

# HEINL RADIO BUSINESS LETTER

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No. 1587

## FLY CRACKS BACK AT NETWORKS ON "COMPOSITION OF TRAFFIC"

The only result that would follow from a repeal of the Supreme Court decision containing the now famous clause that the Federal Communications Commission could determine "the composition of traffic", James L. Fly, Chairman of the FCC, told the Senate Committee considering the Wheeler-White Bill would be "the restoration of the monopoly that the big networks formerly enjoyed.

"This monopoly must not be restored", Mr. Fly declared, "particularly when we are on the threshold of television and frequency modulation which would make that monopoly far more powerful than it ever has been in the past.

"I want to address myself to five words which have been ripped from their context and adopted as the battle cry of the two big networks and the NAB in their war on the Commission's anti-monopoly regulations. These five words (you have heard them repeated again and again at these hearings) are 'the composition of that traffic'.

"When, on May 10 of this year, the Supreme Court upheld the Commission's chain broadcasting regulations, the big networks were much concerned. This was not surprising because on that date the monopolistic shackles which RCA and CBS had imposed upon the radiobroadcast industry were finally broken. Now that the highest Court had spoken there was no way that they could hope to recapture the monopoly they had previously enjoyed -- unless, they could prevail upon Congress to amend the law. It must have been obvious to them that if they were to succeed an extensive legislative campaign would be necessary. And this campaign had to be pitched on a high plane. It would not do to come before this Committee crying, 'We want our monopoly back.'

"The new slogan worked fine. Almost immediately there was a flood of editorials, all making reference to 'the composition of that traffic'. Neville Miller even went to the length of writing as follows to Mary Haworth, the bleeding hearts editor for the Washington Post:

"I am wondering \* \* \* if your readers realize the effect of the Supreme Court decision of May 10 which places in the hands of the Federal Communications Commission, a body of seven men located in Washington, D. C., supreme authority to determine, whenever they wish, what shall and shall not be broadcast to the American people. They may say, at their discretion, what the people shall hear over the radio, whether it be news, drama, music, comedy or politics.'

"In other words, Neville Miller is blaming the soap operas on the Commission! If he can put that one over he is a better man than P. T. Barnum.

"Now, before I go further, let me stop for a moment and ask two questions. First, isn't it extraordinary that in a case where the question was not presented for decision, the Supreme Court should have strayed off the reservation and gone out of its way to pass on the Commission's powers with respect to programs? It is well known that it has been the settled practice of the Court to confine its decisions to the questions before it. It is hard to believe that the Chief Justice, Mr. Justice Reed, Mr. Justice Frankfurter, Mr. Justice Douglas and Mr. Justice Jackson would have deviated from that policy, or that those jurists would have endeavored to exact a new provision of law of such significant character running counter to the whole tenor of the Communications Act. This brings me to my second question which is this.

"Isn't it extraordinary that it is contended that the Court reached and went out of its way to declare the conclusion that the Commission has the power to control 'what shall and shall not be broadcast to the American people' in the face of Section 326 of the Communications Act which specifically provides:

"Nothing in this Act shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication."

"The answer to these questions is that the Court neither decided anything nor uttered any dicta with respect to the Commission's powers over programs, which is clear when you put the phrase, 'the composition of that traffic' back into the context from which the NAB tore it. Neither the words, program control, or, programs, or anything comparable to either occurs in the pages preceding or surrounding the one phrase so carefully culled out of its meaningful environment."

Whereupon Mr. Fly went over the Supreme Court decision paragraph by paragraph and concluded:

"In the network case the Supreme Court did nothing more than decide the issue before it - the validity of the anti-monopoly regulations. The law with respect to the Commission's power, or rather lack of power, over radio programs was left just where it has always been. Under Section 326 of the Act the Commission is specifically denied the power to tell a radio station what it shall or shall not broadcast. The only power which the Commission does have is the power to review the over-all service of a station to determine whether it is operating in accordance with public interest, convenience and necessity. If the Commission finds a man like Dr. Brinkley, Reverend Shuler or Dr. Baker, it has the power under



the decisions of the courts to refuse to renew his license. Everyone who has testified at these hearings has said that the Commission should have the power to keep men like these off the air. Certainly it cannot be said that this power has been abused. The record shows that it has been very sparingly exercised.

"In short, the cry of the networks at these hearings has been for Congress to 'repeal the Supreme Court decision'. I have shown you that the decision has nothing to do with programs and therefore to overturn the Court's decision would have no effect so far as programs are concerned. It comes down to this. The only result that would follow from a repeal of the Supreme Court decision would be the restoration of the monopoly that the big networks formerly enjoyed."

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### 3-YEAR RADIO PERMIT SEEN AS FIRST FCC CONCESSION

The Federal Communications Commission deciding Thursday to issue broadcasting station licenses for a three-year period, maximum allowed by law instead of two years is the first sign of the Commission trimming its sails in the storm raised about the FCC by the two committees on the Hill - the Lea Committee in the House and the Wheeler-White Committee in the Senate.

It is believed the FCC may try to beat Congress to some other concessions the Commission feels it may be forced to make later. The full text of the three-year amendment announcement follows:

"The Federal Communications Commission today (December 15) announced the adoption of an amendment to its rules and regulations looking toward the issuance of standard broadcast licenses for a normal license period of three years, the maximum period authorized under the Communications Act of 1934. The present license period is two years.

"Initial renewals will be for staggered periods, ranging from one year to two years and nine months. Thereafter, all regular licenses will be for the full three-year period. In this way the plan will be placed in operation in such manner as to spread the work load incident to examination of applications for renewals over the full three-year period. Stations are grouped in order of the different license expiration dates in such manner as to include in each group a fair cross-section of the entire industry. This will automatically accomplish a fair distribution of the work load on renewal applications.

"This action is in line with the policy of the Federal Communications Commission and its predecessor, the Federal Radio Commission, to extend the length of licenses whenever the advancement of the radio art and the growth of the radio industry seemed



to warrant such extension', Chairman James L. Fly said.

"In deciding the matter of extending the normal term of licenses, the Commission has always had to consider the concept of a license as a public trust and the need of the industry for all the assurance and stability that seemed consistent with the public trust concept.'

"In 1927, when the Federal Radio Commission was first organized, licenses were issued for sixty days. In 1928, the normal license of a broadcast station was a three-month period. This was increased to six months in 1931. In 1939, the Federal Communications Commission authorized the issuance of licenses for one-year periods, and in October, 1941, increased the period to two years."

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### MCCORMICK'S CHICAGO TRIBUNE BLISTERS THE "OUTWORN FCC"

The Chicago Tribune, owned by the arch-enemy of the Administration, Col. Robert R. McCormick, who also owns Station WGN, one of the country's outstanding radio stations, this week opened fire on the Federal Communications Commission, of which it said:

"With its only excuse for existence erased by the progress of the broadcasting industry it was set up to regulate, the FCC can now sink back into oblivion alongside its New Deal counterpart, the WPA."

The Tribune editorial follows:

"The Federal Communications Commission was described at a recent session of a House investigating Committee in Washington as a haven for draft dodgers.

"One employee reported that it took all of his persuasive power to keep the Commission from obtaining a draft deferment for him, despite the fact that he was a 4-F, judged unfit for military service because of physical defects.

"This employee told also how the FCC engaged in needless duplication of radio intelligence work already done by the Coast Guard. He said that he was told the Commission wanted its employees to appear busy so that it might secure larger appropriations from Congress and so that the employees would not have to go into the Army.

"As far as made work is concerned, there is little difference between FCC and the defunct WPA except in the size of the projects. From its legitimate task of policing of the airlines, FCC has turned to censorship, political activities, radio spy work, regimentation of broadcasters, and sociological readjustment of the ownership of radio stations and communications facilities.

"None of these jobs was delegated to it by Congress, and all of them were undertaken as the result of New Deal conniving. When the FCC asks for more money, it is to pursue these New Deal objectives and not to keep order in the broadcasting industry.

"In fact, whatever need there may have been for the FCC is disappearing. The radio industry, one of the most progressive in America, is cutting the ground from under the Commission. Frequency modulation was in operation before the war, and when peace comes and the industry is able to resume FM development, Congress will be able to junk the FCC and end its expensive political and sociological experiments.

"FCC came into being because there are only a limited number of transmission channels available to regular broadcasters and to communications stations, and they must be made to share them without interference. When frequency modulation comes into its own, the number of broadcasting channels will be almost unlimited and the possibility of interference between stations will be remote. Licensing will not be needed. An FM broadcaster can have a full property right, not only to his physical properties, but to his channel as well, and there will be more than enough of the latter to go around.

"The FM broadcasters can be regulated as far as their programs and operating technique are concerned by the same laws that govern the publication of newspapers and magazines. It costs much less to build and operate a frequency modulation station than it does to build and maintain a similar station of the type now in general use. The fidelity of the broadcasting is so much greater that frequency modulation appears certain to supplant the regular broadcasting of today in most parts of the country.

"The few commercial transmission systems that retain their original broadcasting equipment for distance-covering purposes can be regulated adequately by the Interstate Commerce Commission, which has a much more savory reputation for impartiality and efficiency than the FCC and is too busy maintaining that reputation to embark on New Deal social reforms."

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#### NBC BOOKLET TRACES HISTORY OF RADIO AND NETWORKS

Radio's history from its beginning in 1920 to date, and the relation of this growth to the important contributions made by the National Broadcasting Company, are portrayed in a 24-page illustrated booklet, "What Goes On Behind Your Radio Dial", issued this week by NBC's Promotion Department. Of a press run of 75,000 copies, 25,000 will go to the network's Information Department, 15,000 to affiliated stations and 7,000 to the NBC Public Service Department for distribution by Mrs. Doris Corwith, public service lecturer.

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## McCLINTOCK VIEWS PEACE AS A BUSINESS PROPOSITION

"Business must do the job of cementing the world's peoples into one huge neighborhood, and make immediate plans to aid in post-war reconstruction", Miller McClintock, President of the Mutual Broadcasting System, told 500 top executives of New York City, at a luncheon of the Sales Executives Club last Tuesday.

Speaking on the topic "Peace is a Business Proposition", Mr. McClintock said: "In the post-war period American business will be faced with the problem of its own rehabilitation, the solution to which is not national - or even international - but is actually global in scope."

Citing radio and aviation as the two most important industries responsible for making all people "Global-conscious", Mr. McClintock continued, "Only when the war is over will we become fully aware of these two factors that are going to make a neighborhood of all the lands of the earth. In the past surface geography was the dictator of trade and commerce, and to a large extent of international relations. But the airplane and radio are rapidly redrawing the relative positions of continents and countries."

No point in the world is now more than 60 hours away from your home airport. The great circle routes that the air lines are already using - and the ever increasing speed of our long range planes - will soon revise our entire concept of world travel and trade.

"As aviation has shattered our concept of distance, so radio has revolutionized our concept of time.

"We are now about to see another great upsurge in the field of electronics. The General Electric Laboratories are already foreseeing the day when man can travel from 2,000 to 5,000 miles per hour in a vacuum tube controlled by electronic devices. Such tubes extending from one city to another would place Chicago within a travel distance of about one-half hour from New York, and the Pacific Coast about an hour away from the Atlantic.

"But in the more immediate future we can be assured of such advances as: radio broadcasting of higher quality and greater realism; automatic, unattended radio weather stations and more reliable beacons and many improved and new radio devices for use on aircraft, ships, trains and automobiles; inexpensive home sets providing for standard broadcast reception, television, frequency modulation, facsimile and improved phonograph reproduction -- all in one cabinet; three-dimensional television in color and extensive use of television in churches, schools and factories.

"Since almost all of these strides in aviation and radio communications are being developed by American business", said Mr. McClintock, "it becomes the responsibility of American business to put them to uses that will best benefit both us and the rest of the



world. Only when you realize how aviation and radio communications alone can pull the entire world together, can you appreciate the extent of this responsibility.

"Since the airplane and the radio have so greatly altered the limitations of time and space, they are destined to change our business and social relationships with the rest of the world, and will become the most powerful single factors in our struggle for world peace. \* \* \*

"It is not at all visionary", continued the MBS President, "to translate the peaceful relationships of men on the local level to a global basis. The farmers, the merchants, the manufacturers, the mill hands work and live and trade on a reciprocal basis. Similarly, throughout the world there are functional categories. On a world basis, of course, the comparison is more complex. The divisions may be geographical, ethnic, economic, or political. But the net result is the same - each becomes a logical producer or buyer, making or desiring the goods of some other group.

"It is significant", said Mr. McClintock, "that broadcasting is the only advertising medium that could undertake such a world-encompassing job. For in radio the story is told by the human voice, which even the illiterate can understand. No one even needs to learn to read to understand radio."

To overcome language obstacles, Mr. McClintock suggested the use of Basic English as the solution to the problem of broadcasting to a world-wide audience.

"After the war, of course", continued Mr. McClintock, "the world market will take on an entirely new aspect. Then aviation and radio communications will begin in earnest to redraw trade routes and trade policies. In addition, the war itself will have created new needs and new credits.

"The United States Department of Commerce estimates that in our first post-war year our volume of produced goods should top \$165,000,000,000. This is 69% over \$97,000,000,000 for 1940. In fact, the demand for consumer goods will put our manufacturing output far above that of any year in our history.

"American business has always been the motivating force behind democracy in the United States", concluded Mr. McClintock. "In the period of global expansion that lies ahead, we have the perfect opportunity to prove that American business can also be a vigorous force - in fact, the dominant force - in welding closer ties among nations, and in making possible a lasting and universal peace."

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## SENATE RADIO HEARINGS END; NEWSPAPER OWNERSHIP NEXT

The open hearings on the Wheeler-White Bill to revamp the old Radio Act and maybe the Federal Communications Commission were concluded last Thursday (December 16). It is possible that the Senate Interstate Commerce Committee considering the measure may hold executive sessions before Christmas but with holiday adjournment so near at hand the whole thing will probably go over into the New Year and the Committee report much later.

Showing the interest of the Senators in the subject - and unquestionably a matter which the Senate and House hearings stirred up - was Senator McFarland of New Mexico, inquiring when the FCC expected to reach a decision regarding the newspaper-owned broadcasting stations. The reply was that maybe the Commission might report on that before Christmas or at any rate at a very early date.

At the final session of the Senate Committee, Chairman Fly read a 29-page memo of detailed comment and recommendations on the provisions of the Wheeler-White bill. One of these with regard to forfeiture of a station license read:

"In any case where the Commission pursuant to subsection (a) hereof is authorized to revoke a license, the Commission may in lieu of revocation after notice and hearing as prescribed by Section 312(a), order the licensee to forfeit to the United States the sum of \$500 for each and every day during which the Commission finds that each and every offense set forth in the notice of hearing occurs, or such lesser sum as the Commission may find appropriate in light of all the facts and circumstances of the particular case."

Up to this time all the Commission could do was to cancel a license and there was no penalty for further broadcasts.

Another suggested amendment read:

"The station license, the frequencies authorized to be used by the licensee, and the rights therein granted shall not be transferred, assigned, or in any manner either voluntarily or involuntarily disposed of, or indirectly by transfer of control of any corporation holding such license, to any person, nor may stock or other participation in the ownership of any corporation holding a license, whether or not such transfer constitutes a transfer of control, be transferred to any person, if as a result of the transfer the transferee will hold 20 percent or more of the stock or other participation in ownership."

The House Committee lawyers questioned what they called the "relationship existing" between Mr. Fly and Harold A. Lafount, former Commission member, who is now a radio firm executive.

Eugene Garey, Committee counsel, offered FCC files as evidence that the Commission learned in 1941 it had not been



informed of a change in ownership in 1936, but had taken no action. FCC rules require notification of any change in ownership or operation. Mr. Lafount, Mr. Garey said, first acquired stock in 193y and by 1941 had control.

Edgar L. Brown, President of the National Negro Council, sought to have a provision of the Radio law prohibit the broadcasting "of terms of opprobrium toward any race, creed or color". Luigi Antonini, President of the Italian-American Labor Council complained that stations were dropping foreign language broadcasts and thus rejecting radio as a means of Americanization.

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### FCC DISCRIMINATION IN PRESS WIRELESS CASE IS DENIED

Armed with another lengthy statement - this one was 19 pages - James L. Fly, Chairman of the Federal Communications Commission, answered shot for shot the charges Joseph Pierson, President of Press Wireless, Inc., had made to the Senate Interstate Commerce Committee that his company had been discriminated against by the FCC.

Mr. Fly said, in part: -

"Mackay and R.C.A. Communications have been denied more applications than Press Wireless.\* \* \*

"In his testimony Mr. Pierson stated that the bulk of the business between Algiers and the United States is press traffic. The figures do not bear this out. For example, for the month of March 1943 - the first month during which the Algiers circuit was in operation - the total press traffic handled over the Algiers circuit, both inbound and outbound, was 97 messages with a total of 9,284 words. This compares with a grand total for the circuit for the month of March of 494 messages and 34,053 words. During subsequent months the proportion of press to other traffic has risen but it still remains true that non-press traffic constitutes a substantial portion of the traffic over the Algiers circuit.

"I have a table here which shows for the period from the opening of the Algiers circuit to September 30, 1943, - the latest date for which figures are available - the percentage of total traffic, both inbound and outbound, in terms of messages, words, and revenues, respectively, devoted to press, government, expeditionary force messages, and regular commercial messages.

"Mr. Pierson criticizes the Commission for acting on applications for these temporary licenses without a hearing. This criticism is without merit. The Commission has found it necessary to issue temporary licenses without a hearing because the exigencies of war will not wait while prolonged hearings are held to determine whether authorizations should be issued. Mr. Pierson, himself, with justifiable pride, told this Committee how Press Wireless was able



to maintain badly needed communication with France after the Germans occupied Paris. Press Wireless did this by keeping one step ahead of the Nazis by transferring its Paris operation to Tours, from Tours to Bordeaux and then to Vichy. The application for authority to communicate with Tours and Bordeaux were filed on June 15, 1940, and granted the same day. Mr. Pierson himself states that through a temporary authority granted by the Commission, Press Wireless handled not only press but government and commercial telegraph from France after the fall of Paris and that for a period of twenty days, it was the only radio company in operation between France and this country. It would have been impossible to have established and maintained this important link with France after the fall of Paris if the Commission had been required to await the filing of a formal application and then held hearings in which all interested persons could participate.

"It is significant that many of the facilities surrendered by American radio carriers for the use of OWI - including the frequency 7820 kc formerly licensed to Press Wireless - are operated by Press Wireless for OWI. Press Wireless receives between \$25,000 and \$30,000 a month from OWI for furnishing international broadcast service. In view of the fact that Press Wireless knew that the frequency was going to be used for international broadcasting and raised no objection thereto and in view of the fact that it is being paid by OWI for operating these facilities for OWI, I fail to see any basis at all for Mr. Pierson's complaint.

"Mr. Pierson apparently also felt that the Commission should not have requested Press Wireless to surrender its frequencies without agreeing to return them at the end of the war. I might say here that all of the carriers attempted to get a commitment from the Commission that they would be given back the frequencies they were surrendering when the war was over. The Commission, however, did not feel that it could make such commitments. None of us know today just what the radio or communications picture is going to be like when the war is over. We would simply be tying our hands if we agreed to assign frequencies now for the post-war period. I think that the carriers themselves realize the necessity for this freedom of action on the part of the Commission.

"In his testimony before this Committee, Mr. Pierson refers to the Commission's investigation of Press Wireless' rates and suggests that the Commission began this general investigation because of the unfavorable press stories appearing in the columns of the stockholders of Press Wireless concerning the Commission's action with respect to the Algiers circuit. There is absolutely no foundation to this charge."

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The report of the International Telephone and Telegraph Corporation for the first nine months of this year, issued this week, shows a consolidated net income of \$3,294,543, after expenses and charges, compared with a net of \$970,957 in the nine months of Sept. 30, 1942. On a parent-concern basis I. T. & T., alone, reported a net loss of \$981,413 for the nine months, against a loss of \$1,776,627 in the comparable nine months a year ago.

About 70,000 radios of British manufacture are now getting their finishing touches and 14,000 American sets arrived in London recently, a foreign dispatch says. All these sets are for civilians and will be released through normal trade channels at prices regulated under the price-fixing law of 1939.

The FCC has authorized WOR to change the call letters of its Frequency Modulation station from WOR-FM to WMBA. The "BAM" is for the Bamberger Broadcasting Service, the WOR operating company.

Harold Hough, of Station KGKO, Fort Worth-Dallas, Chairman of the Blue Network's stations Planning and Advisory Committee, has been named a Director of the Blue Network Company. Naming of Mr. Hough, for more than a decade a dominant figure in broadcasting, to the directorship is in conformity with the policy set forth by Edward J. Noble, Blue Network Chairman, at the general meeting of network affiliates in Chicago last month. This marks the first time that a station representative, who is not a network stockholder, has been named a network director.

The Federal Communications Commission has adopted an Order (Commissioner Case not participating) concluding that the accounting performed by the New York Telephone Company, a wholly-owned subsidiary of the American Telephone and Telegraph Co., with respect to four transfers of property from the A. T. & T. Co. in 1925, 1926, 1927 and 1928 was "improper". These property transfers were recorded by the New York Company on its books at amounts substantially in excess of the net book cost of the property to the American Company.

The Commission ordered the New York Company to charge to its surplus the amount of \$4,166,510.57 - the figure representing the amounts in excess of net book cost to the A. T. & T. of the property transferred.

The amount of \$4,166,510.57 had been credited by the American Company to its surplus accounts as "profit" on the transfers. The Commission found that since the New York Co. was a wholly-owned subsidiary of the A. T. & T. "Profits" to the American Company from these transfers are "fictitious or paper increments", and are as unreal as profits from interdepartmental transactions within the A.T. & T. itself.