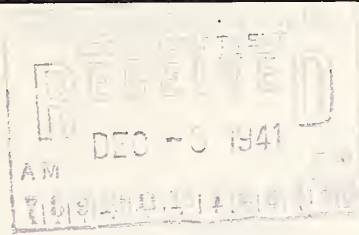


HEINL RADIO BUSINESS LETTER

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INDEX TO ISSUE OF DECEMBER 5, 1941

FCC Further Charged With Exceeding Press Probe Power.....	2
The Radio Spectrum Explained.....	4
Blue Net Revamping Reported Progressing.....	5
Go Pegler One Better Slamming Congress.....	5
Printers Charge Radio Priorities Inequality.....	6
Songwriters Give Buck Confidence Vote.....	8
New Radio Law Proposed At San Francisco.....	9
Fly Accused Of Stirring Up Trouble For NAB.....	10
Action By The FCC.....	11
Trade Notes.....	12

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FCC FURTHER CHARGED WITH EXCEEDING PRESS PROBE POWER

Advancing the case another step, Elisha Hanson, counsel for James G. Stahlman, publisher of the Nashville Banner, in the reply brief for the appellant in the appeal to the U. S. Court of Appeals maintained that the Federal Communication Commission's argument that Order No. 79 (The FCC order for the inquiry into the newspaper ownership of radio stations) is authorized by the "public interest, convenience, or necessity" standard of the Communications Act fails to meet the issue that the terms of the order fall outside of the powers of the Commission. Furthermore it was contended that the order is within the authority of certain sections of the Act (4 and 403) also fails to meet the issue that the order is beyond the powers of the Commission.

Highlights of Mr. Hanson's latest argument were:

"Appellee asserts that the inquiry directed by Order No. 79 (for the newspaper inquiry) is expressly for the purpose of securing information essential to the administration of the statutory standard of 'public interest, convenience, or necessity'.

"The terms of the Order show no such purpose. On the contrary Order No. 79 on its face shows that the Commission is claiming power to consider or to adopt and apply a general policy or rules by which persons engaged in the newspaper publishing business may by reason of that fact alone be placed in a separate category with a view either to preference in the assignment of radio facilities or to disqualification from engaging in radio broadcasting.

"The Commission has no such power under the Communications Act. And the precise terms of the Act negative the delegation by Congress of any such power."

"A choice between a policy of encouraging integration of newspapers and radio stations and a policy compelling divorcement of these two enterprises is one that only Congress can make, if it can be made at all."

"The field of radio broadcasting is open on equal terms to all persons except those specifically disqualified by the Act."

"Newspapers and persons associated with newspapers are not among those disqualified by the Act. As this Court has held, there is no provision in the Act or rule of law that prohibits broadcasting by the owner of a newspaper.

"Just as the Act does not disqualify newspapers or persons associated with newspapers from holding station licenses, neither

does it give them a preferential status in respect of applications."

"The Commission's case falls because it has no power under the Act to group the applications of persons merely by reason of their association with newspapers for the purpose of arriving at a general policy with respect to such applications and the qualifications of the applicants. It therefore has no power to promulgate rules or regulations to effectuate such a policy.

"The Commission confuses public interest with public policy. In so doing it seeks to appropriate to itself the policy making powers of Congress. This is beyond its authority under the Act."

"As now written in the Act, the public policy is non-discriminatory. In its proceeding instituted by Order No. 79 the Commission asserts the power to change the non-discriminatory policy fixed by Congress to a policy of discrimination. It cannot avoid the issue precipitated by its Order No. 79 either by saying it may never adopt any policy as a result of its inquiry made pursuant to the terms of that Order or by pleading that it may use the inquiry for some purpose not disclosed in the Order.

"The phrase 'public interest, convenience, or necessity' cannot be used as a lever by which the Commission can legislate on public policy which it mistakenly calls public interest."

"Public interest must always be determined with reference to the specific factual situation in connection with a particular application or conflicting applications. The determination of the qualifications of a particular applicant as they bear upon the elements of public interest announced in the Sanders case cannot stamp newspaper ownership or association in and of itself as a disqualifying factor or as a factor of preference. Therefore, it is plain that the Commission is not investigating to provide a basis for passing upon a particular application or a comparative appraisal of conflicting applications but is going beyond the sphere of its powers to arrive at a public policy upon which Congress has not yet spoken."

"The argument of appellee that one of the purposes of Order No. 79 is to secure data for the purpose of recommending legislation to Congress is pure subterfuge. It was not until July 1, 1941, or nearly three and one-half months after Order No. 79 was promulgated, that this idea occurred to the Commission, and then appellee expressed it only in a press release.

"If the Commission has the power to issue statements of policy or rules concerning applications for high frequency broadcast stations or future acquisition of standard broadcast stations by persons associated with newspapers or newspapers themselves, then there is no occasion for it to make any inquiry for the purpose of recommending legislation to Congress on this subject.

"If it does not have that power then its inquiry under Order No. 79 is an unlawful one and this Court should so hold."

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THE RADIO SPECTRUM EXPLAINED

"What is the radio spectrum? How do you define it? What are its limits?"

These are typical questions asked by the layman in connection with technical considerations of radio regulation, a news bulletin of the Federal Communications Commission states, and continues:

"Engineers are accustomed to think of the radio spectrum in terms of frequencies available for radio services. But physicists envision the radio spectrum as an infinitesimally small part of the entire 'electromagnetic spectrum'. The latter extends in one direction to slow electrical oscillations and in the other direction up through the various classes of rapid radiation known as infra-red; solar, including visual; ultra-violet; X-ray; gamma, and cosmic, to frequencies which stagger the imagination. From that viewpoint, the radio spectrum is but a tiny segment of a greater spectrum of almost unlimited size and very indefinite boundaries.

"All electromagnetic waves are propagated in empty space at the same velocity, in accordance with the same recognized physical laws. Scientists have classified these waves primarily in accordance with the manner in which they are generated and detached and, secondarily, in accordance with their differing behavior as affected by the medium through which they travel.

"There are no definite boundaries between the classes of waves in the electromagnetic spectrum. Waves of all classes merge slowly into the waves of other classes.

"The Federal Communications Commission has construed the total spectrum of radio waves as 'those extending in frequency from 10 to 500,000 kilocycles, inclusive', with the added provision, however, 'that such construction shall not be interpreted as precluding authority of the Commission over the use of waves less than 10 kilocycles or more than 500,000 kilocycles in frequency if and when such waves, by reason of progress in the art, become available for radio communication either practically or experimentally. . . .'

"Thus, no restrictions have been placed on the future development of radio communication by any attempts to define or limit the boundaries of the radio spectrum for the purpose of regulation or control. In effect, the boundaries of the radio spectrum increase automatically as and when additional frequencies become available for radio communication either practically or experimentally. The rapid development of radio is pushing further and further into upper frequencies which in the past were not believed useful for such purposes.

"It is possible that some day the radio spectrum will extend in range from 10 kilocycles to ten million kilocycles. To plot this spectrum on a linear scale, with an inch representing

12/5/41

100 kilocycles, would require a chart nearly a mile and one half in length. Considering the electromagnetic spectrum on the same basis, such a chart would be over ten million million miles long. It is, therefore, not only convenient, but necessary to use a logarithmic scale. However, this figuring gives some idea of the astronomical proportions of the electromagnetic spectrum when considered as a whole."

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BLUE NET REVAMPING REPORTED PROGRESSING

Following unconfirmed rumors that the NBC Blue network was being separated from the Red and made into an independent organization in case the Blue had to be "sold down the river" if the Federal Communications Commission order survived the court test, there was a report from New York that Mark Woods or Edgar Kobak might head the Blue.

It was said further that the Secretary of State at Albany had been asked by NBC to reserve the title United Broadcasting System.

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GO PEGLER ONE BETTER SLAMMING CONGRESS

Evidently getting "cold feet" on his stronger declarations about Westbrook Pegler a few days before, Representative Clare E. Hoffman (R.), of Michigan, arose in the House last Thursday to say:

"Mr. Speaker, here is a card from Hagerstown, Md., received this morning stating:

"Some radio commentator said you were going to put Pegler on the carpet for some reflection on Congress. I read his column almost daily and have not read anything yet but what was mild to what one can hear on most any street corner about the weakness of Congress and one of it would be fit to print."

"I did not put Pegler 'on the carpet'. I only asked that he be given opportunity to offer proof of his charges."

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PRINTERS CHARGE RADIO PRIORITIES INEQUALITY

A new line of attack which may cause the broadcasting industry some trouble was made by John B. Haggerty, President of the International Allied Printing Trades in the assertion that while the printing trades had been hobbled by defense restrictions, broadcasters have not suffered.

"The time is close at hand when the United States Government, through priorities, the allocation of paper, ink, metal for plates, stapling wire, etc., may decree that commercial printing, including magazines and periodicals, and, to a lesser extent newspapers, must be substantially reduced in size and volume. This will mean less type set, less plates made, less impressions made, less binding, - all of which means fewer jobs for Printing Trades workers", Mr. Gatterty declared to his members.

"We are striving to offset this threatened loss of work opportunities for Printing Trades workers. It is necessary that we have the militant cooperation of your organization in petitioning your Congressman and United States Senators to help us have the legislative program of the International Allied Printing Trades Association adopted, if we are to be successful."

"It is interesting to note that while certain types of paper and other essential supplies necessary for the continued publication of periodicals, magazines and newspapers are to be substantially curtailed - possibly as much as 30% or 40% - thus fewer work opportunities for Printing Trade workers, there has been no curtailment of power necessary for radio broadcasting. It is common knowledge that there is a shortage of electrical power. In several sections of our country electrical power has been rationed even in plants producing for National Defense needs. Yet, the 'Soap Dramas' and other similar radio programs can be heard, in many sections, over as many as five or six separate radio stations at the same time. Surely, such constitutes economic waste. A great part of the many thousands of kilowatt hours of electrical energy used daily in the duplicating of radio broadcast programs could be put to better use.

"Despite the facts above outlined with jobs of many thousands of Printing Trades workers jeopardized through the lack of paper and other necessary supplies, and with electrical energy needed for national defense, we find that radio stations are being permitted to increase the amount of power they use for some 16 hours daily.

"The Board of Governors of this Association, of which your International Union is a part, realizing the loss of work opportunities of many thousands of Printing Trades workers, through the transfer of work opportunities from printing plants to radio networks, have sought to eliminate some of the many unfair advantages which Federal laws grant to radio moguls by seeking certain legislative changes."

Stating they did not favor the Sanders bill (H.R. 5497) in its present form, Mr. Haggerty said the printing trades proposed the following legislative amendments.

- "1. The imposition of an Excise or Franchise Tax on Radio Networks and Commercial Broadcast Stations.
- "2. The elimination of Illegal Rebates and Volume Discounts to large Advertisers and Advertising Agencies.
- "3. Eliminate Monopoly. Radio Broadcast licenses are issued serve Public Interest. Only persons in locality served by Station know what is Public Interest in such localities.
- "4. Radio broadcast licenses to be issued only to persons in locality where station is located.
- "5. Not more than one radio broadcast license to be issued to any one group.
- "6. 50 per cent of radio facilities to be allocated to non-profit Labor - Farm - Educational - Religious Associations
- "7. Radio time used for commercial or advertising purposes be restricted comparable to restrictions imposed on printed publications using the mails.

"To seek a franchise or Excise Tax on radio networks and commercial radio stations which tax would, in part at least, place the radio networks and commercial radio stations on a tax basis comparable to that collected from the printing industry. The printing industry - in reality the Printing Trades workers as such taxes force our acceptance of lower wages - pays high taxes locally and to the States on land and valuable equipment while the radio moguls pay no local or state taxes and small federal taxes, considering their meager investments. The radio stations pay nothing for the franchise from which they derive yearly profits as high as some 870 per cent.

"We believe that much of the growth of Radio Advertising - transferred from the printed page to radio stations and networks - from some 5 cents of the American advertising dollar in 1930 to some 35 cents of the same advertising dollar in 1940 - is due to the illegal granting of rebates and volume discounts to large advertisers and advertising agencies. Of course, with the networks allowing commissions, rebates and discounts, amounting to as high as 50 per cent, while printed publications allow but a 15 per cent commission, there is good reason why radio advertising has been promoted."

"That not more than one license be issued to any one group, thus protecting our people from the monopolistic control of this means of moulding of public opinion.

"At the present time, a few persons located mainly in New York City and Hollywood, through their control of the major networks can and do determine what radio programs more than 80 per cent of the American people may listen to."

12/5/41

"That the amount of time radio stations may use for the sale of advertising be limited, both as to day and night time operations."

"Postal regulations deny second class mailing privileges to publications issued 'primarily for advertising purposes'. As almost every commercial radio station is operated primarily for the sale of advertising, we propose that the Federal Communications Commission be authorized and directed to set a definite limit as to the amount of time, prior to six P.M. and after six P.M. which any radio station may use for the sale of advertising or commercial purposes. Failure on the part of any radio station licensee to observe these regulations to be punishable by the immediate revocation of said license."

Mr. Haggerty's appeal to his members concludes with this admonition:

"Your national officers can help you protect your work opportunities if the Printing Trades Councils, Local Unions, State and District bodies, and the officers and members thereof will write their Congressmen and United States Senators insisting that the legislation herein advocated be adopted.

"Bear in mind that the Congressional elections, as well as the primaries and election of 32 United States Senators are only a few months away. Those seeking office will seek your support. They will support your legislative proposals, and thus protect your work opportunities provided the Printing Trades organizations and workers make these demands strong enough.

"We trust we will have your cooperation and we are hopeful you will write us the attitude of your Congressman and Senators on the legislation herein proposed."

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SONGWRITERS GIVE BUCK CONFIDENCE VOTE

Following a stormy meeting of the American Society of Composers in New York last week, at which Gene Buck opened with both barrels on the publisher members who had demanded his resignation, Mr. Buck centered his fire on Louis Bernstein, Saul Bornstein, and Hermann Starr, publisher directors. He was defended by Billy Rose and Irving Caesar of the song writers.

Finally the songwriters (the organization is composed of upwards of a thousand songwriters but only about 250 publishers) gave their president a rising vote of thanks but the publishers who had sought Mr. Buck's resignation remained seated.

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NEW RADIO LAW PROPOSED AT SAN FRANCISCO

That radio has done much, is doing much and is planning to do even more for the service of the country and the public was the National Defense theme of the convention of the Fifteenth District of the National Association of Broadcasters held last week in San Francisco. Neville Miller, President of the National Association took occasion to advocate a new radio law more adaptable to the present emergency.

Representatives of 30 broadcasting stations of Northern California and Nevada were present. Howard Lane, of KFBK and the McClatchy stations, with offices in Sacramento, presided at the convention in his capacity of NAB Director for the fifteenth district. Wilt Gunzendorfer, Manager of KSRO, Santa Rosa, Chairman of the NAB Sales Managers Committee, and Ralph R. Brunton, of KJBS and KWQ, District Chairman of the Labor Committee, also were active.

The entire convention was invited to the new NBC Building, Taylor and O'Farrell Streets, for a tour of the new million-dollar broadcasting home and a special program.

"Our present radio law is 14 years old", said Mr. Miller, "so we are going to talk about a new one that will be more up to date and more in keeping with the 1941 importance and proportions of broadcasting.

"We will plan closer cooperation with the Government, better service to our listeners, better equipment and more efficient personnel, tax problems, music, radio and labor relationships and all matters that are in any way related to the task of doing a better job for the general public.

"Radio is playing a much more important part in this war than people realize. When entire populations are involved, as they are in this emergency, nothing is more vital than this means of mass communication.

"Short wave is keeping South American informed of the news and this service is largely responsible for keeping Germany out of South America. "

Edward M. Kirby, head of the radio branch of the Public Relations Division of the War Department, discounted rumors that the Army would take over radio broadcasting. "That could only happen in the case of stations in the combat zone if the United States is invaded. After the emergency, such stations as were taken over would be returned to their owners just as the War Department has always returned any property which it might need temporarily.

"People have confidence in an independently operated system of broadcasting. We want it to stay that way. That confidence would be destroyed if the Army operated broadcasting.

"For these and similar reasons there will be no censorship of broadcasting. Even the War Department will release everything except such military secrets as information regarding the

bomb sight, the movement of troops, etc. We don't want to give that sight to any enemy and we don't want to make our soldiers targets by revealing their movements.

"This is the first time since the Civil War that armies have had a new method of mass communication so it is a pioneering effort for both radio and the Army. During the last war the press set up its own control and censorship. Radio is doing the same in the public interest today.

"Another great service of short wave broadcasts is in giving news to army units at remote points. Standard band broadcasts from the army camps are most helpful. In some camps records are made by groups of soldiers from a given area. These are sent back to the home towns of the boys in camp and played as broadcasts over local stations. It is a great reassurance to parents and friends to hear the voices of their boys in this way."

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FLY ACCUSED OF STIRRING UP TROUBLE FOR NAB

In an editorial "An Epidemic of Trade Associations", an editorial in Variety read, in part:

"Wonderment whether the National Association of Broadcasters will be able to keep its ranks tight and avoid being stigmatized openly as primarily the mouthpiece of the networks is the liveliest trade subject just now. With regionals and affiliates asked to rally under the new Network Affiliates, Inc., banner and the non-network stations still planning to set up a vigorous National Independent Broadcasters (feeling is spreading that NAB's always numerous problems are multiplying to a dangerous point).

"Rightly or wrongly, the spreading anti NAB feeling is traced to FCC Chairman James L. Fly. At any rate, the commish chairman has 'encouraged' formation of such groups as NAI and NIB and has let it be known how suspiciously he regards NAB. New Dealer group here quite openly sneers at NAB as the mouthpiece of the networks, with Assistant Attorney General Thurman Arnold seen as considering the organization as virtually synonymous with NBC and CBS in all his conversations."

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The Federal Communications Commission has adopted Order No. 77-A, suspending from January 1, 1942, until further order of the Commission, but in no event beyond January 1, 1943, Sections 12.26 and 12.66 of the Rules Governing Amateur Radio, and Section 13.28 of the Rules Governing Commercial Radio Operators, insofar as the required showing of service in connection with renewal of license is concerned.

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ACTION BY THE FCC

Applications Granted: The Baltimore Radio Show, Inc., Baltimore, Md., granted construction permit for a new FM broadcast station to operate on frequency 45,900 kilocycles, 5500 square miles, subject to field intensity measurements; Tar Heel Broadcasting System, Inc., Washington, N. C., granted construction permit for new standard broadcast station to operate on frequency 930 kc., 1 KW, daytime only; WCBW, Columbia Broadcasting System, Inc., New York, N. Y., granted extension of special temporary authority to operate television broadcast station WCBW in accordance with construction permit except with 4 KW aural and visual power to not later than December 27th; W2XOY, General Electric Co., New Scotland, N. Y., granted special temporary authority to operate a high frequency experimental broadcast station on 43200 kilocycles, 2500 watts power, special emission for frequency modulation, with transmitter located at New Scotland, N. Y., for period November 27, 1941 to not later than December 26, 1941.

Applications Received: Sacandaga Broadcasting Corp., Gloversville, N. Y., construction permit for a new broadcast station to be operated on 1340 kc., 250 watts, unlimited time; Ludington Broadcasting Company, Ludington, Mich., construction permit for a new broadcast station to be operated on 1490 kilocycles, 250 watts, unlimited time, facilities WKBZ, contingent on WKBZ's application for change in frequency; Cleveland Broadcasting, Inc., construction permit for a new broadcast station to be operated on 1300 kc., 5 KW, unlimited hours, using directional antenna for day and night; amended: re stock ownership; Northern Ohio Broadcasting Co., Elyria, Ohio, construction permit for a new broadcast station to be operated on 640 kc., 1 KW, limited time, facilities WHKC; Amended: to request 660 kc., daytime operation, omit request for facilities WHKC and that application be contingent on WCLA application;

Also, Hawley Broadcasting Co., Reading, Pa., construction permit for a new high frequency station to be operated on 46,500 kilocycles, population: 889,600; coverage 4,275 square miles; Andrew L. Todd, Murfreesboro, Tenn., construction permit for a new broadcast station to be operated on 1450 kc., 250 watts, unlimited hours; Josh Higgins Broadcasting Co., Waterloo, Ia., construction permit for a new broadcast station to be operated on 1540 kc., 50 KW, unlimited hours, using directional antenna.

Also, Hugh McClung, Fresno, Calif., construction permit for a new broadcast station on 1590 kc., 5 kw., unlimited time; amended to request changes in antenna and transmitting equipment, power of 1 KW, and to specify studio site as: site to be determined, Sacramento, Calif. and transmitter site at Washington Township, Cal.; Same, Sacramento, California, construction permit for a new broadcast station to be operated on 1590 kc., 1 KW, unlimited hours; Amended: to request 1340 kc., power to 250 watts; KEGA, Earle C. Anthony, Inc., Mobile, construction permit to make changes in equipment and increase power from 2 to 10 watts; amended; to change power from 10 to 4 watts.

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 ::: TRADE NOTES :::
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Commissioner Clifford J. Durr of the FCC has announced the appointment of Walter Erwin James as his secretary in place of J. R. Maumenee, who is now in the Army. Mr. James is a native of Montgomery, Alabama, and prior to his appointment was an assistant to the Secretary of Commerce, assigned to the Division of Administrative Management.

 The Proctor & Gamble Co., of Cincinnati, Ohio, has donated time on its four daytime serial radio programs to aid the Office of Emergency Management in informing the public about the defense program. Such problems of interest to the public as nutrition, health, prices, salvage campaigns and participation in the Civilian Defense program will be discussed on the "Vic and Sade", "Against the Storm", "Ma Perkins", and "The Goldbergs" programs.

 The first issue of the Chicago Sun, Marshall Field's paper, yesterday (Dec. 4) carried a page of radio news. Evidently this is to be a daily feature. Half the page is devoted to programs (including those of WGN, of the Chicago Tribune) and half to news. Among the news story is one "FM Scores in the Mid-West" which also carries the programs of the Chicago FM stations including W59C also owned by the Chicago Tribune.

 Clinton Winant, brother of John G. Winant, United States Ambassador to England, has been appointed the Columbia Broadcasting System correspondent in Vichy, France. Mr. Winant graduated from Princeton University and further studied at Columbia Law School. He served during the first World War as a Captain of Infantry in the 18th Division, seeing action in France.

At the close of the war he became a traveling investigator for prominent American industrial concerns which wanted detailed information on foreign patents offered for use in this country.

 Mrs. Lena Sarnoff Fox, 73 years old, mother of David Sarnoff, President of the Radio Corporation of America and Chairman of the Board of the National Broadcasting Company, died in New York Thursday.

Mrs. Sarnoff was born in Uzlian, Minsk, Russia, and came to this country forty-one years ago. Surviving, besides Mr. Sarnoff and her husband, Jacob Fox, are three other sons, Lew, Morris and Irving Sarnoff, and a daughter, Mrs. Ida Baer. Mr. Sarnoff's father, Abraham Sarnoff, first husband of Mrs. Fox, died thirty years ago. Mrs. Fox was prominent in philanthropic work.

 The Right Rev. Monseignor Fulton J. Sheen, Professor at Catholic University, Washington, D.C., will be the main speaker at the fifth annual dinner of the McCosker-Hershfield Cardiac Foundation to be held in New York on Saturday, December 13th. Monseignor Sheen's address will be carried over WOR's FM station W71NY, in an hour's broadcast beginning at 10 P.M. Dr. Frank Kingdon, Gov. Harold Hoffman of New Jersey, Louis Nizer, Alfred J. McCosker and Harry Hershfield will also be among the speakers.

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