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FRANK E. MULLEN

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July 3, 1942

FLY VIGOROUSLY DEFENDS FCC ANTI-MONOPOLY RULES

Taking full advantage of his day in court - or as it has worked out many days - Chairman James L. Fly, appearing before the House Interstate Commerce Committee now considering the Sanders Bill which contemplates changes in the Communications Act, continued to put up a spirited defense for the FCC anti-monopoly Chain Broadcasting Regulations.

Mr. Fly divided his discussion of the rules into the following parts: Exclusivity of affiliation, territorial exclusivity, duration of affiliation contracts, station rejection of network programs, network ownership of stations, network control of station rates and freedom of speech and the chain broadcasting regulations. Each of these he discussed under three headings - "The Abuse", "Illustrations", and the "Cure", which was always the much discussed anti-monopoly FCC regulations. The FCC Chairman also took up the licensing of networks, newspaper ownership of radio stations and clear channel investigations.

In connection with the newspaper ownership, Mr. Fly said that "we have formed no conclusions as to whether the Commission has authority to refuse a license to a newspaper". The Chairman said the Commission would reach a decision on this soon (later he spoke of several months) and that he had "no objection" to Congress expressing itself on the subject of newspaper ownership of radio stations and added that the Commission might decide to throw the entire problem into the lap of Congress.

On the other hand, he said, the Commission may have the power "under the public interest concept to make a decision".

The Chairman steadfastly declined to say whether he had formed his own opinion on the newspaper-radio point.

"I don't know what my own personal judgment will be", he said.

"Congress Sanders has asked several previous witnesses why newspapers should be put in a proscribed class. He has asked why they should be treated differently from churches, schools and moving picture companies, et cetera. My answer is that if in the future there should arise a marked tendency for the ownership of radio stations to gravitate into the hands of churches, schools or motion picture companies that would be a matter which the Commission should properly look into", Chairman Fly testified.

Mr. Fly predicted tremendous developments in television and frequency modulation.

"Both of these fields", Mr. Fly added, "are set for unlimited commercial expansion immediately after the war. I have the greatest hope that these two industries will flourish during the immediate post-war period.

"There is already one FM network and the linking of television stations into one or more networks is clearly foreshadowed."

Mr. Fly said before the war the Commission had prepared to study the clear channel situation as ordered to do by Congress but was prevented from doing so by a shortage of engineers. Basically he suggested the clear channel situation is an engineering problem and a very interesting one.

Mr. Fly produced an exhibit which he said shows "that in 1941 the Columbia Broadcasting System had a net income, after Federal income tax had been paid, amounting to 55.8% of the total depreciated value of all of its property, tangible and intangible. In the case of NBC, the comparable percentage is 67.2.

"Mutual shows no profit as an independent entity, but, of course, the stockholders do show substantial profits. Page 2 of the exhibit shows that the consolidated net broadcast income of seven Mutual stockholders for 1941, before payment of Federal income tax, amounted to 67.5% of the depreciated value of all their broadcast property. Note that the Mutual figure is before Federal income tax. Figures after Federal income tax are not available since the tax cannot be allocated between the broadcast and the non-broadcast income of these seven Mutual stockholders.

The witness also introduced an exhibit which he said shows that whereas the NEC Red and CBS networks have 40.2% and 37.8% of the total nighttime power, the Blue and Mutual have only 8.7% and 8.5% respectively. The importance of these figures is not that two of these networks are bigger than the other two. On the contrary, the important thing is that two of these networks do not have sufficient power to be audible throughout the nation. It is the listeners deprived of Blue and Mutual network programs rather than the networks themselves whom we should consider. The exhibit also shows that only 6.3% of the nighttime power of the country is unaffiliated with any national network. Obviously, no new network can enter the field if it must seek its affiliates only from these small and scattered independent stations."

Chairman Fly then took up the various regulations as follows:

EXCLUSIVITY OF AFFILIATION - The abuse: In order to get programs from one network, stations frequently are required to contract not to carry even a single program from any other national network. As a result, listeners in a number of cities are deprived of many network programs, and the country's radio service is limited.

"The cure: Regulation 3.101 provides that network affiliation contracts may not be so drawn as to prevent a station, if it so desires, from carrying programs from another network."

"TERRITORIAL EXCLUSIVITY - The abuse: Frequently certain stations decide not to carry particular network programs. Territorial exclusivity means that if the regular affiliate in an area decides not to carry a program, the network may not offer that program to any other station in that area. Thus, the regular affiliate in any area is in a position not only to reject a program, but also to prevent listeners in his area from hearing that program over any other station in that area."

"The cure: Regulation 3.102 provides that the regular affiliate may not prevent some other station from carrying a network program in the event that the regular affiliate rejects it. The regular affiliate may, of course, have first call on the programs of its network; but in the event that it chooses to reject such a network program, it cannot under our regulation block a neighboring station from bringing the rejected program to listeners in that area."

"DURATION OF AFFILIATION CONTRACTS - The abuse: One of the amazing things about these affiliation contracts is the term they cover. While the station is bound by the contract for five years, the network is only bound for one year. Since these contracts protect the station for only one year in any case, our regulation limiting contracts to two years is not a limitation at all from the point of view of the station's certainty of affiliation."

"The network, of course, likes to have its stations bound to it for five years; but it is easy to see how this provision adversely affects the public interest. A network may be offering excellent service and putting on excellent programs at the time an affiliation contract is signed. During the five-year period thereafter, its service and programs may deteriorate. But no matter how low it falls, the station is still bound to take such programs, and only such programs."

"The cure: Regulation 3.103 originally provided that an affiliation contract might not exceed one year - which was at that time also the period of the license. Subsequently, the Commission lengthened the term of the license, and coincidentally the maximum term of affiliation contracts, to two years. Thus, a station is in a position at least every two years to survey the entire field and make such arrangements as appear best at that time."

"Option Time - The Abuse: By taking an option on all the hours of its affiliates, CBS is able to discourage non-network programs. NBC achieves substantially the same effect by optioning the best hours of its stations. These options discourage not only local programs but also transcriptions. Advertisers are unwilling to invest large sums in developing programs which may be moved on 28 days' notice. The result has been that stations have been cramped in their efforts to produce worthwhile local programs and to procure high-quality transcriptions."

"The cure: Regulation 3.104 does not ban options, but it does subject the optioning of time to four restrictions which the Commission found to be in the public interest."

"STATION REJECTION OF NETWORK PROGRAMS - The abuse: Under the law, a station licensee has the responsibility of determining what shall and what shall not go out over his transmitter, and this responsibility is not transferable. There is reason to believe that under some affiliation contracts, the licensee gives up his right to reject improper network programs.

"The cure: Regulation 3.105 provides that a station may not contract away his right to reject unsuitable or improper programs.

"The networks on the whole allege that their present contracts are unexceptionable in this respect; and if this is the case the regulation is quite unobjectionable. However, to the extent that such contracts do or may hereafter impair the principle of licensee responsibility, Regulation 3.105 serves as a remedy.

"NETWORK OWNERSHIP OF STATIONS - The abuse: In addition to the hundreds of stations affiliated by contract with NBC and CBS, these networks were the licensees of 10 and 8 stations respectively at the time of our Report on Chain Broadcasting."

"Since the announcement of our regulations, this concentration of stations has already improved somewhat. Thus 3 of NBC's 10 stations have been transferred to the Blue Network, Inc. In addition, WMAL here in Washington has been transferred back from NBC to the Washington Star. Thus, when the Blue network is sold, it will have 3 stations and NBC will have 6.

"The cure: Regulation 3.106 provides that no network shall own more than one station in any locality. When the contemplated sale of the Blue is completed, this requirement will automatically be met. The regulation also provides that a network shall not be the licensee of a station in any locality where the existing stations are so few, or of such unequal desirability, that competition would be substantially restrained by such licensing.

"NETWORK CONTROL OF STATION RATES - The abuse: NBC's standard affiliation contract provides that, if a station sells time to a national advertiser for less than that which NBC charges network advertisers for that time, then NBC may lower the station's network rate proportionately. Thus, if you, as a national advertiser, go to a station and say, 'I want an hour over your station, and I'll pay so many dollars', the station may have to reply: 'We'd like to, but if we did NBC would crack down on us.'

"This might properly be considered outside the Commission's concern, if it did not affect listeners adversely. However, listeners are affected. Many programs which might be put on by national advertisers, through transcriptions or otherwise, are banned because network rates must be charged even though the network is not used. Thus listeners are deprived of programs which might otherwise be broadcast.

"The cure: Regulation 3.108 provides in effect simply that stations may fix or alter their own non-network rates without hindrance from the networks.

"Note that this regulation, like all the others, does not give the Commission any control whatever, direct or indirect, over anybody's rates. As with the other regulations, 3.108 provides merely that control of such matters shall remain where it belongs - with the 900 or more station owners all over the country."

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MORE THAN MILLION RADIOS IN MASSACHUSETTS

With 1,044,830 sets in Massachusetts alone, the percentage of radios in the homes, as shown by U. S. Census reports still continues very high. Reports have not been received from about two-thirds of the States. The latest heard from are:

OCCUPIED DWELLING UNITS WITH RADIO, FOR STATE AND FOR CITIES OF 25,000 OR MORE: 1940

(A dwelling unit was enumerated as "with radio" if it contained a usable radio set or one only temporarily out of repair)

Area - <u>Massachusetts</u> The State	Total	With Radio	No Radio	Not Reporting Radio
Total dwelling units (including urban)	1,120,694	1,044,830	41,793	34,071
Rural-nonfarm dwelling units	94,541	85,934	5,975	2,632
Rural-farm dwelling units	23,720	20,502	2,457	761
Beverly	6,987	6,673	178	136
Boston	197,393	183,927	7,504	5,962
Brocton	18,137	17,014	722	401
Cambridge	28,717	26,771	744	1,202
Chelsea	9,956	9,188	468	300
Chicopee	10,082	9,594	294	194
Everett	11,763	11,238	177	348
Fall River	29,799	27,538	1,410	851
Fitchburg	10,951	10,268	506	177
Haverhill	13,193	12,001	826	356
Holyoke	14,716	13,812	457	447
Lawrence	21,987	20,285	1,019	683
Lowell	24,932	22,485	1,491	956
Lynn	27,602	25,589	970	1,043
Malden	15,365	14,795	314	256
Medford	16,022	15,128	304	590
Melrose	6,896	6,595	103	198
New Bedford	30,640	28,060	1,712	868
Newton	17,432	16,574	248	610

(Cities continued)

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Area - Massachusetts (Continued) Cities	Total	With Radio	No Radio	Not Reporting Radio
Pittsfield	13,018	12,325	383	310
Quincy	20,367	19,132	259	976
Revere	8,493	7,792	179	522
Salem	10,549	9,814	329	406
Somerville	26,264	24,980	459	825
Springfield	40,303	38,501	725	1,077
Taunton	9,335	8,310	316	209
Waltham	9,167	8,680	177	310
Worcester	48,812	45,365	1,273	2,174
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Area - Kentucky				
Total dwelling units (including urban)	698,538	444,416	235,650	18,472
Rural-nonfarm dwelling units	179,890	115,079	60,144	4,667
Rural-farm dwelling units	280,365	134,773	138,523	7,069
Ashland	7,441	6,527	742	172
Covington	18,028	16,417	1,177	434
Lexington	13,849	10,813	2,730	306
Louisville	89,955	76,864	10,798	2,293
Newport	8,047	8,077	685	285
Owensboro	8,351	6,769	1,255	327
Paducah	9,607	6,785	2,512	310
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Area - Alabama				
Total dwelling units (including urban)	673,815	321,671	329,039	23,105
Rural-nonfarm dwelling units	157,226	82,906	69,176	5,144
Rural-farm dwelling units	289,280	86,115	193,489	9,676
Anniston	6,697	4,297	2,238	162
Birmingham	71,798	55,265	14,156	2,377
Gadsden	9,300	7,084	1,957	259
Mobile	20,512	13,441	6,369	702
Montgomery	21,932	13,234	7,790	908
Tuscaloosa	6,556	3,979	2,294	283

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Sherman Gregory, Manager of Station WEAJ, has been appointed to the Radio Defense Committee of New York City. The committee is concerned with the use of radio in local civilian defense.

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FCC SPLIT REVEALED AS CRAVEN ENDORSES SANDERS BILL

The lengthy hearings on the Sanders Bill to reorganize the Federal Communications Commission closed yesterday (Thursday) with Commissioner T.A.M. Craven sharply opposing Chairman James L. Fly in endorsing the bill and the former declaring that it was high time the Commission itself should be done over and the Communications Act rewritten.

It had been expected that Commander Craven would pull no punches and in this the spectators were not disappointed. Known to be a hard hitter, conscientious, and honest, Mr. Craven struck back at practically every statement made by Chairman Fly and in such a way as made it apparent that there was a very serious rift between the former Naval officer, Chairman Fly and the Commission members backing the latter.

The two concluding witnesses were Mark Woods, President of the Blue Network, and E. K. Jett, Chief Engineer of the FCC. Commander Craven, who had fortified himself with a 34 page prepared statement (Mr. Fly having sprung one 74 pages long) charged that the views Mr. Fly expressed in opposition to the Sanders Bill were not those of all the members of the Commission.

Mr. Craven, in endorsing the Sanders Bill, expressed the opinion that newspapers should not be barred from operating radio stations. He also upheld the networks saying:

"As has already been demonstrated, a network is only an aggregation of individual stations joined together by contractual arrangement for the simultaneous rendition of particular programs. Congress has not seen fit, and wisely I believe, to confer upon the Commission the power to regulate the business practices or business policies of individual stations. I can see no greater reason why such power should be conferred when stations are considered in the aggregate as networks. The necessary result of such action would be to confer upon the Commission the power to impose its will upon all licensees with respect to all business practices growing out of the network relationship. Quite aside from the elements of censorship which are necessarily involved when the source of program material may be regulated, I can see no need for this action. On the contrary, I can see much harm that might result therefrom.

"As a result of the extensive investigation which the Commission has already made of this subject, it has been demonstrated to my satisfaction, first, that networks as we now know them are essential to our system of broadcasting, and, secondly, that in the main such networks operate efficiently and well. There are, of course, certain imperfections in the structure and certain practices which if continued or extended may have an adverse effect upon the quantity and quality of radio service available to the public. But it is my view that if legislation on this subject is considered necessary, Congress itself should outlaw certain specific practices considered harmful or reprehensible, and that within the

limitations thus established the parties be permitted to work out their own economic destiny without interference by the Commission.

"I believe that the solution of the problem of network broadcasting rests in permitting the greatest freedom of action both from an economic and from a program standpoint in so far as is consistent with provisions of general law. However, in order to meet the views of those who desire to impose specific limitations, I can agree that it may be helpful for Congress to enact certain provisions which will serve as guideposts to the industry, but which do not directly or indirectly control its economic or program development."

"In view of recent controversies it would seem desirable that Congress specify more clearly to what extent and in what manner it desires the Commission to regulate broadcasting", Commander Craven continued. "If Congress desires the Commission to regulate the business practices of licensees, it should so state. If Congress desires this Commission not to regulate business practices of licensees, it should likewise specify clearly that the Commission has no such power. Likewise it seems desirable that Congress specify whether, before judgment has been rendered in Courts or other competent agencies, the Commission has power to take into consideration alleged violations of laws, other than the Communications Act, which affect the conduct of the licensees."

"I regard the Commission as an agency created by Congress to administer policies established by the Congress. I do not regard the Commission as an agency empowered to promulgate new social-economic policies. We regulate some of the media for the dissemination of facts and opinion. Therefore our actions affect the value to the public of these media for free speech. Hence when the Commission encounters conditions and problems not foreseen at the time the basic legislation was enacted, it seems most desirable that the Commission return to Congress for further instructions. From this standpoint at least, this Commission hearing on the Sanders Bill seems opportune."

"As indicated previously, the fount of many of the problems is the shortage of radio frequencies. Consequently, the number of available facilities is so limited that it is impossible for everyone to be granted a radio license even if he were qualified. In fact, facilities will be so extremely limited that even if we had 100 national networks devoted exclusively to speech-making in 15 minute blocs, the last person of today's population would have to wait 37 years for his or her return, and then could reach only a small portion of the people then living in the nation."

"I believe in sound competition, and monopolies contrary to public interest are as abhorrent to me as to anyone else. However, the forcing of unsound competition in the fields of radio will nullify the directions of Congress to distribute radio broadcasting facilities fairly and equitably among the various States and communities. Moreover, the forced application of the doctrine of unlimited economic competition will result in a further

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concentration of competitive stations in the large cities and a dearth of facilities in the smaller communities throughout the nation. Likewise, if too many stations are forced into the large cities, the net result will be impaired program service to the entire nation. Such a policy of unlimited economic competition must of necessity impair good engineering standards, with the consequence that rural radio listeners may be sacrificed for a regulatory theory in which the commercial aspects of radio broadcasting are overemphasized and the public service aspects are neglected."

"In recent years the Commission has operated under a plan of organization which, in my opinion, is basically unsound. In addition to making possible, and in fact requiring, an undesirable combination of the legislative, judicial and administrative functions, it is unwieldy and cumbersome. The result has been that too many matters which should have received careful attention have received too little attention or none at all. It therefore seems desirable to me that the Act be both specific and compulsory with respect to a division of the Commission and its major functions.

"The administrative and judicial work of the Commission can be divided along natural lines, namely: (1) Broadcasting - this includes television, high frequency, domestic and international broadcasting; (2) common carriers - this includes domestic land lines and radio as well as international radio and cable; and (3) radio services involved in safety of life at sea and in the air, the preservation of property, regular radio operations aboard ship and aircraft as well as emergency and auxiliary uses of radio, amateur radio, and the licensing of all radio operators."

Commander Craven concluded by saying:

"It is obvious that we shall have new communication problems for Congress and the Commission. The present-day problems will be obsolete and forgotten. Tomorrow we may wonder why we worried so much about today's problems. Therefore it seems essential that we do not base long-term legislation upon what may appear to be a good detailed solution of today's minor troubles in radio. We should avoid the danger of regimenting the future along the grooves of today's thinking, and it is for this reason I hope that any new legislation which may be enacted by Congress will contain statements of broad policy together with such checks and balances as are deemed necessary to insure the development of radio as a free American enterprise in which the public has confidence."

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::: TRADE NOTES :::
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The Treasury Department in a report read by Representative Louis Ludlow, of Indiana, estimated the value of contributed service in advertising war bonds at not less than \$100,000,000. With regard to radio the report stated:

"Radio stations and networks, without exception, and program sponsors in large numbers have cooperated. They have contributed a total of not less than 60,000 station hours of time.

The estimated expenditure for radio broadcasting by the Department of the Interior in connection with promotion and publicity for the fiscal year of 1941 was:

Division of Information, \$17,112; Consumers' Counsel Division, \$258; Office of Land Utilization, \$450; Bureau of Reclamation, \$1,564; National Park Service, \$322; Fish and Wildlife Service, \$9,295; Bonneville Power Administration, \$2,910, Miscellaneous Service Division, \$630.

The Federal Communications Commission on June 30 adopted these amendments of Part 42 (Destruction of Records) of its Rules and Regulations:

"This note shall be inserted immediately after Section 42.1:

"NOTE. - The following shall not be considered violations of these rules and regulations:

"(a) The furnishing of original filed messages to the United States Government in support of bills.

"(b) The transfer of messages or copies thereof pursuant to the Rules and Regulations of the United States Office of Censorship.

"(c) The destruction of records when in the judgment of Defense Commanders or other military or naval authority such destruction is necessary to prevent such records from falling into the hands of an enemy of the United States."

Many Latin American broadcasters are in danger of being forced off the air unless vital replacement parts are released soon by the United States, said John F. Royal, NBC Vice-President in Charge of International Relations. Mr. Royal is back in New York after a two-week visit to Mexico City.

Emphasizing the critical nature of the shortage of tubes and other radio materials, Mr. Royal said that some broadcasters are still waiting for equipment ordered months ago. Two important Mexican stations, he added, are now on their last set of tubes and will have to go off the air unless American supplies, being held at the border, are soon released.

Arthur Hungerford, Business Manager of NBC television, now commissioned Lieutenant, J.G., reports for Navy duty at the Harvard University training center, Cambridge, Mass., as of July 1. After a two-month training course, Lieut. Hungerford will be assigned to a post.

For the first time, restrictions which may continue in effect for the duration of the war are contained in two suspension orders directed against priorities violators. They prohibit Manning, Bowman & Company, Meriden, Conn., from selling electrical supplies containing aluminum under any conditions, and the Illinois Pure Aluminum Company, Lemont, Ill., from selling any articles containing aluminum on orders not rated A-1-j or higher.

Sylvania announces a new window display for radio tube servicemen. Central figure is a typical radio serviceman at attention, saluting. Headline copy reads, "On the Alert To Keep Radios Working". Copy at the base says, "You need your radio now - let us keep it working." On the base of the display is a plea by to Buy War Bonds And Stamps Now! "

The Philco Radio and Television Corp., of Philadelphia, Pa., has been granted a construction permit for an experimental relay television broadcast station to be located between Wyndmoor, Pa. and New York City, and to be used for relaying television programs originated by the NBC station WNBT in New York to Philco's main television broadcast station WPTZ, for rebroadcasting. Channels 13 and 14 (230,000-242,000) 15 watts;

Also Philco was granted construction permit for new experimental television relay station; Channels 13 and 14, 230,000-242,000 kilocycles; power 15 wats.

Likewise Philso was granted a modification of its construction permit authorizing a new commercial television station, for move of transmitter, make changes in antenna system, increase ESR to 1000, and for extension of completion date.

Three current sponsors on the Columbia Broadcasting System announced the expansion of all their programs on Columbia to the full network under the new 15% discount rate. This brings to seven the number of CBS programs using the entire network. The sponsors taking advantage of the new CBS discount rate and expanding their programs to the full network are Philip Morris & Company, Ltd., Liggett & Myers Tobacco Company and Coca Cola Company.

Lois Lorraine, for 5 years on the publicity staff of CBS, has been appointed press representative for Station WEAJ

The General Electric Co., Schenectady, N. Y., has been granted authority to cancel the outstanding construction permit of experimental television relay broadcast station W2XGI, and to delete the call letters.

Station KTRB, Modesto, Calif., has applied to the FCC for modification of construction permit which authorized increase in power, change in hours of operation, install new transmitter, directional antenna for night use and move transmitter requesting extension of completion date from 8/30/42 to 11/30/42.

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