

HEINL RADIO BUSINESS LETTER

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BIG SHAKEUP IN WPB RADIO SECTION - NEW CHIEF

Radio manufacturing interests and problems of the War Production Board have been transferred abruptly, with a new group of WPB officials in charge, a new Radio Section Chief, and other personnel changes.

Effective today (May 1), the WPB Radio Section, heretofore directly under Chief Robert C. Berner, and the Consumers Durable Goods Branch, under Chief Louis C. Upton and Assistant Chief Jesse L. Maury, is transferred to the WPB Communications Branch, whose chief is Leighton H. Peebles. Under Mr. Peebles, the new Radio Section Chief is Frank H. McIntosh, who has just assumed his office. Mr. McIntosh, who thus succeeds Mr. Berner, is a sales engineer, formerly with the Bell Laboratories, Graybar Electric Company and Western Electric Company. Mr. Berner will remain with the Consumers Durable Goods Branch and Mr. Maury, and both will discontinue radio functions and jurisdiction. Mr. Maury also stated he would not continue as Chairman of the WPB Radio Industry Advisory Committee.

The sudden WPB radio reorganization order followed the April 22 general suspension of civilian radio production, leaving few remaining civilian problems except replacement tubes and parts.

All present and also future radio problems and jurisdiction, and the questions of replacement tubes and parts, are being taken over by the Communications Branch in the WPB reorganization, the Radio Manufacturers' Association advises. Some of the Radio Section personnel under Messrs. Maury and Berner are being transferred to the Communications Branch, while others of the present Radio Section staff will remain with the Consumers Durable Goods Branch, with others transferred to the Communications Production Branch under Ray Ellis.

Immediate action and further orders are in a state of transition. The question of future orders and action on appeals, officials stated, are being handled during the temporary transition period jointly by the retiring Radio Section Chief, Mr. Berner, and the new Communications Branch Radio Section Chief, Mr. McIntosh. Immediate questions affecting set manufacturers and also future supplies of replacement tubes and parts have been discussed by RMA officials in a preliminary way with the new Radio Section Chief, Mr. McIntosh.

Both the Communications Branch under Mr. Peebles and the former Radio Section of the Consumers Durable Goods Branch are in the organization of the Chief of the Bureau of Industry Branches,

under Philip D. Reed, in the Division of Industry Operations, whose director is J. S. Knowlson.

Headquarters of the WPB Communications Branch and the new Radio Section, formerly in Temporary Building "E", have new offices in Room 2202, New Post Office Building, Washington, D. C., adjacent to the Federal Communications Commission and the Defense Communications Board.

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SEES ADVERSE CHAIN RULING AFFECTING ALL U.S. ORDERS

The contention was made by Telford Taylor, General Counsel of the Federal Communications Commission, in filing the FCC brief in the Supreme Court in the so-called anti-monopoly rules case appeal, is that if the FCC chain broadcasting regulations may be attacked in equity in an over-all footing" it is difficult to see why all other general policy declarations of the Federal Communications Commission - or, indeed, of other Government agencies - may not also be attacked."

Interesting points were also raised in the brief of the Mutual Broadcasting System just filed by Louis G. Caldwell, Chief MBS counsel. The Supreme Court, expected to act within the next two or three months, is petitioned to remand the chain monopoly chain regulations case with directions to the lower court to hear and determine the motion for preliminary injunction and to consider the original appeal on their merits.

The main FCC arguments are (1) that the NBC and CBS suits are premature because the regulations have no immediate legal effect but are mere declarations of policy to be applied in future administrative proceedings. (2) Since the regulations are not final and the administrative process has not been completed, the regulations are not reviewable at this time. (3) The appellants have an adequate remedy. (4) The argument of the appellant Columbia Broadcasting System that there may be no administrative proceedings in which it may contest the Commission's regulations is merely theoretical and, in any event, irrelevant. (5) Lack of finality is an insuperable obstacle to judicial review of the regulations at this time, whether in a statutory court or before a single district judge. (6) Review of the regulations under Section 402(b) is the appropriate method.

"It would seem equally possible, for example, for an aggrieved manufacturer of radio equipment holding a contract with a licensee or applicant, or other interested party, to attack the Federal Communications Commission's general allocation plan, or the policy which it has declared with respect to the authorization of new or improved broadcast facilities during the period of war emergency", the argument in the FCC brief continued. "The entertain-

ment of these suits, accordingly, would seriously impede the development of intelligent and responsible administrative processes by impelling administrative agencies not to disclose by general statements in advance of case by case adjudication, the policies which they intend to follow. The Government believes the formulation and publication of administrative policies is advantageous not only to those who do business with an agency but to the agency itself. To hold that such policies may be attacked on a sweeping basis prior to their application in particular cases would choke off this beneficial administrative trend."

The Mutual brief by Mr. Caldwell concluded:

"In arriving at its legislative determinations the Commission has, over the years, employed all the usual methods for the securing of information, including investigations in the field (which, in turn, have included countless thousands of observations and measurements with technical apparatus), questionnaires, data exchanged with foreign countries, conferences with interested groups and experts, informal hearings and formal hearings. The hearing in the instant case, resulting in a record of 8,713 pages and 707 exhibits, while of course larger than the average, is only one of a number of huge records built up in such proceedings where they have been held.

"In none of these matters was a hearing required by statute. The same determinations could have been made on the basis of information secured by informal methods (as it has been in other important sets of regulations adopted by the Commission), with no record setting forth the considerations and facts leading to the result. Under present conditions, indeed, it would not be proper to make some of the considerations public; and yet very important legislative enactments are being made from week to week, seriously affecting the persons subject to the Commission's regulatory powers.

"In the court below, counsel for appellants clearly indicated that it was their conception of the review accorded by Section 402(a) that it permitted a complete factual showing by appellants in support of the claim that the Commission had exceeded its powers and in so doing had deprived appellants of their rights. It is difficult to conceive of any factual showing which would not duplicate, in whole or in part, the record made before the Commission in this case and, if any important facts are lacking in that record, it can only be due to appellants' failure to present all the available material evidence to the Commission.

"Suppose, however, there had been no hearing and there were no formal record? Is the door to be thrown open to an extended judicial hearing of the sort sought by appellants? Once such a review is permitted, within what limits can it be confined? How can suits brought under Section 402(a) be prevented from becoming an effective weapon to subject the Commission's regulations to interminable delays, and to countrywide diversities of judicial rulings?"

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PAINE GIVEN FULL ASCAP AUTHORITY

The Board of Directors of the American Society of Composers, Authors and Publishers on Wednesday voted General Manager John G. Paine full authority to conduct the business of the Society, subject to the approval of the newly elected President Deems Taylor, the Executive Committee and the Board of Directors. This action followed the recommendation of Mr. Taylor and the Executive Committee as part of the general plan for the reorganization of the Society's affairs.

Other actions by the Board included the approval of a 15-year contract with former President Gene Buck in a consultant and advisory capacity, at an annual salary of \$25,000, and the election to membership of Archibald Macleish, head of the Office of Facts and Figures of the United States Government.

The following is the version Variety has on the replacement of Gene Buck as President of ASCAP:

"The capture of enough votes among the writer directors came as a shock to Buck and the fact that the publisher contingent on the Board had managed their stratagem so efficiently and surreptitiously caused much incredulous headshaking in the music industry. * * *

"L. Wolfe Gilbert, a Buck henchman, brought up the matter of the recent election for writer directors and raised the question as to whether there ought to be a recount of the three-way contest that resulted in Ray Henderson coming out victor over Jerome Kern and Al Lewis before the Board, which included Henderson, proceeded to vote for officers."

"The count that elected Taylor comprised 11 publishers' votes and five writers' votes. The 16 votes just made the two-thirds majority required by the by-laws. * * *

"Intense publisher-director antagonism toward Buck has been accumulating since early in 1941 when he undertook to treat with go-betweens in a U. S. Department of Justice situation without first consulting ASCAP's Board of Directors. Publisher Directors have held that they would never have been brought up before a Federal Court in Milwaukee on criminal charges, and fined, had they been aware of the department's intentions at the inception of the proceedings. It was Buck, they said, who engaged the services of Charles Poletti, Lieut. Governor of New York, in the matter and left the Society no alternative but to let Poletti resume his negotiations for a consent decree.

"This antagonism increased considerably when Buck some eight months later flouted as ridiculous the terms submitted by NBC and CBS for settlement of their freeze-out of ASCAP and scored as 'Quislings' those publishers who wanted to openly admit that radio had licked them and that there was no sound reason for

continuing the fight. What actually brought the publishers' determination to get him out of the presidency to a head, say his foes, was an all-out attack that he delivered against them at a general membership meeting several months ago."

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RADIO SET PRICES UNDER MAXIMUM PRICE REGULATION

Retail and wholesale prices of radio, including phonographs, used radio sets, and also parts, tubes, and records, are placed under the national price ceilings in the "General Maximum Price Regulation", issued by OPA on April 28th. The OPA radio manufacturers' regulations, applicable to set and component manufacturers' prices, remain in effect.

The new order designates "radios and phonographs" at the head of the list of appliances and equipment specified by Administrator Leon Henderson as "cost of living" commodities placed under the national over-all price ceiling. Other specified commodities included refrigerators, light bulbs, flashlights and electrical appliances, as well as furniture, household equipment and clothing.

The radio and other retail price ceilings - the highest selling price in March 1942 - become effective on May 18, with the distributors' price ceilings effective a week earlier, on May 11. The Radio Manufacturers' Association was advised by Chief James H. Simon, of the OPA Radio Unit, that the "General Regulation" extends to used as well as new radios and phonographs and records, and also to tubes and parts sold by distributors and dealers. Therefore, in issuing the general price ceiling order, OPA revoked and annulled its previous temporary maximum price regulation governing the sale of new radio receiving sets and phonographs by distributors and retailers. This temporary regulation is now superseded by the March price ceilings of the "General Maximum Price Regulation".

All wholesalers and retailers will be automatically licensed under the national regulations on May 11. They must register with OPA at a time to be announced later. Administration of the price ceiling regulations affecting retailers and distributors, including interpretations of the new order, will be in charge of Dr. Merle Fainsod, who heads a new administrative section of OPA under Deputy Administrator J. K. Galbraith.

Leon Henderson also added "advertising services, including radio broadcasting" to the general price regulation "excepted services" list.

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LAWYER LA GUARDIA ARGUES HIS OWN CASE

Some years ago when Mayor La Guardia, of New York City, retired from Congress, someone asked him if he intended practicing law. Mr. La Guardia was quoted as replying that he dreaded returning to the legal practice. If that is true, he must have changed his mind last Wednesday when he appeared before the Federal Communications Commission in Washington as counsel for New York's Municipal Station WNYC. In order to do that La Guardia had to be specially admitted to practice before the FCC.

Mayor La Guardia has a personal interest in Station WNYC as he has been using it for his special Sunday talks and other announcements since his refusal to deal with the City Hall newspapermen with whom he has been carrying on a feud for several months.

New York's station seeks to extend its time to 11 P.M., but is opposed by the Columbia Broadcasting System, as operator of WCCO on the same frequency at Minneapolis, and by the State of Minnesota, on the ground that the time extension would mean interference in certain regions served by WCCO.

Mr. La Guardia attacked the Columbia Broadcasting System for opposing night hours for New York's municipal radio station. WNYC, the Mayor said, should not have "to get the consent" of CBS, a "privately owned corporation", for the privilege.

"Maps", La Guardia declared, "showed too many CBS stations in the Minnesota area to be wholesome."

John D. J. Moore, Jr., Assistant Corporation Counsel of New York City, told the Commission that almost twenty stations using Columbia programs serve the WCCO region, and he wanted to know why when CBS "had such a complete monopoly in this area", there could be any interference from WNYC."

In New York the day after the hearing, Earl Gammons, Manager of WCCO, in Minneapolis, charged that "Counsel" La Guardia had made at least two errors in his presentation.

To the Mayor's charge that there are "too many CBS radio stations in the Minnesota area to be wholesome", Mr. Gammons replied that "the fact is that CBS has two stations in Minnesota. One is WCCO, with a clear channel. The other CBS station in Minnesota is KDAL at Duluth, with a limited local coverage."

The Mayor's "second error", Mr. Gammons said, was in "proclaiming that his is a public-owned station operated only for public service compared with WCCO being a private enterprise. "The Mayor knows that both WNYC and WCCO are licensed equally in the public interest, convenience and necessity", he said.

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RADIO SERVICEMAN WINS COURT ACTION

The legal charge of "unlawfully withholding a radio" has lost some of its sting, according to Radio Retailing, which continues:

"In fact, the possibility that radio servicemen may be successfully faced with such charges while they're trying to collect their service-estimating fees, was considerably weakened last month when the Court of Special Sessions in New York City dismissed the charges against a local radio man.

"This was the case of the serviceman who dared to stand his ground, and insisted on his repair estimate fee of \$1, in spite of all the con-calling and court action that his irate customer undertook. The dealer had his 'estimate charge' sign displayed in his store, and also mentioned it to the customer. Yet he was forced into a long series of court appearances because the radio owner denied knowledge of the fee, and refused to pay it. Meanwhile the dealer hung on to the set.

"The charge was petty larceny. After a number of hearings and delays, Mr. Alpert (lawyer for a servicemen's organization) moved to dismiss the charges on the ground that no larceny had been proven, and that the complainant's remedy, if any, was in a civil court inasmuch as the defendant asserted a lien against the property involved. The three judges hearing the case then dismissed the charges.

"Specifically, it would appear that the only point established here was that such cases call for civil action, rather than criminal.

"It seems that such a civil case would have to be tried under the lien law applying to artisans' services, which contains no specific references to the type of work which is done by radio men.

"There is one step, however, that radio men can take now. And that is to be sure that the customer receives formal and unmistakable notification that a service estimate charge will be made. Printed claim-checks or tags, which constitute a contract and leave no doubt about the agreement, are the best, although prominent display signs and verbal mention are usually enough.

"These steps should be taken to avoid all court action, civil or criminal, and are of special importance in these times. The serviceman's time is now more valuable, and if his charges are questioned to any degree, it will have a particularly unfortunate effect on his business."

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U. S. MAY GIVE RADIO SERIES ON RELIGION

Although the networks have been praised for the way they have handled religious broadcasts, officials of the Committee on religious life in the Nation's Capital have been conferring with officials of the Office of Facts and Figures regarding the program which may be heard on Sunday mornings, according to one informant.

Leaders of the Committee on Religious Life and Federal officials declined to reveal much about the plans for the broadcasts, saying that there are still many wrinkles to be ironed out before the project is fully developed.

However, it was learned that one of the dominating themes of the broadcasts will revolve around a motto of the Committee on Religious Life - "Freedom for Religion and Religion for Freedom".

On one hand, the program may portray religious persecution in Nazi-occupied lands, and the courageous stand of the Norwegian bishops against the Quislings. On the other hand, it probably will tell what is being done to preserve religious freedom in America, and to further understanding and tolerance.

An official of the Office of Facts and Figures said high-class dramatic talent is expected to be used in the radio programs.

Rabbi Norman Gerstenfeld, spiritual leader of the Washington Hebrew Congregation, is General Chairman of the Committee on Religious Life.

Representatives of Catholic, Protestant and Jewish faiths serve on that Committee, which, through radio broadcasts and other means, stresses the basic principles which all religions can share, creating a common spiritual denominator.

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FM STATION W47A DOES AWAY WITH TRANSMITTER WIRES

Whereas most radio programs are carried by telephone wire from the studio to a transmitter, usually located many miles from the studio, a few frequency-modulation stations lately have installed special studio transmitter equipment to relay programs to the main transmitter.

Such a station is W47A, Capitol Broadcasting Company, FM station at Schenectady, N. Y., whose main transmitter is in the Helderberg Mountains, 12 miles airline from the studio. The ST equipment at W47A was installed under the first construction permit issued by the Federal Communications Commission for ST equipment in the 342 mc band. General Electric engineers designed the studio

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transmitter and the station receiver. Both were built by the company's radio and television department, the transmitter in Schenectady and the receiver in Bridgeport. W47A engineers designed and built the studio transmitter antenna and the receiving antenna at the main transmitter.

The complete W47A ST equipment consists of a 25-watt transmitter, a crystal control receiver and temporary directive antennas at both ends of the circuit.

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WOR TIME SIGNALS SO ACCURATE CAN BE USED FOR NAVIGATION

J. R. Poppele, WOR's Chief Engineer, states that WOR Time Signals are so accurate that they can be used for navigation purposes.

The time signals which WOR transmits hourly - twenty-four hours a day - Mr. Poppele said, originate in the Naval Observatory in Arlington, Virginia. This service is made possible by a special arrangement with the Western Union Telegraph Company, and by means of automatic equipment which has been installed in the Master Control Room at WOR. Western Union picks up the hourly time pulse at the Naval Observatory and transmits it by special telegraph lines to a master clock in New York City. This clock is housed in a vault where uniform conditions of pressure, temperature and humidity are maintained. Thus it is possible to maintain the same precise accuracy as the Naval Observatory clocks.

WOR has a special wire line from this master clock in New York to the automatic mechanism in the WOR Master Control Room. The entire operation is electrically and mechanically controlled and the time signal is superimposed upon the broadcast circuit. The mechanism is, therefore, automatic and requires no manual control by studio technical employees.

Mr. Poppele pointed out that recent chronographic tape measurements were made checking the time signal against the Naval Station at Arlington, and it was found that the average error is less than 1/25 of a second. The slight lag is caused by the time required in the operation of the electrical relays which control the broadcast of the impulse.

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 ::: TRADE NOTES :::
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A new Priorities Regulation No. 9, issued by the Director of Industry Operations, will govern issuance and use of ratings for export whenever appropriate forms are approved for specified industries or products. The most important provision of the regulation is that a preference rating assigned under its terms to a product for export may not be applied without an export license or other authorization to export, and the rating will be automatically cancelled if the export license or authorization is revoked. This will help to prevent burdening transportation and dock facilities with materials which cannot be exported.

General Outdoor Advertising of New York City expended \$40,000 in radio devices to switch off their signs in event of air raids only to learn that the signs might have to be blacked out anyway.

An analysis of six CAB reports covering the first quarter of 1942, released by the NBC Research Division, shows that the Red Network leads the next network by 14 percent in average commercial ratings for Monday-through-Saturday daytime listening.

March 1942 figures show that the Red increased its own aggregate daytime ratings by 14 percent over March 1941.

A new line of dynamotors for communication and other service in aircraft, tanks, and mobile field equipment has been announced by the General Electric Company.

The new line of General Electric dynamotors comprises five types, ranging from 25 to 600 watts in output, and from 3 to 31 pounds in weight. Formex wire insulation, light weight, and reliability under rigorous conditions are features. Each unit is designed for high output from a small frame size.

William H. Bauer, FCC attorney, charged before the Senate Patent Committee that the Bell Telephone System and its parent company, A. T. & T., have sought to monopolize the communications field through patents. Bauer told the Committee that the Bell System started from two original patents and has grown to a "structure involving the ownership of more than 9000 patents and rights under an even greater number of patents owned by others."

Bauer charged that RCA is in a "very dominant position" in the radio communication field because of its restrictive patent licensing policy and through patent agreements with companies located in Japan, Germany, Italy, Australia, England, France, Holland, Hungary, Russia, "and others".

In conjunction with his duties as Manager of NBC Operated Stations, Sherman D. Gregory has been appointed Manager of WEAJ, key station of the Red Network, New York. Mr. Gregory's duties will include the coordination of network activity relating to WEAJ.

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BROADCAST FROM COLUMBUS RADIO CONVENTION

The "American Forum of the Air" moves to Columbus, Ohio, on Sunday (May 5) at 8 P.M. to bring WOR listeners a discussion featuring six authorities on radio and public relations. The program will be presented in cooperation with the 13th Institute for Education by Radio of Ohio State University which convenes in Columbus Sunday.

The subject of the discussion will be "Is Radio Being Effectively Used in the War Effort?" and the participants will be:

Edward L. Bernays, publicist and writer; J. Harrison Hartley, Office of Public Relations, U. S. Navy; Robert J. Landry, radio editor of Variety; Ed Kirby, Chief, Radio Branch, Bureau of Public Relations, War Department; William B. Lewis, Radio Director, Office of Facts and Figures, and Roger M. Baldwin, Director of the American Civil Liberties Union.

A portion of the program will be broadcast from the banquet of the Thirteenth Annual Meeting of the Institute for Education by Radio on Monday, May 4 (NBC-Red, 7:30 P.M., EWT).

Speakers include Maj. Harold W. Kent, of the Public Relations Bureau of the U. S. War Department, National President of the I. E. R.; Lindsay Wellington, American representative of the BBC, and Dr. W. W. Charters, of the faculty of Ohio State University.

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NEW RULES FOR SONG-PLUGGERS

To eliminate evils which have grown up around the business of song-plugging, C. L. Menser, Program Manager of the National Broadcasting Company, has put into effect a set of rules designed to circumscribe objectionable practices.

Effective May 4 and until further notice, all contact with the NBC Music Library by the Music Publishers Contact Employees Union, Local 22102, A. F. of L., will be made through a single officially delegated member of the union to whom Thomas Belviso, NBC Music Division Manager, will make available between 2 and 4 P.M., information as to daily clearance of musical numbers. The Library will be restricted, so far as union members are concerned, to this official representative.

It is understood that the new set-up does not in any way oblige NBC to actual performance of the numbers cleared, since in every case a clearance sheet indicates only intention to program the numbers.

Effective May 4 the rule regarding lapse of time between duplication of numbers played - now three hours - will be put on a two-hour basis. The rule applies to both commercial and sustaining programs.

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