, contractor of the house orchestra, will report to Chotzinoff.

A Public Service Division of the Program Department has been established with Walter Preston, Jr. This division will include Womens and Children's Activities, Religious Broadcasting and Educational Broadcasting.

A Director of Talks is also established to coordinate with the managers of the Red and Blue Networks all talk programs of the government, those of controversial nature, political character and forum discussions.

Daniel S. Tuthill, formerly Assistant Managing Director of the Artists Service Department will be Assistant Manager of the division, handling contracts and management. Douglas Meservey becomes Assistant Manager in charge of sales.

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