

# HEINL RADIO BUSINESS LETTER

2400 CALIFORNIA STREET

WASHINGTON, D. C.

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## FCC PRESS HEARING RECESSES UNTIL WEDNESDAY

After only two days of testimony, the Federal Communications Commission late Thursday recessed the hearing on newspaper control of radio stations until 10 A.M. Wednesday.

Highlights of the hearing for the two days were:

The FCC denied a motion by the American Newspaper Publishers' Association to halt the inquiry on the ground that the Commission lacked jurisdiction.

A similar plea by the Newspaper Radio Committee was denied.

FCC witnesses testified that during 1940, some 214 newspaper stations made a profit while 68 operated at a loss.

At the outset of the hearing when Attorney Hanson was trying to challenge the authority of the Commission to hold the investigation, Chairman Fly said: Please don't interrupt us further. We are going to proceed with the hearing. You may file your objections at any time."

"Then I'll file them right now", said Hanson angrily, and he handed a brief to the Commission secretary.

"Your powers", said Hanson in his brief, "do not embrace authority to adopt any policy or rules the purpose of which is to prohibit persons engaged in the newspaper publishing business from operating radio stations. Being without power to adopt any such policies or rules you are without power to conduct an inquiry for the purpose of determining whether or not you should adopt such a policy or rules."

In a formal order denying Mr. Hanson's motion, the Commission stated that "with the recent advent of frequency modulation (F.M.) broadcasting this question has taken on an increased importance." It was added that out of 116 applications for F.M. licenses, 45 were filed by newspaper interests, confronting the Commission "with the necessity of determining whether or not the granting of F.M. licenses to such interests will serve the public interest, convenience or necessity." The Commission's duty to act on these applications, it was pointed out, "carries with it the duty to determine the qualifications of the applicants."

Citing court decisions in support of his position, the counsel for the newspaper publishers said:

"There is no statutory authority empowering the Commission on its own motion to make general classifications of persons

otherwise qualified under the statutes for the purpose of laying down a policy or adopting rules either for the purpose of prohibiting persons belonging to a certain class from holding licenses or limiting the number of persons within a certain class who may hold licenses."

Mr. Hanson declared that the questionnaire which the Commission sent out to publishers throughout the country in preparation for these hearings "is nothing more nor less than an impartial effort on your part to inquire into the newspaper publishing business, the business policies of newspapers, the editorial practices of newspapers, the promotional activities of newspapers, the news policies of newspapers, the nature of the work performed by newspaper employees and the business connections of newspapers, over none of which does this Commission have any authority whatsoever."

Mr. Hanson said the Commission's own General Counsel had held that the Commission had no authority to take up the question of whether it was for or against the public interest for newspapers to operate stations.

Exhibits showed that newspapers or their employees or stockholders had an interest in 298 standard broadcast stations, including 243 in which they owned an interest of 50 percent or more.

Another exhibit purported to show that the number of stations in which newspapers or their employees or stockholders had interests increased from 85 in 1931 to 298 as of June 30, 1941.

Mr. Hanson told reporters that four persons he had advised not to appear in answer to subpoenas were Edwin S. Friendly, business manager of the New York Sun; Lt. Comdr. James G. Stahlman of the Nashville Banner, former publisher of the Publishers' Association and now on active duty with the Navy; Arthur Robb, editor of Editor and Publisher, newspaper trade paper, and William A. Thomson, Director of the Bureau of Advertising of the Publishers' Association of New York.

The FCC developed at the opening session of the hearings, a statistical background on the number of newspapers interested in broadcasting outlets and other pertinent figures.

The Commission learned from figures and charts offered in evidence that advertisers spent an estimated \$545,000,000 on newspapers and \$200,000,000 on radio last year.

The total circulation of daily newspapers in the United States, the Commission was told, increased from 29,080,323 in 1922 to 41,009,258 in 1941, although the number of daily papers decreased from 2,033 in 1922 to 1,877 at the close of 1940.

The figures showed that during the same 19 years the number of broadcasting stations increased from 30 to 882 and the number of radio receiving sets from 400,000 to 50,100,000.

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Chairman Fly asked whether there were estimates of how many of these receiving sets were in actual operation a good part of the time, pointing out that some households might own several, and automobile sets were included. Allen W. Saylor of the Commission's research staff said information on this subject would be presented later.

Another witness Elmo Roper, a research expert for the Fortune Public Opinion Service, introduced the results of recent polls intended to develop the popularity of radio and newspapers, respectively, as sources of news.

Mr. Roper said, in answer to a question, that a poll he conducted on the last presidential election was only one-half of 1 percent off in predicting the popular vote. Analyzing public opinion samples on the newspaper-radio news questions, he said:

"They show without question that the radio has come up as a source of news. And we know that people think, rightly or wrongly, that the radio gives them news more quickly."

The polls established beyond question, in his opinion, that "radio increases as a source of news as you go down the economic ladder and newspapers increase as you go up." He point to tables in which persons of varied economic status were interviewed.

Harold Hough, Chairman of the Newspaper-Radio Committee, a group of the interests concerned in the Commission's inquiry, issued a statement expressing disappointment that the Commission had refused, at the outset of the hearings, to consider the question of whether it had power to take up the issue involved.

Differences and similarities between radio and newspaper methods of present news were discussed Thursday at the FCC as the Commission continued its inquiry into newspaper ownership of radio stations.

Mitchell V. Charnley, Professor of Journalism at the University of Minnesota, pointed out that the "ear audience" listening to radio news-broadcasts included many living room groups, with the whole family addressed. This, he said, had led to certain taboos on radio which newspapers did not observe. Some stations, he said, never use the word "smoke", because it is objectionable to many persons.

Necessarily, Prof. Charnley said, radio news is briefer and less complete than accounts in newspapers. Both media of news, he added, must select a comparatively small portion of the many thousands of words a day they receive from press associations and local reporters, because of the space limitation which both must meet.

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## TAXES PUT ON RADIO TIME SALES

Taxes on "net time sales" of radio networks and stations above \$100,000 a year, were written into the defense tax bill reported by the House Ways and Means Committee this week.

The bill also carries excise levies on radios and radio messages.

As the "net time sales" of radio broadcasting, the Committee voted to impose this tax: on less than \$100,000 income, no tax; from \$100,000 to \$500,000, a 1 percent tax; from \$500,000 to \$1,000,000, a 10 percent tax; above \$1,000,000 a 15 percent tax.

The Committee will ask the Rules committee for a rule "protecting" the bill against amendments from the floor, which means if the rule is adopted by the House, that only changes suggested by the Ways and Means Committee can be considered.

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## BILL PERMITS SUSPENSION OF RADIO "SABOTEURS"

The House this week passed and sent to the Senate a bill giving the Federal Communications Commission power until July 1, 1943, or until the end of a national emergency, to suspend radio operators in the U. S. Merchant Marine, and to refuse licenses to applicants believed to be subversive.

The bill would give the FCC power to inquire into the "capacity, experience, habits of life and character" of applicants for licenses.

Operators already in the service who are believed to be subversive may be immediately suspended but have the right to appeal and a hearing before the Commission.

The bill defines "subversive" activities to include membership in the Communist Party, German-American Bund, or advocacy of overthrow of the government.

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B. F. McClancy, NBC Traffic Manager, is leaving the National Broadcasting Company on August 15 to accept an executive position with the Eaton Manufacturing Company, Cleveland, Ohio, makers of precision parts.

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## FLY EXPLAINS PURPOSE OF PRESS INQUIRY

Following are excerpts from the opening statement of Chariman James L. Fly at the newspaper-radio hearing:

"The general question of joint control over newspapers and broadcasting stations has been a topic of interest, both in Congress and elsewhere, for a long time. . . .

"The importance which has thus been continuously attached to the problem and the further fact that the Commission is now faced with a group of newspaper applications for FM facilities, have caused us to conclude that a general inquiry is advisable. Out of 99 applicants for FM licenses as of June 30th, 43 are newspaper interests. These newspaper applications raise the common question of the extent to which and the circumstances in which grants to newspapers will serve the public interest. We could, of course, have considered the question separately as to each of the 43 applicants. The proper dispatch of business, however, as well as the need to achieve that degree of uniformity, consistency, and informed judgment properly expected of administrative bodies, clearly indicate the advisability of these general hearings.

"I would like particularly to emphasize that the purpose of these hearings is to inform the Commission. No conclusions or opinions have been formulated by the Commission. The facts and circumstances which will be developed in these hearings may lead us to the conclusion that no rules or policies whatsoever need to be developed. Or they may lead us to the conclusion that recommendations to Congress should be made, and the problem handled by way of legislation. Or we may conclude that certain policies or regulations can and should be developed within the jurisdiction already committed to us by Congress.

"The Commission believes that discussion of its jurisdiction under existing law to take action with respect to joint control of newspapers and radio stations would be premature at this time. The jurisdictional question itself must be determined partly in the light of the facts and circumstances which the hearings develop, and argument should be based on concrete rather than supposititious proposals. The Commission will afford ample opportunity for the expression of views of the jurisdictional question if and when it contemplates the issuance of any rules.

"I have emphasized the fact that the sole purpose of these hearings is to inform the Commission. I want to add, with equal emphasis, that the Commission is determined to be informed. Our jurisdiction to formulate rules will be determined subsequently; our jurisdiction to make a study of the problem we think clear, as stated in our decision released on the petition filed by the American Newspaper Publishers' Association. Government commissions have a duty to inform themselves of problems pertinent to the field in which they function. The public and the Congress would rightly criticize us for passing over without consideration problems basic

to the welfare of the radio industry and the public which it serves. It is for just such reasons that Congress has empowered this Commission to hold hearings concerning any question which may arise under the Act which we administer, and to require the attendance and testimony of witnesses and the production of relevant documents and to pay the attendant expenses of such proceedings. Furthermore, it is wholly in accord with the traditions and institutions of our form of government that we should carry on such a study, and it has been familiar practice at least since the establishment of the Interstate Commerce Commission half a century ago."

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### NEW RADIO TAXES APPROVED

The House Ways and Means Committee Tuesday night gave final approval to the \$3,529,200,000 defense tax bill.

Nearing completion of the \$3,500,000,000 tax bill, the House Ways and Means Committee formally approved 12 new or increased excise levies to raise approximately \$325,000,000 annually.

The so-called "hidden" taxes officially incorporated into the bill were, in addition to tax on automobiles, tires and tubes, imposition of a flat 5 percent tax on telephone bills, \$43,000,000; lower exemptions and increased rates on existing telephone and telegraph toll taxes to raise \$27,600,000; commercial trucks and automobiles, 2½ percent to 5 percent, \$16,100,000; imposition of a 5 percent tax on total bills in cabarets, \$1,500,000; reduce exemptions in club dues, \$2,800,000.

Ten percent tax on phonographs, records and musical instruments, \$15,000,000; increase tax on radios from 5½ to 10 percent \$9,400,000; increase tax on mechanical refrigerators from 5½ to 10 percent \$21,000,000; and imposition of a tax of 2 cents per 1,000 on matches, \$8,200,000.

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Declaring that Mayor LaGuardia's broadcast over WNYC, the city station, constituted the "most overworked commercial on the air today", Vice Chairman Joseph T. Sharkey of the City Council criticized the Mayor and his third-term backers Wednesday for using the city station to announce his candidacy at the Fall election. Mr. Sharkey, leader of the Democratic majority in the Council, said the city station was "airing nothing but Fusion medicine shows" at a cost of \$125,000 yearly to the taxpayers. He threatened Council action to limit the station activities.

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## 300 KC. ASSIGNED TO DEFENSE PURPOSES

So that adequate protection through the use of radio communication may be given the many thousands of military pilots undergoing training to serve the nation's augmented air force, the Federal Communications Commission is notifying amateurs that 300 kilocycles in one of the bands normally allocated to amateur use will be assigned for this important national defense purpose.

The frequencies in which amateur operation will give way to the military are from 3650 to 3950 kilocycles. To cause the least interference to amateurs, these frequencies will not be immediately withdrawn, but will be transferred by degrees between September and March next.

In order to provide the widest possible development of amateur activities, the Commission intends to rearrange the amateur allocations so as to make additional frequencies within the remaining amateur bands available for amateur radiotelephone. In that way, although the amateurs temporarily vacate some ether space, opportunity will remain for their valued service in developing all forms of radiocommunication.

"There is under way in this country a vast plan for the training of many thousands of additional military aircraft pilots at a large number of new air fields located throughout the United States", the FCC explained. "An essential part of their training involves a large-scale use of radio communication. Amateurs are well aware of the congestion existing throughout the frequency allocation know that in the medium-high frequencies the congestion has been acute for years.

"It is the desire of the Federal Communications Commission to cause the least inconvenience to existing services and to divert for any defense requirements the minimum number of channels possible. The Commission is also aware that the amateurs maintain some of their most important services in the band 3500-4000 kilocycles but the new pilot training program is a vital component of the defense plans of the country, and from the considerations of the equipment available for it and the number of frequencies required, no other portion of the spectrum is capable of accommodating this need."

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Commercial television by the National Broadcasting Company, in operation only since July 1, has already so increased the work and staff of the NBC Television Division, under Alfred H. Morton, Vice President in Charge of Television, that it has been necessary to seek new quarters. All units of NBC Television are being moved from the main NBC studio building in the RCA Building to the Fourth Floor of the Sixth Avenue Building.

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## CENSUS REPORTS ON RADIO MAKERS' SALES

The following report was released this week by the Census Bureau:

"Approximately one-half, 51.0 percent, of the radios, radio tubes, and phonographs produced in the United States in 1939 were sold to wholesalers and jobbers; one-fifth, 18.6 percent, went direct from point of production to industrial, commercial, professional, and institutional users; and 14.0 percent were sold direct from plants to retailers for resale. In addition, 5.2 percent of the total 1939 output was produced for export direct from plants to buyers in other countries. Sales through selling organizations owned and operated by manufacturers amounted to 6.5 percent (5.1 percent through wholesale branches and 1.4 percent through retail outlets).

"This industry, as reported by the Census of Manufactures, consisted of 224 establishments with value of products for the year 1939 amounting to \$275,870,165 (preliminary figure). Of these establishments, 217, with products valued at \$270,693,254, reported an analysis of their sales. Sales and intra-company transfers of these 217 plants amounted to \$270,614,000. Sales may differ from value of products for several reasons: (1) Receipts for contract work are included in value of products but not in sales; (2) sales are affected by changes in inventory between the beginning and end of the year; (3) in a few instances, sales were distributed on the basis of selling price rather than value of products; and (4) some plants in the industry purchase and sell goods which they do not process. The latter, included in sales but not in value of products, amounted to \$8,435,000 in 1939."

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## FTC HITS S-W DIATHERMY CLAIMS

The Federal Trade Commission, in complaints issued against two Los Angeles firms, charges misrepresentation and false advertising in the sale of short wave diathermy devices for treating diseases. The respondents are Nolan B. Stadley, trading as Sterling Appliance Co., distributor of the "Sterling Short Wave Diathermy", and George S. Mogilner and James Walker, trading as Merit Health Appliance Co., selling the "Merit Short Wave Diathermy".

In both cases the United States District Court for the Southern District of California recently restrained the respondents from disseminating certain advertisements of their products pending issuance of Federal Trade Commission complaints and their final disposition. The court actions were taken upon application of the Commission under the amendment to the Federal Trade Commission Act providing injunctive relief in cases involving advertised commodities the use of which may be injurious to health.

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## FCC GRANTS FM; CONDITIONS CBS GRANT

Construction permit for a new FM broadcast station, to serve the Lansing, Mich., basic trade area, was granted this week by the Federal Communications Commission to WJIM, Inc., of that city. The proposed station is authorized to use 47,700 kilocycles to cover an area of 3,800 square miles with more than 250,000 population. The proposed antenna location is the Olds Tower. The applicant now operates standard broadcast station WJIM, affiliated with the Michigan Radio Network.

In connection with grant to Columbia Broadcasting System, Inc., for a Class C FM station at Hollywood, Calif., (announced July 16), to use 43,100 kilocycles for a service area of 38,000 square miles embracing San Diego and Bakersfield, the Commission stipulated that prior to issuance of construction permit the applicant shall obtain approval by the Commission of the exact coverage pattern and shall submit proof satisfactory to the Commission that the applicant's lease agreement of December 3, 1940, with Mount Wilson Hotel Company, is so modified as to eliminate the provisions therein pertaining to exclusivity of use for broadcasting purposes of property on Mount Wilson controlled by the lessor.

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## FCC ESTABLISHES "FLIGHT TEST STATIONS"

The Federal Communications Commission this week established a new class of radio stations called "Flight Test Stations" in the aviation service to provide facilities for communication with aircraft undergoing flight tests.

Adopted modification of Ship Rules (Part 8) and Rules Governing Coastal and Marine Relay Services (Part 7) necessitated by developments in maritime telephone service on the Great Lakes, communication between ships and Government stations, interference caused by improperly adjusted ship radiotelephone transmitters, and misinterpretation of certain regulations. Sections 7.30; 7.38; 7.61; 7.62; 7.77; 7.90; 7.93; 7.96; 8.54(f); 8.91; 8.98; 8.114; 8.116; 8.132; 8.237; 8.108).

Adopted amendment to Section 13.61'a) of Rules Governing Commercial Radio Operators to require operators of commercial high frequency and television broadcast stations to hold radiotelephone first class operator license as in the case of standard broadcast.

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## ILLNESS OF MISSIONARY DIAGNOSED BY RADIO

A battle against infantile paralysis that took him half-way around the world, after his illness had been diagnosed over the radio thousands of miles away, is ending in victory for the Rev. James Harold Shultz, 36-year-old missionary of the Seventh Day Adventist Church, who has lived since 1933 in the wilds of Tibet.

Seized by a strange illness, the Rev. Mr. Shultz wrote a letter to his brother Gerald, who is employed at Washington Sanitarium, Takoma Park, Md., explaining the symptoms.

Gerald Shultz took the letter to Dr. Robert Hare, chief of the medical staff of the sanitarium, and talked the case over with Dr. Hare and Dr. C. H. Wolohon. The doctors said: "It looks like infantile paralysis. Tell Harold to come home where he can get the proper treatment."

Gerald knew of one quick way to communicate with his brother. The missionary is an amateur radio operator. In Tibet he had set up his own transmitter, powered by two automobile batteries and a motor generator. Each Monday night at 8 o'clock, from Tibet, he conversed with a National Broadcasting Co. radio engineer in New York. Gerald was in New York, standing by the engineer's side, on the Monday night following his conference with the doctors.

The atmosphere was unusually clear that night, so clear that the engineer and the Rev. Mr. Schultz could talk by radio telephone, rather than by code. Gerald took over the phone after contact had been made.

"Harold", he told his brother in Tibet, "Dr. Hare and Dr. Wolohon say you have infantile paralysis. Do the best you can for yourself with what you have in the clinic. But come home as soon as you can."

The message from New York was beamed over the ether waves southward through the South Pole, and then sped northward to Tibet, a distance estimated at 17,000 miles.

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NBC Research Division has just completed an analysis of the choice of media by the nation's 50 largest advertisers. This analysis covers their gross expenditures in 1940 in the three principal media - network radio, magazines and newspapers. In compiling the 50 leaders, the statisticians omitted 5 liquor advertisers which are not acceptable as network clients. The 50 leading advertisers - all spending more than \$1,000,000 and know best the relative values of various media - spent 12.5% more for network time than they spent for newspaper space, and 27.3% more for network time than they spent for magazine space. Of the 50 advertisers 40 used network radio. Each of these 40 advertisers also used magazines and newspapers, but spent 27.3% more for network time than for newspaper space and 51.9% more for network time than for magazine space.

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## PAUL KLUGH, FORMER ZENITH V.P., DIES

Paul B. Klugh, retired Vice President of the Zenith Radio Corporation, of Chicago, and Executive Chairman of the National Association of Broadcasters from 1924-1927, died last week in Yellowstone Park, Wyoming, while on an extended vacation trip. Mr. Klugh, who was 62 years old, lived at 20 Prospect Hill Avenue, Summit, N. J. and was touring the West with his wife at the time of his death.

As Executive Chairman of the National Association of Broadcasters, Mr. Klugh in 1924 directed the first fight of broadcasting stations against the demands of the American Society of Composers and Publishers for fees for the use of copyrighted music, a controversy which broke out again January 1st of this year. In 1924 broadcast station representatives appeared before the Senate Patents Committee to support a bill designed to relieve them of payment of copyright dues on broadcast music. Altogether seven bills to amend the 1909 copyright law were introduced in Congress but all failed of passage. In 1926, Mr. Klugh stated that continuation of broadcasting was doubtful unless music copyright owners agreed on reasonable fees and asked for legislation fixing them. In 1926, after two years of controversy, Mr. Klugh again supported a bill designed to fix a flat fee for broadcasting all copyrighted music, on the grounds that such a fee would also include benefits to non-ASCAP members.

Mr. Klugh served for a number of years as Chairman of the Annual Trade Shows and Industry banquets of the radio industry.

A Native of Detroit, Mr. Klugh lived in Chicago until six years ago when he took up residence in Summit, N.J., a year following his retirement as Vice-President of Zenith Radio Corporation. At the time of his death he was a Director of the Corporation and of the Radio Manufacturers' Association.

Surviving are his wife, Mrs. Rhoda Corwin Klugh and two daughters, Mrs. Irvin G. Gaverick of Chatham, N.J., and Mrs. Gordon P. Stearns of Rohoboth, Mass.

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