

HEINL RADIO BUSINESS LETTER

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INDEX TO ISSUE OF OCTOBER 31, 1941

NBC and CBS Sue, Following Secret D.J. Conference.....	2
Durr, FCC New Deal Appointee, O.K'ed.....	3
ASCAP, NBC and CBS Equally Glad War Is Over.....	4
Union Operators Charged With Refusing Ship Bearings.....	5
Another Senate Clash Over McDonald's British Offer.....	6
Action By The FCC.....	9
Trade Notes.....	11
FM Network Seeks New York Outlet.....	12

No. 1376

October 31, 1941

NBC AND CBS SUE, FOLLOWING SECRET D.J. CONFERENCE

Close on the heels of a closely guarded conference called by Assistant Attorney General Thurman G. Arnold at the Department of Justice, participated in by network heads and a Federal Communications Commission "observer", at which everyone was sworn to secrecy, the National Broadcasting Company and the Columbia Broadcasting System "kicked over the traces" by filing suit in the U.S. District Court of New York Thursday to prevent the FCC from putting into effect the new network rules which, according to CBS, would "force revolutionary changes in network broadcasting".

Columbia contended that these amendments, by which it was sought to appease the major chains, were insubstantial and subject to the same criticisms as the original rules, which, the network charged, constituted "a wrecking operation".

NBC said that its suit was filed to enjoin the enforcement of the FCC order "as being void and beyond the power and authority of the Commission to impose and also for the alleged reason that the order is arbitrary, capricious and contrary to public policy".

Filing suit with NBC were its affiliated stations WOW, of Omaha, and WHAM, Rochester, N. Y.

There were several versions of the more or less mysterious Department of Justice conference. One was that the major networks were called in to again be warned against trying to buck the FCC by taking the case to Court. Another, and this from a very reliable source, was that the Department of Justice men disabused the radio officials of ideas that a "squeeze play" for the FCC was being executed.

"What really happened, I believe, was that NBC and CBS simply called Chairman Fly's bluff", one informant said. "Feeling that the FCC was on shaky ground, he did his damndest to keep them from going to Court. I also think that the President tried to talk Sarnoff out of testing the case. Furthermore, it wouldn't surprise me a bit if Fly didn't get Thurman Arnold to see if he couldn't keep the boys in line by a few dirty looks from the Department of Justice, or maybe an intimation that if the networks didn't watch their step that Arnold would go ahead with his monopoly case against them."

On the other hand, it was said that the Justice officials believed it useless to argue with the chains after they had made up their minds to sue. The meeting between the network representa-

tives and the chief of the Antitrust Division was, by this version, said to have been amicable and did not go into the issues raised by the FCC or any allegations of monopoly. Instead, the talks were supposed to have centered about judicial procedure for possible merging of issues over FCC authority and possible issues concerning the Sherman Antitrust statutes.

It was declared to have been pointed out that great risk accompanies any monopoly action by the Department of Justice because the Communications Act expressly prohibits the FCC from granting a license to any person or group of persons found guilty of monopoly. Any judge who had to decide if monopoly has been exerted by the chains would hold the licenses of all M and O stations in the balance.

No definite date has ever been set by the Antitrust Division to start action against the broadcasters but attorneys have been at work for months and decision to file suit depends upon the chain companies' appeal from the FCC. In either case, it is understood that the bulk of material is to come from the mass of testimony and evidence adduced at FCC monopoly hearings.

At the session in Mr. Arnold's office were: Louis G. Caldwell, Fred Weber and Alfred J. McCosker, for Mutual; John T. Cahill, James D. Wise and Judge A. L. Ashby, for NBC; Judge John J. Burns and Joseph H. Ream, for CBS; Telford Taylor, as observer for the FCC; and, Victor O. Waters, Holmes Baldridge and Mr. Arnold for the Department of Justice.

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DURR, FCC NEW DEAL APPOINTEE, O.K.'ED

As had been expected, the Senate Finance Committee last Tuesday reported favorably on the nomination of Clifford J. Durr, New Dealer from Alabama, for a 7 year \$10,000 a year Federal Communications Commissionership. A few days later the Senate confirmed the nomination of Mr. Durr, who is a brother-in-law of Supreme Court Justice Hugo Black, of Kuklux Klan fame. Durr, like Chairman Fly, is a Government career jobholder. Also, like Mr. Fly, Durr is a comparatively young man. Fly was born in 1898, and Durr in 1899.

Formerly a lawyer in the Reconstruction Finance Corporation, Mr. Durr was appointed to the FCC because of what was said to be his ability as a lawyer and because of his strong political backing, rather than for any special knowledge of the broadcasting or communications industry. There is only one man on the entire FCC who has had any practical experience in broadcasting and communications when he was appointed, and none was ever put on because of any particular demand of the industry itself. Practically every appointment has been political and in many instances men that the industry has never heard of.

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ASCAP, NBC AND CBS EQUALLY GLAD WAR IS OVER

Judging from the statement given out by Niles Trammell, President of the National Broadcasting Company, Edward Klauber, Vice-President of the Columbia Broadcasting System, and Gene Buck, President of the American Society of Composers, restoring ASCAP music to those networks yesterday (October 30), a large sigh of relief was heaved by everybody concerned.

It read:

"Solution of the music problem is welcomed equally by Radio and the American Society of Composers, Authors and Publishers. Never before has there existed such complete understanding and friendly relations between ASCAP and the broadcasters as there is today.

"The task of working out a set of contracts acceptable to the Society and to all segments of the broadcasting industry was long and arduous. That this result has been accomplished is due to the earnest desire of all parties to bring about a lasting peace in the interests of public service.

"Radio and ASCAP recognize their need for each other. They also recognize their duty to the American public and the cause of democracy. We believe that the contracts entered into today between Radio and ASCAP will result in years of useful implementation in the fulfillment of that duty and that cause."

The contracts, which are identical for NBC and CBS, provide that the networks shall pay ASCAP $2\frac{3}{4}$ per cent of net receipts from network commercial business, and their managed and operated station will pay $2\frac{1}{4}$ percent of commercial program income. ASCAP's original demand on the major chains was a flat $7\frac{1}{2}$ percent of network receipts for commercial programs.

The contracts are slated to run to December 31, 1949, at which time they will be renewable for nine years. They provide for arbitration if at that time ASCAP requests more favorable terms. It is also stipulated that ASCAP will provide its music free for television programs at the present time, but the right is reserved to cancel this service.

The new contracts, an ASCAP official said, will mean a sharp reduction in the Society's income from radio. Whereas ASCAP received \$5,100,000 from that source in 1940, it is estimated that the new scale will bring about \$3,000,000 annually. E. C. Mills, Chairman of the Administrative Committee of ASCAP was quoted as saying that the loss of revenue to the Composers because of the controversy amounted to more than \$4,000,000.

Broadcast Music, Inc., organized last year by the National Association of Broadcasters to supply its musical needs, will continue to function.

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10/31/41

UNION OPERATORS CHARGED WITH REFUSING SHIP BEARINGS

The attention of the Department of Justice has been called to charges that operators on certain American ships outside of the war zone have deliberately failed to respond to requests for bearings from the radio operators of Trans-Atlantic air clippers. Instead they have asked the airplane operator what union he belonged to. If he said none, then no data as to location or even the weather has been forthcoming. Already ten such cases are said to have been reported to the Justice Department.

What action, if any, the Department may take if the charges prove true, is not known, but they bring into the spotlight a bill by Congressman Bland passed by the House and now before the Senate Commerce Committee. It provides that the Federal Communications Commission shall suspend the license of any ship's radio operator when the Commission, after investigation, has found there is "reasonable probability that such operator is a subversive individual".

The term "subversive individual", as defined by the bill, is very broad and, while directed primarily at operators who are members of, or sympathetic with, organizations which advocate the overthrow or undermining of our form of Government, it also specifically points the finger at any persons who participate in any "combination or conspiracy to resist the lawful authority of the United States".

In making its report on the bill to the House, Mr. Bland's Committee said: "It must not be considered that a large number of radio operators are subversive individuals or disloyal. The reverse is the case, but disloyal radio operators strategically placed may do great damage and it is against a menace of this character that the proposed bill is designed to guard.

"Testimony deduced before your Committee shows that at most there would be no more than 200 out of something like 2,000. In fact, it appeared from some testimony before your Committee that the numbers might not be more than 105, and as to some of them they may be identified for the purposes of the law with fairly reasonable dispatch."

Although no one would comment publicly on the reports being investigated until results of that investigation are aired, it was said, off the record, by several in Government circles that the ships' radio operators with which the Clipper operators have had difficulties undoubtedly could be found among those 150 or 200 identified in testimony before Bland's Committee as troublemakers, and "subversive or disloyal".

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ANOTHER SENATE CLASH OVER MC DONALD'S BRITISH OFFER

Sparks flew on the floor of the Senate for the second time in two weeks over the offer Commander E. F. McDonald, Jr., of the Zenith Radio Corporation, received from England to supply him with essential manufacturing materials which our priority officials refused to give him here. It was participated in by Senator Burton K. Wheeler, of Montana, Administration foe, and Senator Alben W. Barkley, of Kentucky, Administration defender.

Senator Wheeler began the debate when he declared that it was the lack of planning on the part of the Government which caused the shortage of the basic materials now so badly needed.

Senator Wheeler said:

"I am sorry I have not brought with me today a letter which I received a few days ago, after I made a statement on the floor of the Senate about the Zenith Radio Corporation. I called attention to the fact that the president of that corporation had told me, in the presence of others, that he was unable to get a certain material necessary in the manufacture of radios, that he had finally written to England and took the matter up with the English, asking them if they could furnish the material. A Senator on the floor called my attention to the fact that there was in the Washington Post an editorial denying that story, and saying it was untrue. The editorial reads:

REPEATING A LIE

There is some comfort in the statement by Senator Wheeler that there is to be no organized fight in the Senate on the second lend-lease appropriation. Senator Wheeler merely says he will vote against it. Unfortunately in his statement on Monday he sought to bring other Senators to his side in a thoroughly unworthy manner. He repeated one of those canards against the good faith of the fighting British, which the President recently felt called upon to expose. Mr. Roosevelt did not deal with the particular fantasy that Senator Wheeler trotted out on Monday. But, since the Montanan's story has been going the rounds from coast to coast since June, the facts need to be explained. Such a need is the greater because of the Senate consideration of the second lend-lease appropriation and the fresh currency on Capitol Hill which Senator Wheeler has given to the story.

"I call the attention of my colleagues to the fact that the editorial refers to 'repeating a lie'. They are the ones who are repeating a lie. I have a letter from the president of the Zenith Co. himself in which he says that I quoted him correctly; that what I said was absolutely true, that he could not get the material in this country, that he did write to England, and that they offered to furnish it to him, but he never ordered the material.

"The only mistake I made, if one was made, was that he got the material from England - and I do not recall having said that. They offered it to him from England, but he did not order it from England. So the distinguished editor of the Washington Post is the one who is repeating a lie, if a lie is being repeated, when he says that the story which was given currency in the Capitol and throughout the country was not true.

"I ask that the letter to which I have referred, which I do not happen to have with me at the present time but which I will supply, be inserted in the Record as a part of my remarks."

There being no objection, the letter was ordered to be printed in the Record and is as follows:

Zenith Radio Corporation,
Chicago, October 14, 1941.

Hon. Burton K. Wheeler,
United States Senate, Washington, D. C.

My dear Senator Wheeler: The British Publicity Department and the Chicago Tribune both called me today asking whether I had made a statement to you that we could buy alnico steel from England.

I stated to both of them that I made the public announcement to our stockholders at our annual meeting this past June that there was a great shortage of alnico steel; that we were having difficulty obtaining it, and that during the period of this shortage we had had an offer from England to supply part of our needs in alnico steel to be used in magnets for radio loudspeakers.

I told the Tribune man that the Tribune had already published my statement to this effect and that it had been carried by one of the press services. I also told him that it had been published pretty generally over the United States and that it was a statement of fact, as we had been offered this alnico steel. However, I stated that we never accepted their offer.

I want you to have this before you, so that there will be no twisting by the papers or others of the fact that I did make the above statement. And, what is more, the correspondence is in my files if anyone questions it.

Sincerely yours,

Gene.

Mr. BARKLEY. If the Senator will read the whole editorial he will find it makes some reference to the fact that the president of the Zenith Co. had been contacted and that he had denied the statement which had been made. * * * *

Mr. BARKLEY. I am not stating what the facts are; I do not know what they are --

10/31/41

Mr. WHEELER. I am stating what the facts are.

Mr. BARKLEY. But the whole editorial should be inserted.

Mr. WHEELER. I shall insert it. The editorial continues:

Senator Wheeler charged that an official of the Zenith Radio Co. of Chicago, recently denied aluminum by our priority officials, had written to England for it "just for fun" and was promised delivery in 3 weeks. There is not a word of truth in the allegation.

I did not charge that an official of the Zenith Radio Co., of Chicago, was denied aluminum by our priority officials. I said - and the Record will bear me out - that the Zenith Co. could not get certain materials here for radio parts, but did write to England and was promised delivery in 3 weeks. I may have been in error about the 3 weeks, but that was my recollection of the conversation.

I was in error if I said "aluminum", because it may have been some other material. My statement in the Senate on October 16 was that it was "certain material".

The editorial proceeds:

The story, evidently, came out of the annual meeting of the Zenith Radio Co. as far back as last June, or within 2 months of the signing of the Lend-Lease Act. The company was short of alnico steel, an alloy of aluminum, nickel, and copper, and the president, Capt. Eugene McDonald, whom Senator Wheeler quoted, said that the company might be able to get some of this steel from Britain. His reason was that he had had offers of alnico steel before. This was not odd. The British had had to keep up exports in order to pay for war imports, and even after the Lend-Lease Act was signed still had to make deliveries on orders obtained in the cash-and-carry era. But in this case the Zenith Co. received a negative response. The fact is that such goods are subject to export licenses, and, as the British replied, "no licenses will be granted."

This is only one of many fairy tales that are being bandied about by the isolationists.

The fairy tales which are being bandied about are not being spread by the isolationists. Not only that, but the intolerance that is being bandied around is not on the part of isolationists.

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ACTION BY THE FCC

Applications Granted: Oak Park Realty and Amusement Co. Chicago, Ill., granted construction permit for new Frequency Modulation broadcast station to operate on 47,900 kilocycles, to serve 10,800, square miles, and operate 4 hours day, 4 hours night; W71SB, South Bend Tribune, South Bend, Ind., granted modification of construction permit to change transmitter site locally, make changes in transmitter and antenna system; increase service area to 7,100 square miles and extend commencement and completion dates to 60 and 180 days after grant, respectively (FM station).

Also, Commercial Radio-Sound Corp. New York City (Portable-Mobile), granted construction permit on an experimental basis only for a new public address relay station to operate on 310,000 kilocycles; 0.1 watt, special emission for frequency modulation; KJR, Fisher's Blend Station, Inc., granted construction permit to move transmitter locally, conditional to taking care of blanketing situation; install a directional antenna for nighttime use, and increase day and night power to 50 kilowatts (now has 5 kw. on 1000 kilocycles, unlimited time); KSFO, Associated Broadcasters, Inc., San Francisco, Cal., granted petition for reconsideration and hearing directed against Commission grant of September 9, 1941, of construction permit to Pacific Agricultural Foundation, Ltd. (KQW), San Jose, Cal., to change frequency from 1010 to 740 kilocycles and power from 1 kilowatt night, 5 kilowatts day to 50 kilowatts unlimited time; designated same for consolidated hearing with application of Associated Broadcasters for construction permit to change frequency from 560 to 740 kilocycles and power from 1 kw night, 5 kw day, to 50 KW unlimited time; denied further request of Associated Broadcasters that hearing be held in San Francisco.

Also, WRUW, World Wide Broadcasting Corp., Scituate (Boston), Mass., granted modification of international broadcast station license to add 9700 kilocycles, providing that no objectionable interference results to service of other stations which have priority of assignment.

Also, KVOS, KVOS, Inc., Bellingham, Wash., granted construction permit to install new equipment, install a directional antenna for day and night use, increase day and night power to 1 KW, change frequency to 790 kilocycles, and move transmitter to 3 miles west of Bellingham, Wash.; KFXJ, R. G. Howell and Charles Howell, d/b as Western Slope Broadcasting Co., Grand Junction, Colo., granted construction permit to change frequency to 920 kc., increase power to 500 watts night, 1 KW day, unlimited time; WEJL, National Broadcasting Co., Inc., New York, N. Y., granted special temporary authority to operate relay broadcast station WEJL on its presently licensed frequencies and power in order to communicate between the public address system booth in Madison Square Garden and the announcer on the floor of the arena so that the announcer can convey to the audience a close-up descriptive information concerning events at the National Horse Show on November 5, to 12, 1941, only; WEJI, Same.

10/31/41

Also, W9XBT, Balaban & Katz Corp., Portable-Mobile, Area of Chicago, granted license to cover construction permit which snowed decrease in power and change in equipment for new television relay broadcast station; frequencies 204,000-216,000 kilocycles; 40 watts, to be used with applicant's television broadcast station W9XBK; the license is granted conditionally; W6XDL, Don Lee Broadcasting System, San Francisco, Calif., granted modification of construction permit which authorized new experimental television broadcast station, for extension of commencement and completion dates to April 30, 1942.

Applications Received: Philco Radio and Television Corp. Portable-Mobile, construction permit for a new television station to be operated on Channel 13 and 14, 230000-242000 kilocycles, 60 watts (peak) A5 emission (to be operated with applicant's commercial television station WPTZ); General Electric Co., Schenectady, N.Y., construction permit for a new television relay broadcast station to be operated on 162000-168000 kilocycles, Aural 50 watts, Visual 60 watts, Emission A5, and Special for frequency modulation (To be used with applicant's television (commercial) broadcast station WRGB).

Also, WBRK, Monroe B. England, Pittsfield, Mass., construction permit to install new transmitter, directional antenna for day and night use, change frequency from 1340 to 1150 kilocycles, increase power from 250 watts to 1 KW; W. Walter Tison, Jacksonville, Fla., construction permit for a new broadcast station to be operated on 600 kc., 1 KW and unlimited hours; WFTL, Ralph A. Horton, Ft. Lauderdale, Fla., construction permit to install new transmitter, directional antenna for night use, increase power from 250 watts to 10 KW, change frequency from 1400 to 710 kc., and move transmitter; Raymond C. Hammett, Talladega, Ala., construction permit for a new broadcast station to be operated on 1230 kc., 250 watts, unlimited time; Olympic Broadcasting Corp., Bremerton, Wash., construction permit for a new broadcast station to be operated on 1540 kilocycles, 500 watts, unlimited time.

Also, K300, Sioux Falls Broadcast Assn., Inc., Sioux Falls, S. D., construction permit to increase power from 5 to 10 KW, change hours from limited to unlimited, install new transmitter, directional antenna for night use and move transmitter and to make changes in directional antenna; WCHS, Charleston Broadcasting Co., Charleston, W. Va., construction permit to install new transmitter, make changes in directional antenna for night use, change frequency from 580 to 640 kilocycles, increase power from 5 to 50 kilowatts, and move transmitter.

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 ::: TRADE NOTES :::
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Broadcasting will come of age Sunday, November 2, at 7 P.M. On that date, and at that hour, 21 years ago, Westinghouse Station KDKA in Pittsburgh began an organized service of radio programs and so introduced broadcasting to the world.

Among those reported as having rented new commercial quarters in New York, was Carl L. Janik, Eastern District Manager for Radio Manufacturing Engineers, Inc., of Peoria, Ill., in the Time and Life Building.

Emerson Radio and Phonograph Corporation will run an extensive Christmas advertising campaign on the Emerson "Personal" set, claimed to be the smallest and lightest on the market.

F. P. Guthrie, District Manager of R.C.A. Communications, of Washington, was among those who attended the dinner given to Maj. Gen. J. O. Mauborgne, who recently retired after a four year term as Chief Signal Officer of the U. S. Army at the Officers Club on Governor's Island, New York City, Saturday, October 25.

The dinner was given jointly by the Veteran Wireless Operators' Association and the American Signal Corps Association. W. J. McGonigle, of the New York Telephone Company, President of the Veteran Wireless Operators' Association, was the toastmaster.

There was a large attendance drawn from officials and employees of the communications companies as well as many Army officers who had served with General Mauborgne, and the guest of honor seemed touched by the many tributes paid to him.

Twenty-one engineers and transmitter technicians of the Columbia Broadcasting System, Station WABC and International Station WCBX, gathered at the new WABC transmitter on Columbia Island last Tuesday night for an inspection tour and late supper. The men - formerly all together at Wayne, N. J., - came from Wayne, site of the old WABC transmitter, and from Brentwood, L.I., home of the WCBX international transmitter.

Dr. John R. Brinkley, former goat gland specialist and broadcaster, was removed from Del Rio, Texas, to San Antonio, following a sinking spell brought on by the weakened condition of his heart. Physicians have said that additional amputation of his left leg seems indicated. Brinkley also has legal difficulties pending. They involve a mail fraud charge and his own bankruptcy.

Prime Minister John Curtin, of Australia, outlining plans to stimulate understanding between the peoples of Australia and the United States, announced yesterday that a powerful short-wave station costing more than \$900,000 would be built so that Australian talks can reach American listeners.

In the RCA Laboratories, studies are being made through the powerful eye of the electron microscope to reveal for the first time the intricate construction of the skin, hair and wings of butterflies, bees, flies, beetles, and even the submicroscopic details of their egg shells.

Widely accalimed in scientific and industrial circles as an epochal development in scientific instruments, the RCA electron microscope magnifies up to 100,000 diameters, which is from 50 to 100 times more powerful than the strongest optical microscope.

Telephone operating subsidiaries of the International Telephone and Telegraph Corporation innine foreign countries report an aggregate net increase of 39,459 telephones in service during the first nine months of 1941.

The I. T. & T. has organized International Telephone & Radio Manufacturing Corp and has established factories at Newark, N.J. to produce equipment and supplies for the rapidly growing telephone systems south of the United States. These factories are in production and ready to meet the urgent need of communication equipment in Latin America as rapidly as materials are available.

Cleveland Broadcasting, Inc., of Cleveland, Ohio, has applied for construction permit for a new broadcast station to be operated on 1300 kilocycles, 5 kilowatts and unlimited hours, using directional antenna day and night.

Ralph W. S. Bennett, Sandusky, Ohio, has applied for a construction permit for a new broadcast station to be operated on 1450 kilocycles, 250 watts and unlimited hours.

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FM NETWORK SEEKS NEW YORK OUTLET

The American Network, FM's first chain organization, will shortly file its application for a key outlet in New York City. The new station, if approved by the Federal Communications Commission, would be located in the Lincoln Building, 60 East 42nd Street, with transmitter and radiating antenna at the same site.

Simultaneously with filing of its official application, The American Network will ask permission to make temporary use of a 10,000-watt FM installation, now idle, until such time as the Commission has had an opportunity to consider the granting of a regular license. This special transmitter could be ready to go on the air with a daily program schedules 60 days after approval, if so authorized.

The American Network plans the eventual establishment of a coast-to-coast FM web having outlets in more than 40 principal cities, with approximately 75% of the national popuktion living within the proposed service areas.

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