

# HEINL RADIO BUSINESS LETTER

2400 CALIFORNIA STREET

WASHINGTON, D. C.



RECEIVED

OCT 27 1941

FRANK E. HEINL

## INDEX TO ISSUE OF OCTOBER 24, 1941

Hanson Again Argues FCC Without Press Probe Power.....	2
Proposed Denial Of Radio Burglar Alarm Applications.....	4
OPM Radio Industry Committee Authorized.....	5
Program Costs Up 24%.....	6
Radio Manufacturers Rescind Foreign Competition Action.....	7
FCC Revised Rules Assure Fair Competition, Says MBS.....	8
See New IB Organization As Further Jab At NAB.....	9
Action Of The Federal Communications Commission.....	10
Trade Notes.....	11
Trammell Again Explains NBC Stand Re BMI.....	12

No. 1366

## HANSON AGAIN ARGUES FCC WITHOUT PRESS PROBE POWER

Hammering away at his contention that the Federal Communications Commission has no power to consider or to adopt a policy by which newspapers may be differentiated for the purpose of assignment of radio facilities or from disqualification from engaging in broadcasting, Elisha Hanson, counsel for James G. Stahlman, publisher of the Nashville Banner, in his appeal to the U. S. Court of Appeals for the District of Columbia, states that therefore the Commission has no power to initiate an investigation to consider the adoption of such a policy.

The summary of Mr. Hanson's argument is that:

"Order No. 79 (The FCC order for the inquiry into newspaper ownership of radio stations) asserts such power. Its validity must be determined solely by its terms and the Order shows on its face that it exceeds the express or implied powers conferred upon the Commission by Congress under the Act.

"The discretion of the Commission is limited. In each case it is under a duty to pass upon a particular application or conflicting applications for the same facilities as measured by the statutory standard of 'public interest, convenience or necessity'.

"The Commission cannot add standards at variance with that standard nor can it increase the limitations upon the holding and transfer of licenses as they are set forth in Sections 310 and 311 of the Act.

"The broadcasting field is open to everyone, provided there be an available frequency without interference to others and the applicant can show competency, adequacy of equipment and financial ability.

"Order No. 79 oversteps these limits. It singles out as a special class for discriminatory treatment the applications of persons associated with newspapers.

"This would constitute an injurious discrimination in violation of the Fifth Amendment to the Constitution of the United States. Such a discriminatory policy would also be in conflict with the nondiscriminatory policy written by Congress into the Act.

"Under the Sanders decision affiliation with a newspaper cannot be made a separate and independent element - an inoperative fact - in passing upon applications. The test is not the mere fact of joint control of newspapers and radio stations, or whether there



is competition or monopoly, but what will best serve the interest of the public. No provision of the Act or rule of law prohibits broadcasting by the owner of a newspaper.

"Order No. 79 is not an assertion of authority to weigh joint control of a newspaper and radio station merely as one circumstance governing particular applications in relation to the considerations enumerated by the Supreme Court. On the contrary the said Order places applicants in the newspaper field in a separate category for preference or incapacitation. This is in substitution rather than in fulfillment of the policy clearly expressed by Congress.

"How far Congress could legislate on the matters hereinabove mentioned is not before this Court in this proceeding grounded on Order No. 79. The Commission cannot usurp the legislative function of making a choice between a policy of favoring integration of newspapers and radio stations and a policy of compelling divorcement of the two forms of enterprise.

"Since Order No. 79 exceeds the Commission's powers it is without warrant of law and the subpoena issued and served upon appellant pursuant thereto is a nullity.

"The Commission can derive no aid from the broad terms of Section 403 because Order No. 79 goes beyond the Act itself. The Sanders and Tri-State Broadcasting Corporation cases remove Order No. 79 from the bounds of any matter within the authority of the Commission or any question which may arise under the Act and in relation to its enforcement.

"The investigation was not ordered by the Commission for the purpose of making recommendations to Congress for additional legislation as provided in Section 4(k) of the Act. The face of the Order shows that its sole purpose is to conduct an inquiry to lay the basis for the adoption of a policy to be issued by and to be applied by the Commission for its own guidance.

"Even if Section 4(k) is deemed to be involved herein the Commission can only demand information relevant to a power conferred upon it by Congress. The Commission's powers of investigation by testimonial compulsion are not as broad as the regulatory powers of Congress itself in the field of communications. By falling outside the Act Order No. 79 necessarily falls outside Section 4(k).

"In any event the investigation initiated by Order No. 79 is a general fact-finding inquiry which exceeds the powers of the Commission.

"The cases of Harriman v. Interstate Commerce Commission, 211 U.S. 407 (1908) and Federal Trade Commission v. American Tobacco Company, 264 U.S. 298 (1924) support the conclusion that no matter how broad the terms of the investigatory provisions of the statute may be, an investigation by an administrative agency either on its own motion or pursuant to Congressional resolution must be ancillary

10/24/41

to a lawful purpose embraced by the powers granted in the statute.

"In reaching for the power claimed by Order No. 79, the Commission, the creature of Congress, seeks to become greater than its creator contemplated."

X X X X X X X X X

#### PROPOSED DENIAL OF RADIO BURGLAR ALARM APPLICATIONS

Applications by the No-Bel Radio Burglar Alarm of San Francisco to construct two experimental radio stations at that city and Oakland, Calif., to experiment with a radio burglar alarm, have brought proposed denial by the Federal Communications Commission. The applicant sought to use the frequencies 1658 and 2466, with power of 50 watts, for this purpose.

In its proposed findings, the Commission concludes:

"1. The applicant has not shown itself technically and financially qualified to conduct an experimental program which could be expected to contribute to the progress of the radio art or to accomplish the objectives set forth.

"2. Since the applications involve the use of the frequencies assigned to police radio systems located in the proposed area of operation, mutual objectionable interference would be expected to result at times of simultaneous operation.

"3. Since the proposed operation could not be conducted as outlined without the full assent and cooperation of the police departments which would be affected thereby, and there is no indication that these requisites have been obtained or are obtainable, from responsible officials, the Commission is unable to find that applicant has made a sufficient showing as to the adequacy of facilities for conducting the proposed program of experimentation.

"4. Service of the character herein proposed is available through existing wire facilities, and there is no showing that the proposed radio alarm system will produce any substantial advantage over such facilities.

"5. Public interest, convenience or necessity will not be served by the granting of these applications."

X X X X X X X X



## OPM RADIO INDUSTRY COMMITTEE AUTHORIZED

Establishment of a Radio Industry Defense Advisory Committee has been authorized by the Office of Production Management and the Department of Justice, the Radio Manufacturers' Association reports.

OPM will hold an industry conference in Washington, to receive nominations and organize the industry committee, on Thursday, October 30. Invitations have been sent, according to the information from OPM to RMA, to a large selected list of radio companies, representative of all radio manufacturing groups, including sets, tubes, parts and accessories, transmitting and other radio apparatus. The organization of the industry committee on October 30th is being arranged by Sidney J. Weinberg, Chief of the OPM Bureau of Clearance of Defense Industry Advisory Committees. The government presiding officer who has been appointed is Jesse L. Maury, Chief of the Electrical Products and Consumers' Durable Goods Branch of the OPM Commodity Section who will act as Chairman of the Industry Committee.

The Radio Industry Committee is the nineteenth established by OPM for major industries and is purely advisory. The automobile, electrical, rubber, shoe, hosiery, paper and other industry defense Advisory Committees already have been organized, all with many subcommittees, or panels, such as the "Refrigerator Panel" of the Electrical Industry. Attendance and participation in the OPM radio industry conference on October 30th will be restricted to the radio companies sent invitations, and this OPM list has not been announced.

Production and allocation problems, both for defense and civilian purposes, together with conservation, simplification and efficient utilization of industry facilities, are among problems designated by Attorney General Biddle for consideration of the Radio Industry Committee.

A meeting of the RMA Priorities Committee will be held in Washington on October 29th, prior to the industry meeting called by OPM. The Priorities Committee will be continued for action on immediate industry problems and also liaison with and assistance to the OPM industry committee.

X X X X X X X X X X

Export procedure and applications for export licenses are now being handled by the Economic Defense Board, and export license applications, other than for munitions, should be submitted to the Chief, Office of Export Control, Economic Defense Board, Washington. This agency now handles all export matters except those of the Army and Navy Munitions Board.

X X X X X X X X X X

## PROGRAM COSTS UP 24%

At the start of the broadcast season of 1940-41, Variety estimates on program costs (talent, music, arrangements, royalties, etc.) as distinct from time expenditures reveal that Sunday night on the three coast-to-coast webs, NBC, CBS and Mutual, represents a \$137,000 "Free show" to the Nation. This total outlay for performances greatly exceeds that of any other night of the week.

Inclusive of daytimers the aggregate cost of commercial network entertainment has reached a new high of \$671,000 a week for programs, as such. This figure when compared to the expenditures prevailing at the height of the 1940-41 season represents a boast of 24%. Aside from the increase in the total number of network shows the relatively big margin may be attributed to the replacement of the inexpensive quiz-audience participation show by considerably more expensive variety and dramatic programs.

The estimated cost of some of the leading network programs for 1941-42 (production expenses, inclusive of actors, musicians, writers, directors, royalties, prizes, etc.) are:

Fred Allen, \$13,000-14,000; "Amos 'n' Andy", \$7,500; Jack Benny, \$18,500; Edgar Bergen, \$11,000-12,000; Ben Bernie, \$7,500; "Big Town", \$8,500; Major Bowes, \$16,000; Burns and Allen, \$7,500; Bob Burns, \$6,000; Eddie Cantor, \$11,000; "Cavalcade of America", \$5,500; "Spotlight Bands", \$10,000; Ford Concerts, \$11,000; Gillette Boxing Bouts, \$175,000; Helen Hayes, \$7,500; "Hollywood Premiere", \$5,000; Bob Hope, \$10,500; "Information Please", \$8,500;

Also, "Kraft Music Hall", \$11,000-12,000; Kay Kyser, \$7,000; "Lux Radio Theatre", \$8,500-11,000; "Maxwell House Coffee Time", \$9,500; "Fibber McGee", \$7,500; Metropolitan Opera - Lump sum of \$250,000 paid for season of 16 broadcasts; "Millions for Defense", \$4,500-5,000; "Pause That Refreshes", \$6,000-7,000; Al Pearce, \$8,500; "Prudential Family Hour", \$8,500; "Screen Guild Theatre", \$13,500; Red Skelton, \$5,500; "Silver Theatre", \$6,000; Kate Smith Hour, \$10,000; Phil Spitalny, \$5,500; "Telephone Hour", \$7,500-8,000; "Three-Ring Time" (Milton Berle-Chas. Laughton), \$7,000; "Time to Smile", \$11,000; Rudy Vallee, \$9,500-10,000; Fred Waring, \$12,000; Orson Welles, \$8,000; and Walter Winchell, \$5,000.

X X X X X X X X

Ten awards of \$15 each have been presented by the Columbia Broadcasting System to elementary and secondary school teachers who reported interesting and valuable ways in which the "School of the Air of the Americas" has been used in classrooms. The contest was arranged with the cooperation of the Department of Classroom Teachers of the National Education Association.

X X X X X X X X X X



## RADIO MANUFACTURERS RESCIND FOREIGN COMPETITION ACTION

A bulletin of the Radio Manufacturers' Association dated September 19, 1941, contained a Report on Foreign Competition made by an RMA special Committee, dated September 17, 1941, with a notation thereon that the report had been unanimously approved by the Radio Manufacturers' Association's Executive Committee on September 18, 1941, and a further reference was made to this subject in the bulletin of September 25th.

At a meeting of the Association's Executive Committee, held on October 15, 1941, at which all members present voted in the affirmative except two present and not voting, a resolution was passed rescinding all previous approval action on this report. This act of rescission was approved by the Board of Directors of the Association at a subsequent meeting on the same day, with instructions not to carry out the recommendations or proceed with the subject matter.

The Foreign Competition report urged the Government to clamp down on "the practice of supplying foreign competitors with materials to compete with and destroy the business of bona fide American manufacturers". The action was supposed to have been directed against the Philips Company of The Netherlands, which, having been forced to leave that country, has established itself in Latin-America and is having some of its sets built in the United States.

X X X X X X X X X X

A C O R R E C T I O N

We are indebted to an official of the General Electric Company for the following:

"I feel sure you won't mind a comment on one of the items that appeared in your September 23 issue. On page 9 you state that Station WRUL 'now is the strongest shortwave unit in the Western Hemisphere'. This we believe to be contrary to fact. I am told that WRUL is now operating at 50,000 watts, while WGEO here in Schenectady is operating at 100,000 watts. If you will check the F.C.C. records, I believe you will find that WRUL has never been licensed to operate at more than 50,000 watts.

"I am writing this, not to suggest a correction, but merely in the interests of greater accuracy in the future."

Correct!

FCC says "No. WRUL has never been licensed to operate on more than 50,000 watts."

R. D. H.

X X X X X X X X X X

## FCC REVISED RULES ASSURE FAIR COMPETITION, SAYS MBS

Analyzing the Federal Communications Commission's recent revision of its chain broadcasting regulations, a second "White Paper" prepared by the Mutual Broadcasting System contends that the Commission's order as modified October 11, 1941, has for the first time inaugurated an era of fair and equal competition so that in the future the success of a network will depend not on artificial restraints and unreasonable control over station independence but on its ability to furnish superior service to its affiliate stations, to the public, and to the advertiser.

Mutual's Second White Paper is signed by Fred Weber, General Manager, W. E. Macfarlane, President, and Alfred J. McCosker, Chairman.

"Never again will the public awake to find that a successful and popular program which it has been receiving regularly for weeks or months has suddenly disappeared from the radio dials in the community because another network, exercising arbitrary privileges under a contract, has decreed that the affiliate station must carry another and later program for which it has arranged", the "White Paper" continues. "No longer will there be contraction of additional network service because stations have been forced to cancel programs thus causing the termination of permanent lines providing additional choice of sustaining and commercial programs to those important communities with less than four stations.

"Henceforth an advertiser will be free to make his decision wholly on the merit of the facilities. No longer will it be possible for a network to go to the advertiser and state that the advertiser's purchase of another network at the same identical hour would result in the withdrawal of his program from the air in many important 3-station cities. No more will a network and an advertiser, who, for example, have in good faith entered into an arrangement for a nightly half-hour program and have secured acceptance of the program by the network's affiliates, be subjected to the indignity and the economic loss resulting from having the continuity of the program interrupted one, two, or more nights a week or of having the program completely forced off the air in important 3-station cities, by the action of another network acting under existing option-time contracts and, by threats of litigation or loss of network affiliation, compelling the stations in such cities to accept another advertiser's program (secured, perhaps, by rate concessions and designed largely, if not entirely, to injure the first network and the advertiser who has elected to do business with it).

"The dire prophecies of some of the industry's self-constituted spokesmen are without basis in fact and will never materialize. The Commission's action will tend to promote and not to injure a truly American system of broadcasting. There will be no chaos, no disruption of operations, no deterioration in service, no impairment in cooperation by broadcasters in national defense, no paralysis of freedom of the air, and no danger of government



operation. There will be every incentive toward improvement in service through healthy competition and its encouragement of incentive, ingenuity and resourcefulness in accordance with the American traditions. \* \* \* \* \*

"No one, including Mutual, would go so far as to assert that the revised regulations are without possible defect or that further amendments may not prove necessary in the light of practical experience, although it is doubtful that any major change will be required. \* \* \* \*

"If such contingencies should arise, Mutual will again take steps to bring the need for further amendments to the attention of the Commission."

X X X X X X X X X

SEE NEW IB ORGANIZATION AS FURTHER JAB AT NAB

In one quarter the recent organization of Independent Broadcasters, Inc., at Chicago was regarded as just another evidence of dissatisfaction on the part of stations with the National Association of Broadcasters.

"The National Association of Independent Broadcasters was organized because certain broadcasters felt that the National Association of Broadcasters wasn't doing the job and because they believed that NAB was dominated too much by the networks", a broadcaster commented. "I think you will find that the NIB will be a sort of holding company for Independent Broadcasters, Inc. It is about the same crowd that attended the NIB convention, addressed and encouraged by Chairman Fly at Chicago. IB, Inc., or the "Major Markets Group", as they originally called themselves, has been organized to represent certain commercial interests of the independents which a national association couldn't very well do, such as copyright and ASCAP matters, opposition to super-power, labor unions, and so on. It is really a trade association.

"The NIB can only speak in general and on non-controversial matters for its members, that is to say, presentations to the FCC for the group as a whole, appearances before Congress, and other more or less non-commercial matters upon which the entire group is in accord. It was the original intention that NAB should develop in this manner, but it didn't do so."

Eugene Pulliam of WIRE, Indianapolis, was Chairman and organizer of IB, Inc. at Chicago. Organizational and membership committee chosen was headed by Walter Damm of WTMJ, Milwaukee, and included Henry Slavik, Ronald Woodyard, William O'Neill, Campbell Arnoux; Copyright Committee which met with ASCAP leaders in New York was comprised of Hoyt Wooten, John Gillin, Stanley Hubbard, Ed Craney and Hulbert Taft. On the Super-Power Committee are John Shepard, III, John Kennedy, William Scripps, Ed Craney and Luther Hill.

X X X X X X X X X

It was reported that those assembled in Chicago to organize IB, Inc. represented upwards of 60 stations. There are to be 12 Directors. Stations allied with networks will have equal voting power so that no one network will be able to dominate the organization.

X X X X X X X X X

## ACTION OF THE FEDERAL COMMUNICATIONS COMMISSION

Applications Granted: Modification of license to increase power to 500 watts daytime granted to KVAN, Vancouver Radio Corp., Vancouver, Wash.; now operates on 910 kilocycles, 250 watts daytime only; WRGB, General Electric Co., Schenectady, N. Y., granted construction permit in accordance with provisions of forfeited permit, for television broadcast station with completion date as Dec. 31; W8XAL, The Crosley Corp., Mason, Ohio, granted extension of special experimental authority to international broadcast station W8XAL to operate on 6080 kilocycles, 1 kilowatt night and day; share with WLWO using emission AO and A1, for the period November 1, 1941, to November 1, 1942; WBYN, Brooklyn, Inc., Brooklyn, N. Y., construction permit in part, to install new transmitter (transmitter formerly used by WVFW), increase power from 500 watts, unlimited, to 500 watts night, 1 kilowatt day, unlimited; KFAR, Midnight Sun Broadcasting Co., Fairbanks, Alaska, granted authority to rebroadcast certain sponsored programs from International Station WRCA, on a commercial basis for the period ending December 6, 1941.

Also, W59C, WGN, Inc., Chicago, Ill., granted extension of special temporary authority to operate frequency modulation station W59C commercially on 45900 kilocycles with power of 3 kilowatts, on a temporary basis only for a period beginning Oct. 21, 1941 and ending not later than December 19, 1941, subject to determination of the issues in the hearing on Commission Order No. 79, pending completion of construction; WABA, Agricultural Broadcasting Co., Chicago, Ill., granted extension of special temporary authority to operate a special laboratory transmitter as a relay broadcast station on 39820 kilocycles with power of  $\frac{1}{2}$  watt in order to record on the ground and to rebroadcast over WLS the human voice and the rate of the heart beat, and other scientific data during a free fall in the air prior to the opening of a parachute, for the period beginning October 24, 1941, to not later than November 22, 1941; WEGA, Agricultural Broadcasting Co., Chicago, Ill., granted extension of special temporary authority to operate relay station WEGA with crystal controlled 50 watt transmitter aboard Lockheed Lode-star stratosphere plane, for testing purposes and also to relay to Station WLS information in connection with parachute jumps to be made by Arthur Starnes between Oct. 21, 1941 and Nov. 19, 1941 only.

Applications Received: KVI, Puget Sound Broadcasting Co., Inc., Tacoma, Wash., construction permit to install new transmitter and increase power from 5 kw to 5 kw night, 10 kw day (570 kc.); KABC, Alamo Broadcasting Co., Inc., San Antonio, Texas, construction permit to install new transmitter, changes in antenna system, change frequency from 1450 to 1470 kc., and increase power from 250 w. to 500 w. night, 1 kw day.

X X X X X X X X X



10/24/41

TRADE NOTES

Two more stations are joining the NBC Blue Network within the next two months. They are KTKC, Visalia, California, and WFTC, Kinston, North Carolina.

William B. Bartlett, trading as Champion Battery Co., 549 West Washington St., Chicago, engaged in the sale and distribution of a so-called sales stimulator plan, has been ordered by the Federal Trade Commission to cease and desist from the use of unfair and deceptive acts and practices in commerce. The respondent is also ordered to cease using the word "Champion" to describe his products, or otherwise representing that his products are the products of the Champion Spark Plug Company of Toledo, Ohio.

Two new CBS Sectional Educational Directors have been appointed by Sterling Fisher, Columbia Network Education Director. Lloyd W. Dennis, Program Director at WJSV, CBS's Washington station, is to supervise Columbia's education activities in the East. Robert R. King, of KTSA, Columbia's station in San Antonio, Texas, is the new Educational Director for the Southwest.

A story that a container of acid large enough to burn out the wiring in the control room had been found in the National Broadcasting Building in New York causing a "bomb scare" was declared unfounded by John McKay, Manager of NBC Press Department.

First in a series of awards by Harper and Brothers, publishers of Norman Weiser's "Writer's Radio Theater", has been won by the CBS Kate Smith Hour and Jean Holloway, one of its most prolific dramatic writers.

The contents of the RCA Review for October are: "A Survey of Research Accomplishments with the RCA Electron Microscope", G. A. Morton; "Receiver Control by Transmitted Signal - 'Alert Receiver'", Harmon B. Deal; "A Two-Side Non-Turnover Automatic Record Changer", B. R. Carson; "A Method and Equipment for Checking Television Scanning Linearity", Vernon J. Duke; "A Modern Control Room for a Commercial Radio Transmitter Central", L. E. Fletcher and C. L. Kennedy; "The Development of a Frequency-Modulated Police Receiver for Ultra-High-Frequency Use", H. E. Thomas; "Photography of Cathode-Ray Tube Traces", H. F. Folkerts and P. A. Richards; "A Simplified Television System for the Radio Amateur and Experimenter", L. C. Waller and P. A. Richards; Technical Articles by RCA Engineers.

X X X X X X X X X X X

10/24/41

## TRAMMELL AGAIN EXPLAINS NBC STAND RE BMI

Following is the text in part of a letter sent to Neville Miller, President of the National Association of Broadcasters, by Niles Trammell, President of the National Broadcasting Company:

"Some broadcasters have requested that we clarify the position of the National Broadcasting Company with reference to BMI. We made the following statements at meetings of the NAB Board of Directors and the NAB Executive Committee, and I am pleased to restate them to you at this time.

"NBC believes that there should always be an open, competitive market in music and that no one licensing agency should be permitted to become or remain the sole source of supply of the music so necessary to the continued existence of broadcasting. BMI was formed for the purpose of establishing such an open and competitive market.

"While the execution of the proposed ASCAP agreements will make available to broadcasters a considerably larger catalogue of musical compositions than is currently available, the open, competitive market in music which has now been established can be maintained only by the continuance of BMI and other licensing organizations.

"NBC sincerely hopes BMI will be continued and will be happy to do its part in this connection. You may, therefore, consider the following a firm offer on the part of NBC, subject to acceptance by BMI on or before March 1, 1942.

"NBC will execute license agreements with BMI, which shall -

- (a) run concurrently with its proposed ASCAP license agreements;
- (b) provide for payments to BIM in the same amounts as those currently being made, so long as the BMI revenue and expense budget remains the same; and
- (c) provide for an increase or decrease in such payments dependent upon and proportionate to any increase or decrease in the BMI revenue and expense budget.

"So long as BMI music continues to be made available to NBC, NBC will not discriminate between it and the music of other licensors. Assuming the continued high quality of BMI music, this should assure its continued popularity."

X X X X X X X X X