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INDEX TO ISSUE OF JANUARY 18, 1944

| | |
|--|----|
| Fly Charges Trammell Would Hamstring FCC; Fool Press..... | 1 |
| Telecommunications Unit In New State Dept. Setup..... | 3 |
| Jett Independent Stand Jeopardizes Confirmation..... | 4 |
| Press Wants Nondiscrimination Written In Radio Act..... | 5 |
| Jett Is Added To Speakers At FM Convention Jan. 26..... | 6 |
| MBS Ends Year With Highest Billings In Its History..... | 7 |
| Homer Capehart Enters Indiana Race For U. S. Senator..... | 7 |
| Charge Diathermy Concern With Cashing In On FCC Order..... | 8 |
| Overseas Army Stations Celebrate First Anniversary..... | 9 |
| Kobak Cautions Against Assuming "Victory Is In The Bag"..... | 10 |
| Trade Notes..... | 11 |

January 18, 1943

FLY CHARGES TRAMMELL WOULD HAMSTRING FCC; FOOL PRESS

Chairman James L. Fly of the Federal Communications Commission, now declares that what Niles Trammell, President of the National Broadcasting Company is trying to accomplish in "discrediting" the Supreme Court radio decision is "to hamstring the FCC, abolish the network rules and regain his monopolistic strangle-hold on the affiliated NBC stations."

Certainly the boys are getting rough with each other. Mr. Fly's latest accusation is a comeback at what Mr. Trammell recently said in the Editor & Publisher which publication explains that space was made available for Mr. Fly's denial in the current issue (Jan.15) at the FCC Chairman's request.

Mr. Fly replied, in part, as follows:

"In the January 8 issue of Editor & Publisher, Mr. Trammell called upon newspapers to make common war with him upon the Supreme Court decision of May 10 upholding the anti-monopoly chain rules of the Federal Communications Commission.

"That decision, Mr. Trammell advised, means that there can be no free radio in America. And to make perfectly sure that the newspapers got the point, he warned that it is only a short step from there to a government-controlled press.

"Before the publishers of the nation rush to enlist under Mr. Trammell's banner and do battle shoulder to shoulder with him against the Supreme Court and the Federal Communications Commission, I wish to make it crystal clear just how and why he is attempting to deceive them with this preposterous assertion.

"To support his charge he offers these five words from the decision: 'the composition to that traffic.' He argues that when the Court ruled that the Commission had the responsibility of determining 'the composition of that traffic', it gave the Commission power to regulate program content, what shall and what shall not be broadcast to the American people.

"I described to the Senate Interstate Commerce Committee the elaborate propaganda campaign launched by the National Association of Broadcasters, which is a stooge organization for NBC and CBS, to recapture the chain monopoly privileges. I testified: 'These words, yanked from their context made a fine battle cry. It was much better to talk in terms of abridgment of free speech than in terms of restoration of monopoly. Here also was a cause which the press could logically be expected to champion.

"The new slogan worked fine. Almost immediately there was a flood of editorials, all making reference to the composition of that traffic.

"I have here a dozen samples of these editorials, all published within 20 days of the meeting of the NAB Board and all proclaiming that "the composition of that traffic" means that "the Commission has power to control completely everything that goes out over the air".

"Analyzing the Supreme Court decision, I showed the impossibility of construing it to give the Commission power to regulate program content.

"The Court', I contended, 'says the Commission is not simply a traffic officer, policing the wave lengths to prevent stations from interfering with each other. Obviously, the traffic referred to is the stations themselves, and the radio emissions from these stations. Then the Court goes on to say that the Commission does something more than supervise "the traffic".

"Again the traffic refers to the station. Then follows the sentence which the two big networks and their associate, NAB, chose to misconstrue, "it puts upon the Commission the burden of determining the composition of that traffic". * * * The composition of that traffic is again the composition of the electrical traffic, that is, the stations that are on the air. * * *

"Thus, 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 already 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.'

"Commenting on my testimony, Chairman Burton K. Wheeler said:

"Of course, in order to put the construction which Mr. Miller (Neville Miller, President of the National Association of Broadcasters) and the President of the National Broadcasting Company put on that statement, you would have to hold that the Supreme Court by implication repealed a direct provision of the law - which in effect says that the Commission cannot regulate program content.

" . . . And to me it is perfectly absurd to put that kind of construction on the law, because it cannot be put on the law without your saying that by implication the Supreme Court overruled it, and they didn't overrule it. Now, perhaps the language they used was unfortunate, but nobody could construe it - certainly the Commission couldn't construe that language of the Supreme Court to say that it gave them the right, in the face of express law, to regulate the contents of programs.'

"Hitting at the very type of propaganda which Mr. Trammell spread on the pages of Editor & Publisher, Chairman Wheeler said:

"I think because of the propaganda that has been sent out, and it has been unfortunate, by the radio industry to a great many stations out through the country, the smaller stations that do not have the benefit of high-priced lawyers that the chains employ, that those outlying stations have come to the conclusion that this language means the Commission could regulate their programs. It has created a fear in the minds of some of the owners of these stations without question of doubt."

"The FCC does not now, nor did it ever, believe it had the power to regulate the content of radio programs. It does not desire that power.

"And incidentally, NBC and CBS which have raised such a hue and cry about the damages they would suffer because of the network regulations are doing a bigger business now than ever before.

"What are these network rules that cause Mr. Trammell to shed so many crocodile tears? They are rules which free the station owners from almost complete domination by the networks - a condition which they had to accept if they wanted to get network service. They give the stations a measure of freedom to run their business and to serve their communities they never had before. They are a milestone in the battle for the extension of free speech."

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TELECOMMUNICATIONS UNIT IN NEW STATE DEPT. SETUP

One of the results of the reorganization of the State Department is the creation of a new Office of Transportation and Communications which supplants the old Division of International Communications formerly headed by Thomas Burke who resigned several weeks ago. The new office is under Assistant Secretary of State Adolf A. Berle, Jr., and has these divisions: Aviation, Joe D. Walstrom, Acting Chief; Shipping, Jesse E. Saugstad, Acting Chief; Telecommunications, Francis Colt de Wolf, Chief.

Mr. de Wolf is well known to the communications industry having been for many years Assistant in the International Communications Division. The division was divided into three sections - Aviation, Telecommunication and Shipping. These have now been enlarged into divisions and will continue to deal with international aspects of radio, telegraph and cable communications, aviation and shipping.

Undersecretary of State Edward R. Stettinius, Jr. gave a brief outline of the reorganization plan last Saturday night during the second of the Department's radio series over NBC entitled "The State Department Speaks."

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JETT INDEPENDENT STAND JEOPARDIZES CONFIRMATION

The independent political stand taken by Ewell K. Jett, Chief Engineer of the Federal Communications Commission, nominated last week by President Roosevelt to the Commission appears to have raised a novel question. When the name of Mr. Jett came up, Senators E. H. Moore of Oklahoma and Styles Bridges of New Hampshire, Republicans, questioned the fact that Mr. Jett was a Republican, the designation given him by the President. Mr. Jett, who because of his years in the Navy has never voted, refused to commit himself politically other than to say that he was an independent. There the matter stands at this writing with the possibility of a hearing by the Senate Interstate Commerce Committee to investigate it further.

Proponents of Mr. Jett's stand contend that since the law says that the 7-man Commission "shall be composed of not more than four members of the same party" that it doesn't matter what Mr. Jett's politics are so long as he is not a Democrat since there are already four Democrats on the Commission. The law doesn't say anything about Democrats or Republicans and the argument is that Mr. Jett being an independent is qualified to serve. And that is the stand he has taken.

Furthermore, it became known that Mr. Jett, although he in no way sought the position, but having had the honor of a presidential nomination, would now like to be confirmed. Previously when the commissionership had been suggested to him, he had shown no particular desire to have it. Also there was only a \$1,000 difference in the salary. However, there is said to be no indifference in his present attitude and that he is desirous of being confirmed.

The Jett case brings to mind the appointment in 1928 of C. M. Jansky, Jr., nationally known radio engineer and Arthur Bacheller, Radio Inspectors in the New York District, by President Coolidge to be members of the old Federal Radio Commission. Mr. Jansky was designated as a Democrat and Mr. Bacheller a Republican. The question was raised as to their politics. An effort to rush the appointments through brought on a filibuster. It was at the end of that particular Congress also that President Coolidge was just giving out so the appointments died with the Congress and thus the Commission lost the services of two of the best qualified radio engineers in the United States.

Mr. Jett disclaims any party affiliation, declaring he had "always maintained an independent status". Senator Bridges wrote Senator White (R) of Maine that:

"Mr. Jett is not a Republican, and never has been a Republican, and can under no circumstances qualify as a Republican."

A thing in Mr. Jett's favor is that Senator White is at the present time Acting Minority Leader and in that way may put in a good word for the FCC official because Senator White is also the

radio authority of the Senate and furthermore no one knows the value of Mr. Jett's work and his high professional standing better than Wallace White.

An odd phase of the case is that Senator Moore, of Oklahoma, who raised the question of Mr. Jett's not being a Republican, himself jumped party lines to secure the Republican senatorial election having up to that time been one of the leading Democrats of Oklahoma.

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PRESS WANTS NONDISCRIMINATION WRITTEN IN RADIO ACT

The newspapers are not going to take the word of the New Deal dominated Federal Communications Commission that there will be no future discrimination against the papers acquiring broadcasting stations. And to make sure of this the Newspaper Radio Committee will endeavor to have a non-discrimination clause written into the new Radio Act. Senator Chan Gurney (R), of South Dakota, himself a member of the Senate Interstate Commerce Committee will offer such an amendment to the Wheeler-White radio bill assuring newspaper publishers of not being unduly hindered from entering the field of radio, including FM and television.

One of the first newspapers to be heard from regarding the FCC's latest flip-flop is the Washington News (Scripps-Howard) which says:

"After two years or so of deliberation, the Federal Communications Commission has decided not to adopt any general rule against newspapers acquiring radio stations. It 'does not feel that it should deny a license merely because the applicant is engaged or interested in a particular type of business.'

"Being in the business of merchandising news, entertainment features and advertising, we quite naturally resented and resisted any suggestion that we be arbitrarily deprived of the right to use any mechanical means that might be available to that business. Years ago the type in newspapers was set by hand, and we might not still be in this business if at that time the Government had decided that newspapers could not acquire typewetting machines.

"The printing press is not out of date yet, though broadcasting has become a strong competing medium. With inventions and improvements - frequency-modulation broadcasts, television, facsimile reproduction, and nobody knows what lies beyond - it is conceivable that some day that old press rumbling below may go the way of the dinosaur and the ox-cart. When and if that day comes we would still like to be in the business of communicating our news and views to the public - on a basis of equal competitive opportunity with anybody else.

"It never occurred to any Government bureau to deny the horse-and-buggy doctor the right to change over to an automobile, or to deny the owners of sailing ships the right to switch to steam. But Government bureaus in those days didn't go in so heavily for planning and regulating. We thought it strange that even in this era a Federal agency should seriously consider barring newspapers from broadcasting, while leaving the field open to patent-medicine manufacturers, utility companies and sundry other enterprisers.

"Anyhow, after thinking it over, the FCC has decided that it 'does not desire to discourage legally qualified persons from applying for licenses but does desire to encourage the maximum number of qualified persons to enter the field of mass communications, and to permit them to use all modern inventions and improvements in the art to insure good public service.'

"Which is all right with us - since 'all's well that ends well.' But to make sure that argument has ended inside the FCC, it might be a good idea for Congress, the next time it legislates in regard to the Commission's powers, to write in a stronger provision insuring a policy of equal opportunity and non-discrimination."

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JETT IS ADDED TO SPEAKERS AT FM CONVENTION JAN. 26

Regardless of any action the Senate may take on his nomination for Commissioner, E. K. Jett, Chief Engineer of the Federal Communications Commission will be a speaker at the fifth annual meeting of FM Broadcasters, Inc., to be held at the Hotel Commodore in New York Wednesday and Thursday, January 26 and 27th. Mr. Jett will speak in addition to James L. Fly, Chairman of the Commission, whose acceptance had been previously announced. George Adair, Assistant FCC Chief Engineer will also be heard. Messrs. Jett and Adair will participate in a round table discussion.

Says the FM Broadcasters bulletin:

"Although the fifth annual meeting is still nearly two weeks off, advance registrations from people who plan to attend have been arriving in happy droves. The January 12 count (last chance we had to total them up) reached almost 200 individuals who represented 116 different organizations. It's quite a roster - particularly impressive to us because it includes many names of groups who hitherto had no avowed interest in FM. Thus far, 27 States have been heard from and, with logical optimism, we expect quite a few more.

"Advance registration for the meeting closed Jan. 15. Because of wartime conditions, no tickets for the open luncheon on Wednesday (January 26) can be sold at the door (hotel has to make plans well in advance, you know) although late-arrivals will naturally be admitted to the other sessions so long as seating room is available. And it looks like we'll need plenty of that.

"In the past few weeks there have been received applications from 11 more groups who want to be members of the association. This raises the total of FMBI membership to 84 - approximately twice the number that belonged at the outbreak of war. The newcomers, whose applications will be passed upon by the FMBI Board of Directors during the annual meeting in New York, include the following:

"WFMJ Broadcasting Company, Youngstown, Ohio; McClatchy Broadcasting Company, Sacramento, Calif.; Fetzer Broadcasting Company (WKZO), Kalamazoo, Mich.; Press Publishing Company, Sheboygan, Wis.; WKBH, Inc., LaCross, Wis.; WBNY, Buffalo, N.Y.; Iowa Broadcasting Company, Des Moines, Iowa; Josh Higgins Broadcasting Company (KXEL), Waterloo, Iowa; Capital Broadcasting Company, Inc., Montgomery, Ala.; Racine Broadcasting Corp., Racine, Wis.; Commodore Broadcasting, Inc., Decatur, Ill.

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MBS ENDS YEAR WITH HIGHEST BILLINGS IN ITS HISTORY

Mutual gross billings for the entire year of 1943 reached the highest figure in the history of the network, with a total of \$13,841,608, an increase of 43.6 percent over the amount reached in 1942, which totalled \$9,636,122.

Gross billings for the month of December, 1943, hit a new monthly high of \$1,603,402, an increase of 86% over the figure for December, 1942, which was \$861,815. Further breakdown indicates that the billings represent a consistent increase, beginning with February.

Total of sixty sponsors spent a sum of \$12,527,800.79 with Mutual during 1943, with revenue from locally sponsored programs totalling \$1,313,807.21, making a grand total for the year of \$13,841,608.00.

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HOMER CAPEHART ENTERS INDIANA RACE FOR U. S. SENATOR

Homer Capehart, former phonograph and radio manufacturer, will seek the Republican nomination for United States Senator in his native State of Indiana in the coming election. Mr. Capehart, who is 47 years old, has been in politics for sometime and attracted country-wide attention with his cornfield barbecue in Indiana in 1938 and later managed the ceremonies for Wendell Willkie acceptance speech at Elwood in 1940.

Mr. Capehart was formerly Vice-President of the Rudolph Wurlitzer Company of Cincinnati and President of the Capehart Corporation of Fort Wayne. Mr. Capehart is now President of the Packard Manufacturing Corporation and Capehart Engineering Company both at Cincinnati.

The Republicans are believed to have an excellent chance of carrying Indiana in the Fall election and it is believed therefore that Mr. Capehart will have plenty of company in seeking the nomination.

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CHARGE DIATHERMY CONCERN WITH CASHING IN ON FCC ORDER

Home Diathermy Co., Inc., New York, Home Diathermy Co., Inc., Wilkes Barre, Pa., Arnold Steindler and Isadore Teitelbaum, individually and as officers of both corporations, have been ordered by the Federal Trade Commission to cease and desist from unfair and deceptive acts in commerce which involved misrepresentation of a Federal Communications Commission order relating to the registration of diathermy apparatus.

The Commission finds that for the purpose of inducing owners of their machines to send the machines to the respondents' factory for calibration, they disseminated deceptive and misleading statements and representations with respect to the requirements provided by an order issued by the Federal Communications Commission May 18, 1942. These representations, the Commission finds, were disseminated by letters sent to purchasers of their machines and by oral statements made to machine owners which misrepresented the terms of the order issued by the Government agency.

The misrepresentations of the respondents, asserted that in order to comply with the order of the Federal Communications Commission, it was necessary that all diathermy machines by given a thorough calibration; that machines purchased from the respondents or any others, must be sent to the respondents' factory in New York City for the purpose of calibration and that unless this work was done, it would be impossible to properly and legally complete the required forms and register the instruments as required by provisions of the order; that it was necessary to pay the respondents the sum of \$7.50 for calibrating each machine, together with delivery charges, and that unless this was done and the forms properly completed, the owner of the machine was subject to a penalty of \$10,000 or confiscation of the machine.

According to the letter sent by the respondents to the owners of machines, the order of the FCC was issued because enemy aines in the United States were using short wave diathermy to transmit illegal messages to our enemies, and since it would be a very costly and lengthy procedure to track down each person owning diathermy units, the Government had ordered anyone owning a diathermy in the United States to fill out forms calling for a factory calibration.

All these representations, the Commission finds, are false and misleading and deceptive, in that it is not necessary that diathermy machines be calibrated or any servicing or adjustments made to permit full compliance with the requirements of Order No. 96 of the Federal Communications Commission, and in that it has never been necessary for owners of the respondents' machines or any other diathermy devices to pay any money or compensation of any nature or to pay the transportation charges to the factory or other places, as a prerequisite for compliance with the order, as represented by the respondent.

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OVERSEAS ARMY STATIONS CELEBRATE FIRST ANNIVERSARY

In a series of radio programs that rivalled anything he ever heard at home, the serviceman in Africa, Sicily, and Italy, listened to the first anniversary programs of his radio network - the six American Expeditionary Stations - on last December 15. With Captains Andre Baruch and Houston A. Brown, founders of the network, he was celebrating the first anniversary of the first radio station in history operated by servicemen for their own entertainment.

He heard General Dwight D. Eisenhower, Major General E.S. Hughes, and Rear Admiral Spencer Lewis. Then he listened to a special Command Performance shortwaved from the States and rebroadcast through the American Expeditionary Stations, on which all his favorite stars appeared. And from England by transcription came another salute in the form of a variety show.

A year ago, just thirty-seven days after the first shell was fired at Casablanca, this first station in all military history to be created for the entertainment of servicemen, came on the air. The idea was born at a meeting of Allied officers. A colonel spoke up: "Something must be done for the entertainment of our troops. Since an early curfew must be established, it must be something that will hit every man in his bivouac area."

Captain (then Lt.) Andre Baruch, former CBS, NBC and Pathe Newsreel announcer, knew what to do.

"Let's have a radio station", he said. That was the answer. The meeting broke up. Baruch talked it over with Captain (then Lt.) Houston A. Brown, electrical engineer.

"Brownie, we've got a couple of borrowed records. The boys have got portable radios as part of the company equipment. Can we tie the two together?" he said.

"Let's go foraging", said Brown.

That first station was made out of expendable materials that were found on the beaches at Fedala and Casablanca, out of old parts requisitioned from a French transmitter, and held together with worn strips of wiring. But it tied the record, "What Is This Thing Called Love", the first recording to be played, and the portable radio together. The first American Expeditionary Station was on the air.

There were only seventeen records at the beginning. But the boys in the tents and aboard ship dug up some more. News from the Signal Corps kept the boys informed on how the fight was going. Records from home kept them entertained.

When news reached the States of what was going on, a Special Service Radio Sub-section, headed by Lt. Col. Thomas H. A. Lewis, former advertising executive, readied new equipment as well

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as transcriptions of all the favorite radio programs from home, and started to feed this material overseas.

As troops moved forward new stations were put up. More recordings started to arrive. Air time increased. Now six stations operate in the theater. Each furnishes ninety hours of entertainment a week. The stations' crews and equipment move as fast as the troops. The station in Sicily was on the air a week before the fall of Messina, and the boys in the front lines in Italy heard their station in October. Captain Baruch is in charge of all of them, and Captain Brown as technical director of the stations, now sets up modern commercial equipment. But his first home-made job (on foreign soil) cut down so that it fitted into a suitcase, still operates.

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KOBAK CAUTIONS AGAINST ASSUMING "VICTORY IS IN THE BAG"

Declaring that there is too much thinking around the country that "the war is in the bag", Edgar Kobak, Executive Vice-President of the Blue Network, told the Boston Advertising Club that the biggest service radio can perform is to "exert all our power to scotch the idea that the war is over."

Ever since the Blue became independent, Mr. Kobak said, the constant thought and striving has been to make it the leading network. But after seeing pictures of the landing at Tarawa, and our wounded returning from the battle fronts, he added, he realized that "back of our network ambition is another and greater one."

"If we don't win this war", he declared, "I don't care who or what is the leading network. It would be an empty honor."

"We want to be a leader, but a leader in the kind of a country and the kind of world that will result only if we, if the United Nations, win the war, which means that we have to do everything we can to contribute to winning the war - with the least cost in lives and in the shortest space of time."

Asserting that there is too much feeling around the country that the worst is over with victory just around the corner, Mr. Kobak declared that nothing is further from the truth. Such thinking, he continued, had resulted in a considerable let-down which is causing our leaders much justified anxiety - "all at a time when we are getting set for the final, supreme effort."

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 ::: TRADE NOTES :::
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Niles Trammell, President of the National Broadcasting Company, and John Royal, Vice-President, received nice free publicity by having their pictures included among the celebrities who had travelled in American Airlines. This was carried in page ads in the principal newspapers of the country.

 Sparks-Withington Company and Subsidiaries - Six months to Dec. 31: Net profit after provision of \$1,146,150 for United States and Canadian income taxes and after a reserve for possible renegotiation was \$469,673, equivalent to 51 cents a common share, compared with \$392,406, or 42 cents a share, after Federal and Canadian taxes of \$1,497,425 in same period of 1942.

 Toscanini, conductor of the NBC Symphony Orchestra, who once rejected a Hollywood offer of \$250,000 to make a single motion picture, has just completed his first film in more than half a century in music - and for no compensation. It is an official government picture, "Hymn of the Nations", half-hour in length, designed to be shown in many foreign lands, and was produced by the Bureau of Motion Pictures of the Office of War Information's Overseas Branch.

 Columbia Broadcasting System's Affiliates Advisory Board will hold its first session of the new year on January 24 and 25 at network headquarters in New York City.

CBS executives who will attend the meeting are: Paul W. Kesten, Executive Vice President of the network; Joseph H. Ream, Vice President and Secretary; Frank Stanton, Vice President; Frank K. White, Vice President and Treasurer; and Herbert V. Akerberg, Vice-President in charge of Station Relations.

 Three stations joined the Mutual network during the month of December, 1943 - WHLS, of Port Huron, Michigan, 250 watts; KICD, Spencer, Iowa, 100 watts, and WKNY, Kingston, N. Y., 250 watts.

 Sales figures for the Blue Network's Central Division during 1943 reached a new all-time high and prospects for a repeat performance appear to be bright for 1944, according to a statement issued by Merritt R. Schoenfeld, Sales Manager of the Division.

 Specially packaged telephone and telegraph equipment, which permits several messages to be sent simultaneously over one pair of wires is being supplied by the Bell System to the Army Signal Corps for shipment overseas, it was disclosed yesterday. The apparatus was developed by the Bell telephone laboratories at the request of the Signal Corps and is being produced by the Western Electric Company, manufacturing subsidiary of the American Telephone and Telegraph Company. Signal Corps engineers estimate that the use of the "carrier" apparatus will save more than 100,000,000 pounds of copper. It not only will mean fewer shiploads of copper, but it also will provide many additional communication channels for the forces in the various theatres of war.