NAB Reports
THE NATIONAL ASSOCIATION OF BROADCASTERS
1626 K STREET, N. W. WASHINGTON, D. C. Vol. 8, No. 5, February 2, 1940

Broadcast Music, Inc., Passes Million Mark

Neville Miller made the following statement Thursday about the progress of Broadcast Music, Inc.:

"The Board of Directors of Broadcast Music met in New York on Tuesday, January 30. The response from the stations had been so encouraging that we decided to make a special effort to secure contracts from the remaining stations and start operation at the earliest possible date. Therefore, the Board will meet again the middle of next week and it is hoped that by then we shall have received sufficient additional checks and contracts to justify immediately declaring Broadcast Music, Inc., a going concern.

"We have passed the million dollar mark and are on our way to the million and a half mark. With the money in sight, it is extremely important that we save all the time possible and get under way at once. It would be a tremendous help if those who have not sent in their checks and contracts would do so now. It would certainly be a grand feeling to lay down a big bunch of contracts and checks before the Board at the meeting next week and to announce in the Bulletin next week that Broadcast Music, Inc., was in operation."

JOHNSON INTRODUCES NEW LIQUOR BILL—WORSE THAN FIRST

Senator Johnson (D.-Colo.) on Monday introduced an amendment in the nature of a substitute intended to be proposed to the bill (S. 517) to prohibit the advertising of alcoholic beverages by radio. The proposed bill is much more drastic than the bill reported by the Committee on Interstate Commerce in its effect on broadcasters. Its language in subsections (a) and (b) broadens the prohibition on broadcasters and advertisers of the Committee's bill and further prohibits "any advertisement of, or information concerning, . . . any person engaged in the business of manufacturing or selling any alcoholic beverages, if the purpose of such advertisement or information is to induce the purchase or use of any alcoholic beverage." Subsection (d) would make station licenses conditioned upon compliance with the provisions of subsection (a); it provides that if the FCC "finds that any licensee has wilfully violated any provision under subsection (a), the Commission shall have the same power to revoke such license as it has to revoke licenses for violation of, or failure to observe any of the restrictions and conditions imposed by the Communications Act of 1934 as amended."

S. 517 is on the Senate calendar and might come up at any time. Doubtless, Senator Johnson will move his proposed amendment when the bill is called up for consideration. We print below S. 517 as reported by the Committee followed by the amendment intended to be proposed:

S. 517

(Report No. 338)

To amend the Communications Act of 1934 to prohibit the advertising of alcoholic beverages by radio.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 316 of the Communications Act of 1934, as amended, is amended to read as follows:

"Sec. 316. (a) No person shall broadcast by means of any radio station for which a license is required by any law of the United States, and no person operating any such station shall knowingly permit the broadcasting of, any advertisement of or information concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes.

"(b) No person shall broadcast or directly or indirectly induce any other person to broadcast by means of any radio station for which a license is required by any law of the United States, and no person operating any such station shall permit the broadcasting of, any advertisement of or information concerning any alcoholic beverage if such advertisement or information is broadcast with the intent of inducing the purchase or use of any alcoholic beverage.

"(c) Any person violating any provision of subsection (a) or subsection (b) of this section shall, upon conviction thereof, be fined not more than $1,000 or imprisoned not more than one year, or both, for each and every day during which such offense occurs.

"(d) All basic permits heretofore or hereafter issued under the provisions of the Federal Alcoholic Administration Act, as amended, shall be deemed to be conditioned upon compliance with the provisions of subsection (b) of this section. If the Administrator of the Federal Alcoholic Administration finds that any person who holds any such basic permit has willfully violated any provision of subsection (b) of this section, the Administrator shall by order, after due notice and opportunity for hearing to such person, revoke such permit or suspend such permit for such period as he may deem appropriate, provided that for a first

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JOHNSON INTRODUCES NEW LIQUOR BILL—WORSE THAN FIRST

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violation of the conditions thereof the permit shall be subject to suspension only. Subsections (f), (h), and (i) of section 4 of such Act, as amended, shall apply to any proceeding under this subsection."

S. 517

AMENDMENT

(in the nature of a substitute)

That (a) no radio station for which a license is required by any law of the United States, and no person managing or operating any such radio station or financially interested therein, shall directly or indirectly charge to or receive from, or attempt to charge to or receive from, any person any money or other valuable consideration in full or part payment for the service of broadcasting by radio any advertisement of, or information concerning, any alcoholic beverage or any person engaged in the business of manufacturing or selling any alcoholic beverage, if the purpose of such advertisement or information is to induce the purchase or use of any alcoholic beverage.

(b) No person shall directly or indirectly contribute or pay to, or offer to contribute or pay to, any person or any radio station for which a license is required by any law of the United States any money or other valuable consideration in full or part payment for the service of broadcasting by radio any advertisement of, or information concerning, any alcoholic beverage, or any person engaged in the business of manufacturing or selling any alcoholic beverage, if the purpose of such advertisement or information is to induce the purchase or use of any alcoholic beverage.

(c) Any person violating any provision of subsection (a) or subsection (b) shall, upon conviction thereof, be fined not more than $1,000 or imprisoned not more than one year, or both.

(d) All radio-station licenses heretofore or hereafter issued or continued in force under the provisions of the Communications Act of 1934, as amended, shall be deemed to be conditioned upon compliance with the provisions of subsection (a) of this section. If the Federal Communications Commission finds that any holder of any such license has willfully violated any provision of subsection (a) of this section, the Commission shall have the same power to revoke such license as it has to revoke licenses for violation of, or failure to observe, any of the restrictions and conditions imposed by the Communications Act of 1934, as amended.

(e) All basic permits heretofore or hereafter issued under the provisions of the Federal Alcohol Administration Act, as amended, shall be deemed to be conditioned upon compliance with the provisions of subsection (b) of this section. If the Administrator of the Federal Alcohol Administration finds that any holder of any such basic permit has willfully violated any provision of subsection (b) of this section, the Administrator shall by order, after due notice and opportunity for hearing to such holder, revoke such permit or suspend such permit for such period as he may deem appropriate: Provided, That for a first violation of the conditions thereof the permit shall be subject to suspension only. Subsections (f), (h), and (i) of section 4 of such Act, as amended, shall apply to any proceeding under this subsection.

(f) As used in this Act, the term "person" includes an individual, partnership, association, joint-stock company, trust, or corporation.

FCC Record Rules

Section 3.93 (e) of the FCC rules, dealing with recorded and transcribed programs, says:

"The identifying announcement shall accurately describe the type of mechanical record used, i.e., where a transcription is used it shall be announced as a 'transcription' or an 'electrical transcription,' and where a phonograph record is used it shall be announced as a 'record.'"

The FCC informed the NAB this week that the rule means just what it says.

This must be construed to mean that only the words used in the rule are permissible. "Transcribed" and "recorded" are out. When a transcription is used it must be announced as "a transcription." The same goes for records.

Last week the NAB was erroneously informed that the present custom of the industry could be continued.

It would be advisable at this time for broadcasters to review the record and transcription rules printed in the NAB REPORTS of January 12, 1940 (p. 3953).

RADIO COMPETITION ESSENTIAL, FCC ARGUES IN COURT

"The Federal Communications Commission is under no duty to protect licensees of existing radio broadcasting stations from competition, in passing upon an application for a permit for a new station," asserts the FCC in a brief filed with the United States Supreme Court contesting judgment of the United States Court of Appeals for the District of Columbia in the case of Sanders Brothers radio station WKBB, Dubuque, Iowa, v. FCC.

"The basic theory upon which broadcast licenses have always been allocated is that competition is essential to the maintenance of high-quality programs," avers the Commission, explaining: "This is because competition among stations for advertisers means competition among stations for listeners and this in turn means rivalry to present the highest quality programs. Thus the character of radio presentations, and therefore the public interest, is largely dependent on competition."

The Commission points out that this view was stressed by the former Federal Radio Commission in an early report to Congress and more recently was expressed in the case of the Spartanburg Advertising Company when the Commission declared that "neither the license now enjoyed by petitioner nor any provision of the Com-

munications Act of 1934 confers upon petitioner a monopoly of the radio-broadcast facilities in the community which it is now serving."

Quoting the brief:

"There is nothing in the nature of the license held by an existing station which confers, expressly or by implication, a right to protection from competition. Such a license is an authorization to operate radio-transmitting equipment and is in no sense a franchise to engage in any type of business. The rights conferred by the license are neither absolute nor exclusive. The maximum term of a standard broadcast license under the Act is three years, but the Commission by regulation has fixed the term at one year. The license confers no property right in the frequency authorized to be used.

"Section 309 (b) (1) expressly provides that a 'station license shall not vest in the licensee any right to operate the station nor any right in the use of the frequencies designated in the license beyond the term thereof nor in any other manner than authorized therein.' Section 301 declares that the purpose of the Act, among other things, is to provide for the use of the channels of interstate and foreign radio transmission, but not the ownership thereof, for limited periods of time under licenses granted by the Commission. The license may not be transferred or assigned without the written consent of the Commission. The license may be modified by the Commission on its own motion if such action will promote the public interest, convenience, and necessity. And applicants for licenses under the Act are required to sign a 'waiver of any claim to the use of any particular frequency or of the ether as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise.'

"It is clear, therefore, that the rights which are granted by the license are restricted solely to the use of the facilities licensed for operation. There is no difference between the rights conferred by a license to operate a radio broadcast station and the rights conferred by a license to operate any other of the 38 or more types of radio stations."

Sanders Brothers contested the right of the Commission to authorize the Dubuque Telegraph Herald to establish a rival radio station. On January 23, 1939, the Court of Appeals reversed and remanded the case to the Commission upon the following grounds: (1) that an "issue of 'economic injury to an existing station through the establishment of an additional station' . . . is sufficient to furnish proper grounds for an appeal"; and (2) that the Commission erred in failing to make findings on the issue.

As to the first consideration, the Commission contends in part:

"As a licensee authorized to use radio transmitting equipment, respondent has the right only to the use of the frequency assigned to it; its license confers on it no franchise to carry on any business, much less to be protected from competition in the conduct of its business. Consequently, the mere fact that respondent, in connection with its business, operates radio-transmitting equipment under license from the Commission gives it no legal right or interest which it does not otherwise possess to question the validity of competition by the Telegraph Herald. And clearly, as a person engaged in the advertising business, respondent has no such legal right or interest. No person engaged in furnishing an advertising medium, whether it be through the sale of newspaper or periodical space or of radio time, may question a competitor's right to engage in that business. The legality of the permit issued to the Telegraph Herald to operate transmitting equipment may no more be questioned by respondent as a competitor in the advertising business than a power company could question the legality of a loan to competing companies, essential to enable them to engage in the electric power business.

"The fundamental consideration which the court below disregarded is that the status of respondent as a licensee authorized to use radio transmitting facilities is not changed because it is also engaged in the advertising business. In the conduct of its advertising business, it clearly has no right to freedom from competition from anyone else furnishing an advertising medium, whether it be a newspaper, a magazine, or another broadcast station. For example, insofar as this business is concerned, respondent has no more right to be protected from competition by the Telegraph Herald as a radio station that Telegraph Herald, as a newspaper, has a right to be protected from competition by the respondent either as a radio station or if it should propose to enter the newspaper field. As a licensee authorized to use radio transmitting facilities, respondent has a right to protection from undue interference in the operation of its equipment. But the important fact is that the injury with which respondent claims to be threatened here is loss of its advertising revenues and not invasion of its right to use its transmitting facilities. This is injury with which, under the Act, the Commission is not required to concern itself."

In denying the assumption that detailed findings of fact are required, the brief says:

"Neither the Commission nor its predecessor, the Federal Radio Commission, has ever assumed, in acting upon an application for a new license or for the renewal or modification of an existing license that any detailed findings of fact were required. Hundreds of thousands of such applications have been granted without any detailed findings having been made, only an entry on the Commission's minute book evidencing the action taken. If the Commission were obligated to make detailed findings with respect to every application made for a new license or for the renewal or modification of a license, an almost intolerable burden would be placed on it. This practical consideration is doubtless the reason why Congress did not write into the Act any requirement for dedetailed findings, and was certainly a determining factor in molding the consistent administrative practice."

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MILLER ENDORSES RELIGIOUS TOLERANCE CAMPAIGN

Declaring that "anti-sectarianism and anti-racial propaganda weakens both religion and the liberties of our country by divisive tactics of propagandists attempting to arouse Americans against themselves," Neville Miller this week pledged the cooperation of the radio industry in a nation-wide campaign with the Federal Council of the Churches of Christ in America, wherein local ministers will use local radio stations "for the purpose of creating

a better understanding between the various races and religious groups."

In a letter sent to all radio stations in the United States, Mr. Miller further declared: "There is no greater public service a station can render than to give its facilities to bring its listeners closer together in the bonds of understanding, based upon truth and fact. This, to me, is one of the root-principles of the American system of broadcasting."

Mr. Miller pointed out that from its knowledge of past history, the Federal Council of Churches, representing some 143,000 individual Protestant congregations in the United States, "knows that the germs of intolerance cannot easily be controlled, once let loose," and that "the time is at hand for a constructive campaign of tolerance and understanding."

In a statement by the Federal Council of Churches, the aims of the campaign were detailed as follows:

"The primary aim of this radio campaign is to lay essential facts before the American public, in order that, through an educated public opinion, we, as a people, may profit from the example of many less fortunate European peoples living in countries where democracy has been destroyed by tactics that included the fomenting of racial and religious hatred and oppression.

"Leading Christian clergymen in hundreds of American cities, over their own local radio stations, are being asked by the Federal Council of Churches, to "lead the way" in this radio campaign in the common interest of all racial and religious groups in America and for due recognition of the contributions of minorities in the life of society as a whole.

"The Christian church is showing a great awareness of the issues presented. It is interested in healing, conciliation, understanding, mutual aid and peace. The clergymen will present information and discuss the contributions which all interested citizens can make to the American democracy."

Mr. Miller's letter to the broadcasters follows:

"The Federal Council of the Churches of Christ in America is sending one of its local contacts to your station, with the sincere request that facilities be granted to a local minister, for the purpose of creating a better understanding between the various races and religious groups who comprise your listening audience.

"The Federal Council of Churches, representing approximately 143,000 churches in the United States, feels that the time is at hand for a constructive campaign of tolerance and understanding, lest the spread of intolerance by hate-mongers, both at home and abroad, sweep over the country as it has elsewhere.

"From its knowledge of past history, this national church body knows that the germs of intolerance cannot easily be controlled once let loose; that anti-sectarianism and anti-racial propaganda weakens both religion and the liberties of our country by divisive tactics of propagandists attempting to arouse Americans against themselves.

"We have had the opportunity of examining the material upon which the Council's new effort for tolerance will be made. It is factual and impartial. It is informative and it is "good" radio. It is material which men of good will in all faiths will welcome. And it is vitally important that this message, educational in scope and patriotic in purpose, be gotten across now.

"The Federal Council of Churches has again turned to radio to do this job. It feels that no other medium of communication can reach the minds and hearts of men so effectively. I feel sure that all stations will wish to take part in this important, worthwhile project. Its spokesmen will no doubt be outstanding clergymen in each city. Certainly there is no greater public service a station can render than to give its facilities to bring its listeners closer together in the bonds of understanding, based upon truth and fact. This, to me, is one of the root-principles of the American system of broadcasting."

GROSS REVENUE FOR 1939

The gross time-sale revenue of the industry for 1939 is estimated by Dr. Herman S. Hettinger for Broadcasting Magazine at $171,113,813. This represents an increase of 14 percent over 1938.

Broadcasting increased its lead over national magazine advertising as reported by Publishers' Information Bureau. Magazines grossed $151,484,530 for the year, an increase of 7.1 percent over 1938.

Newspaper lineage reported by Media Records for the year 1939 is 1.5 percent above the figure for 1938. Applying this increase to their estimated 1938 figure, newspaper gross revenue would be $552,000,000.

National farm paper revenue for 1939 was estimated at $10,085,880, an increase over 1938 of 2.6 percent.

The January 26th issue of *Printers Ink* carries an article titled "1939 Advertisers" in which is given a comparison of gross revenue of magazines, major network radio and farm papers for those advertisers spending more than $100,000 during 1939 in all three of these media. It should be borne in mind in reviewing this analysis that the advertisers listed are not credited with any national spot advertising they have placed. The comparison is confined to the business carried by the three major networks, Columbia Broadcasting System, Mutual Broadcasting System and National Broadcasting Company. Gross revenue to stations from national spot business for the 342 advertisers is not available from any source.

The figures are presented here because of the superior gains of radio in the rising advertising market during the year.

Here is how $100,000 Advertisers spent their money:

	Totals	Magazines	Radio	Farm
342 Advertisers for 1939	$204,361,906	$112,779,665	$82,055,797	$9,526,444
Same Advertisers for 1938	180,064,904	101,938,159	68,999,406	9,127,339
Amount of Change	24,297,002	10,841,506	13,056,391	399.105
Percent of Change	13.5	10.7	18.9	4.4

Radio's increase of 18.9 percent indicates that it is continuing its progress to close the gap in competition.

Radio has arrived in competition with magazines in the matter of $1,000,000 advertisers in the three media, magazines, radio and farm papers, as is indicated in the following table.

Here is how the $1,000,000 Advertisers spent their money:

	Totals	Magazines	Radio	Farm
41 Advertisers for 1939	$116,388,067	$51,558,450	$59,903,312	$4,926,305
Same Advertisers for 1938	101,389,948	46,971,270	49,762,573	4,656,105
Amount of Change	14,998,119	4,587,180	10,140,739	270,200
Percent of Change	14.8	9.8	20.4	5.8

It is significant also that of the first 10 in amount spent for advertising in the three media, 8 devoted more to network radio advertising than to other media. In 1938, 6 devoted their major expenditure to radio. Of last year's list of 10 leaders, one of those, which in 1938 spent most of its appropriation in magazines, in 1939 placed most of its advertising in network radio.

Labor

WAGE AND HOUR LAW

The NAB has asked the Wage and Hour Administration further to clarify its definition of "executive."

Under the Wage and Hour law, bona fide executives are exempt from the provision limiting the work week to 42 hours unless time and one half is paid for overtime.

When the law went into effect, the Administration defined an executive as an employee who made $30 or more a week; who had the power to hire and fire, or was influential in hiring and firing; who directed the work of others; and *who did no substantial amount of work of the same character as that performed by those under him.*

What amount of work was a *substantial* amount of work? Did *regularity* play any part in the picture?

These are questions that have arisen, especially about chief engineers. In small and medium sized stations, the chief engineer often relieves one of his operators daily during lunch hour, or takes one regular trick each week at the controls or transmitter.

Discussion of this question with Wage and Hour officials has indicated that a chief engineer who *regularly* does the work of a subordinate is not a "bona fide executive."

However, the Administration's reply to a formal request for an opinion should be enlightening.

A small, midwestern station has agreed with the Wage and Hour Administration to give its employees $384 due for overtime. This amount was distributed among nine employees.

I. B. E. W. STRIKES IN SEATTLE

Four Seattle stations now have contracts with the International Brotherhood of Electrical Workers (A. F. of L.) covering their technicians.

The union called a strike at one of these (KIRO) before the agreement was signed, and a strike was still in progress at a fifth station (KOL) on January 26.

The union moved into Seattle last October. Negotiations were begun with KRSC almost immediately, and a closed shop contract resulted. The closed shop was the principal issue in subsequent negotiations with four other stations. On January 18, the union called a strike at KIRO and KOL. Both stations were off the air less than half an hour. Negotiations with the union were resumed at KIRO and the union technicians went back to work. The strike continued at KOL, although the station went back on the air 20 minutes after the walk-out. Union musicians refused to go through the picket line.

On January 25, KOMO-KJR signed a contract calling for a preferential union shop.

An I. B. E. W. strike at KFSD, San Diego, Calif., was still in progress on January 24. It started last fall. A closed shop was the principal issue. Negotiations are being continued. The station is on the air.

WGXR ELECTION

The Labor Relations Board has certified Local No. 913, Radio Broadcast Technicians & Engineers Union, International Brotherhood of Electrical Workers (A. F. of L.), as the sole collective bargaining agency selected by a majority of the radio broadcasting operators, engineers, and technicians of the Interstate Broadcasting Company, Inc. (WQXR), New York City, upon the basis of a secret ballot election held January 8, 1940, resulting in a count of three votes for Local No. 913; no votes for the American Communications Association (CIO); and two votes in favor of neither organization.

Engineering

FCC TO WITNESS TELEVISION DEMONSTRATIONS THIS WEEK

Having heard oral argument on the proposed tentative television standards, members of the FCC will spend the period of February 1 to 5 witnessing television demonstrations by various firms interested.

On February 1 the Commissioners will visit Albany and Schenectady, N. Y., to view General Electric Company rebroadcast of television signals originating in New York City. That evening, in the Poughkeepsie-Newburgh area, the Radio Corporation of America will show home reception of a telecast from the Empire State Building.

On February 2 there will be National Broadcasting Company studio and reception television demonstrations in New York City.

On February 3, also in New York, the Commissioners will see operation of Cath-Ray Electronic Laboratories receivers and, that afternoon or evening, witness demonstration of flexible system of transmission by the Allen B. DuMont Laboratories, Passaic, N. J.

On February 5 the Commissioners will visit the RCA plant at Camden, N. J., to witness a new large screen projection and other television developments. That afternoon, in Philadelphia, there will be demonstration by Philco Radio and Television Corporation of polarization mitigation of interference.

Because the Don Lee Broadcasting System is located at Los Angeles, the Commission has designated its local inspector-in-charge to view a demonstration there.

RCA SAYS TELEVISION RADIO RELAY TECHNICALLY READY

Development of the radio relay method of transmitting television signals between cities has been advanced by RCA Laboratories to the point where it is technically ready for the first step of application in a public service, the Radio Corporation of America announced this week.

"This new development, different from any other system so far devsied, makes possible the establishment of inter-city television networks similar in effect to the wire networks of sound broadcasting," said an RCA statement. It is feasible, according to RCA engineers, to set up a radio relay system for television linking New York City, for example, with the nation's capital, Washington, D. C., and with Boston, Mass., and other intermediate cities. Similar radio relay networks could be established in other sections of the country.

"Even such a limited network could make television programs immediately available to approximately 20,000,000 persons, or, roughly, one-sixth of the nation's population. Programs could originate as well as be received at any city which is part of the radio relay system. . . .

"The new RCA television relay system is regarded by engineers as one of the most remarkable advances in the development of radio transmission in many years, because of the success achieved in dealing with frequency channels of extreme width. It differs from other methods of radio relay in that it makes use of specially designed relay stations operating on frequencies many times higher than those used by regular television broadcasting stations.

"RCA has had an experimental radio relay system in test operation for nearly a year between the National Broadcasting Company's Empire State Building transmitter and Riverhead, Long Island. The rely points are located at Hauppague, 45 miles from the Empire State Building, and at Rocky Point, 15 miles from Hauppague. The Rocky Point station boosts the signal another 15 miles to Riverhead.

"Each relay station contains both receiving and transmitting devices, and is mounted on a 100-foot steel tower. The antennas are of the parabolic type necessary for the highly directional, or beam-like, transmission, which the system uses. The power required for operation is 10 watts or less. The distance between each relay point, in practical operation, would vary according to the terrain. The average distance would probably work out at approximately 30 miles.

"The station operates unattended. The receiver is on at all times, and when a control signal is transmitted from a terminal point the relay receiver picks it up and delivers it to the companion transmitter. This action is repeated at each relay point until the circuit is in full operation. The frequency used is approximately 500,000 kilocycles. In the case of NBC's Empire State Building transmissions, the signal starts out on a frequency of 45,250 kilocycles and is changed to 500,000 k.c. at Hauppague, the first relay point, remaining at approximately the latter frequency throughout the relay system. When another terminal station receives the signal it is reconverted to a lower broadcasting frequency.

"The new system is the product of years of research in the R.C.A. Communications, Inc., division of RCA Laboratories. Work in the 500,000 k.c. section of the radio wave spectrum began more than ten years ago. An experimental television relay system using a much lower frequency, was set up between New York and Camden, N. J., about seven years ago, and pictures of low-definition were successfully transmitted over it. The relay station was located at Mt. Arney, N. J., 64 miles from New York. It boosted the signal another 23 miles to Camden.

"Four years ago, a radio relay for the transmission of telegraph, teletype, and experimental facsimile was installed by the RCA between New York and Philadelphia. Operating on frequencies ranging from 85,000 to 105,000 kilocycles, this system was incapable of carrying high-definition television images; however, much was learned from its operation. It became apparent that if high-definition television were to be relayed, new-type reception and transmission tubes must be developed. Starting more than three years ago, the work of developing the new tubes progressed rapidly and, by early 1939, it became possible to use them in the building of the experimental New York-Riverhead system. Operation of the system for nearly a year in all sorts of weather and atmospheric conditions has proved its effectiveness."

NEW TOWER LIGHT RULES

The Civil Aeronautics Authority has issued a new bulletin entitled "Aeronautical Lights and Obstruction Marking Manual."

Heretofore the CAA has not specified standards for the type of lighting on towers of over 300 feet. However, the new recommended standards include towers up to 800 feet in height. One of the most interesting recommended standards is that on towers from four to six hundred feet an electric code beacon is specified for the top and the middle of the tower, and for towers of six hundred to eight hundred feet, an electric code beacon is specified at the one third, two thirds levels, and the top of the tower.

The recommendations and specifications set forth in the manual have been prepared as a general guide for the marking and lighting of obstructions to air commerce. Specific recommendations for each particular problem will be given upon request directed to any Regional Office or the Washington Office of the Civil Aeronautics Authority.

The section of the Manual of the most interest to broadcasters reads as follows:

Radio Obstruction Markers

Where a serious hazard to air commerce is presented by a structure located on or near a civil airway, the installation and operation of an effective radio marker of a type approved by the Authority may be necessary for the proper protection of air commerce.

Night Marking (Lighting)
General

The purpose of night marking a structure which presents a hazard to air commerce is to warn airmen during the hours of darkness of the presence of such a structure. To accomplish this objective, it is necessary to provide on such a structure adequate obstruction lighting in a manner to insure visibility of such lighting from aircraft at any angle of approach. No standards for night marking, however, can be given more than general application as a structure of any height which is so located as to present a serious hazard to air commerce may require special or additional marking. (See structures requiring special study on page 17.) On the other hand, such a structure may be removed from the general flow of air traffic to make obstruction lighting unnecessary, or it may be so located in reference to other structures or to the contour of the ground that the hereinafter described standards should be applied to the upper part of the structure only.

Temporary Warning Lights

Where a hazard to air commerce is presented by a structure during its period of construction, red warning lights should be displayed on top of the structure from sunset to sunrise until permanent obstruction lights are installed and in operation.

Operation of Obstruction Lighting

In areas of poor visibility, it is recommended that obstruction lighting be controlled by a light sensitive control device adjusted so that the lights will be turned on at a north sky light intensity level of 20-foot candles and turned off at a north sky light intensity level of 40-foot candles. Where obstruction lighting is accomplished by lights which are not equipped with spare lamps and automatic lamp changers, and it is extremely difficult to service such lights, consideration should be given to the installation of adequate auxiliary lights and automatic relays for instant switch-over to these auxiliary lights in the event of lamp failure in the main obstruction lighting.

Obstruction Lighting by Lights Not Described

Obstruction lighting installations may be produced by gaseous tubes such as neon tubes or by any method other than the con-

ventional incandescent lights, provided such lighting installations offer equal or greater range intensity, afford equal dependability of operation and possess characteristics similar to those hereinafter specified or described in the recommended standards for obstruction lighting.

Towers and Poles

Towers and poles which present a hazard to air commerce should be lighted nightly from sunset to sunrise in accordance with the following specifications:

Specification "A". Where the overall height of such structures does not exceed 200 feet, there should be installed at the top of each such structure two 100-watt lamps enclosed in aviation red prismatic obstruction light globes. If only one lamp is operated, the circuit should be equipped with a relay for instant automatic switchover to the other lamp in case of lamp failure. (See typical obstruction light fittings on page 22.)

On levels at approximately two-thirds and one-third of the overall height of such structure, there should be installed two 100-watt lamps enclosed in aviation red prismatic obstruction light globes. Each light should be placed on diagonally, or diametrically, opposite positions of the structure at each level. (See typical arrangement on page 25.)

In the case of a triangular shaped tower, the lights at the two-thirds and one-third levels should be mounted so as to insure visibility of at least one light on each level from aircraft at any angle of approach.

Specification "B". Where the overall height of such structure exceeds 200 feet but does not exceed 400 feet, there should be installed at the top of such structure a 300m/m electric code beacon equipped with two 500-watt lamps (both lamps to burn simultaneously) and aviation red color shades. This type of beacon is shown on page 23.

The 300m/m electric code beacon should be equipped with a flashing mechanism producing not more than 40 flashes per minute with a luminous period of one second and a period of darkness of one-half second, but not less than 20 flashes per minute with a luminous period of two seconds and a period of darkness of one second. In the event the beacon is not readily accessible for periodic inspections of the lamps, a tell-tale light circuit should be installed to indicate failure of either lamp.

On levels at approximately two-thirds and one-third of the overall height of such structure, there should be installed two 100-watt lamps enclosed in aviation red prismatic obstruction light globes. Each light should be placed on diagonally, or diametrically, opposite positions of the structure at each level. (See typical arrangement on page 25.)

In the case of a triangular shaped tower, the lights at the two-thirds and one-third levels should be mounted so as to insure visibility of at least one light on each level from aircraft at any angle of approach. If it is necessary to locate the flashing mechanism, described in a preceding paragraph, in such a manner on the towers or poles as to cause the lights at the two-thirds and one-third levels to be affected thereby, such lights may flash.

Specification "C". Where the overall height of such towers exceeds 400 feet but does not exceed 600 feet there should be installed at the top of each such tower a 300m/m electric code beacon equipped with two 500-watt lamps (both lamps to burn simultaneously) and aviation red color shades. This type of beacon is shown on page 23.

On a level at approximately three-fourths of the overall height of such tower, a 100-watt lamp enclosed in an aviation red prismatic obstruction light globe should be installed on each outside corner of the tower at such level.

At approximately one-half of the overall height of such tower, a 300m/m electric code beacon, as previously described, should be installed in such a position within the tower proper that the structural members will not impair visibility of this beacon from aircraft at any angle of approach. In lieu of this electric code beacon, 100-watt lamps enclosed in aviation red prismatic obstruction light globes should be installed on each outside corner of the tower on a level at approximtaely one-half of the overall height of the tower, provided a 24-inch rotating beacon, equipped with an automatic lamp changer and at least a 1000-watt lamp or a 500-watt lamp and an auxiliary reflector, is installed about 50 feet above the ground on a suitable structure and is located within 500 feet of the subject tower. The beam adjustment of this rotating beacon should be approximately 10 degrees above the horizon.

On a level at approximately one-fourth of the overall height of such tower, a 100-watt lamp enclosed in an aviation red prismatic obstruction light globe should be installed on each outside corner of the tower at such level. The 300m/m electric code beacon should be equipped with a flashing mechanism producing not more than 40 flashes per minute with a luminous period of one second and a period of darkness of one-half second, but not less than 20 flashes per minute with a luminous period of two seconds and a period of darkness of one second. In the event these beacons are not readily accessible for periodic inspection of the lamps, a tell-tale light circuit should be installed at each beacon to indicate failure of either lamp.

If it is necessary to locate the flashing mechanism, described in the preceding paragraph, in such a manner on the tower as to cause the lights at the three-fourths and one-fourth levels to be affected thereby, such lights may flash.

Specification "D". Where the overall height of such towers exceeds 600 feet but does not exceed 800 feet, there should be installed at the top of each such tower a 300m/m electric code beacon equipped with two 500-watt lamps (both lamps to burn simultaneously) and aviation red color shades. This type of beacon is shown on page 23.

On a level at approximately five-sixths of the overall height of such tower, a 100-watt lamp enclosed in an aviation red prismatic obstruction light globe should be installed on each outside corner of the tower at such level.

At approximately two-thirds of the overall height of such tower, a 300m/m electric code beacon, as previously described, should be installed in such a position within the tower proper that the structural members will not impair visibility of this beacon from aircraft at any angle of approach.*

On a level at approximately one-half of the overall height of such tower, a 100-watt lamp enclosed in an aviation red prismatic obstruction globe should be installed on each outside corner of the tower at such level.

At approximately one-third of the overall height of such tower, a 300 m/m electric code beacon, as previously described, should be installed in such a position within the tower proper that the structural members will not impair visibility of this beacon from aircraft at any angle of approach.*

On a level at approximately one-sixth of the overall height of such tower, a 100-watt lamp enclosed in an aviation red prismatic obstruction light globe should be installed on each outside corner of the tower at such level. The 300m/m electric code beacon should be equipped with a flashing mechanism producing not more than 40 flashes per minute with a luminous period of one second and a period of darkness of one-half second, but not less than 20 flashes per minute with a luminous period of two seconds and a period of darkness of one second. In the event these beacons are not readily accesible for periodic inspection of the lamps, a tell-tale light circuit should be installed at each beacon to indicate failure of either lamp.

If it is necessary to locate the flashing machanism, described in the preceding paragraph, in such a manner on the tower as to cause the lights at the five-sixths, one half and one-sixth levels to be affected thereby, such lights may flash.

* *Note:* In lieu of these electric code beacons, 100-watt lamps enclosed in aviation red prismatic obstruction light globes should be installed on each outside corner of the tower on levels at approximately two-thirds and one-third of the overall height of the tower, provided a 24-inch rotating beacon, equipped with an automatic lamp changer and at least a 1000-watt lamp or a 500-watt lamp and an auxiliary reflector, is installed about 50 feet above the ground on a suitable structure and is located within 500 feet of the subject tower. The beam adjustment of this rotating beacon should be approximately 10 degrees above the horizon.

The manual deals comprehensively with the subject of aeronautical lighting and the recommended standards for lighting other hazards to air commerce have been expanded. Copies of the 26-page manual may be secured by writing to Mr. William J. MacKenzie, Civil Aeronautics Authority, Washington, D. C.

OHIO UNIVERSITY CONFERENCE

One of the important subjects of discussion at the Ohio State Broadcast Engineering Conference, to be held between February 12 and 23 at Ohio State University, Columbus, Ohio, will be "General Discussion and Question Box," conducted by Mr. Andrew D. Ring, Assistant

Chief Engineer of the FCC. Mr. Raymond M. Wilmotte, consulting engineer for NAB, will be chairman of this discussion group. Mr. Wilmotte is compiling a list of questions to be discussed during this meeting and he asks that those who have questions which they would like to have considered, write him at 730 Fifth Avenue, New York City.

FCC MODIFIES LICENSES FOR HAVANA REALLOCATION

As a preliminary to reallocating channels assigned to broadcast stations within the standard broadcast band of the United States to conform to the now ratified North American Regional Broadcast Agreement, the Federal Communications Commission has definitely suspended the rule fixing the broadcast license period at one year and providing for a staggered system of license renewing; and has modified all outstanding licenses whose expiration date falls beyond August 1, 1940, by ordering that all such licenses terminate as of that date.

It now appears to the Commission that such reallocation of facilities as may be required to carry out the Agreement can be effectuated by August 1.

In addition, and upon suspension of this rule, the Commission granted the applications for renewal pending before it to expire next August 1, for the following stations:

KFBI, Abilene, Kans.; KFBK, Sacramento, Cal.; KFEQ, St. Joseph, Mo.; KFVD, Los Angeles; KGDM, Stockton, Cal.; KGU, Honolulu; KIRO, Seattle, Wash.; KJBS, San Francisco, Cal.; KMMJ, Grand Island, Neb.; KMPC, Beverly Hills, Cal.; KNX, Los Angeles; KOAM, Pittsburgh, Kans.; KOB, Albuquerque, N. Mex.; KOMA, Oklahoma City, Okla.; KOWH, Omaha, Neb.; KPO, San Francisco; KRLD, Dallas, Tex.; KSL, Salt Lake City; KSTP and auxiliary, St. Paul, Minn.; KTRB, Modesto, Cal.; KVOO, Tulsa, Okla.; KWKH, Shreveport, La.; KXA, Seattle; KYOS, Merced, Cal.; KMOX, St. Louis, Mo.; WABC-WBOQ, New York City; WBAL, Baltimore; WBAP, Fort Worth, Tex.; WBBM, Chicago; WBT, Charlotte, N. C.; WCAL, Northfield, Minn.; WCAU and auxiliary, Philadelphia; WCAZ, Carthage, Ill.; WCBD, Chicago; WCCO, Minneapolis; WCFL, Chicago; WCKY, Cincinnati; WDGY, Minneapolis; WDZ, Tuscola, Ill.; WEAU, Eau Claire, Wis.; WEEU, Reading, Pa.; WEW, St. Louis, Mo.; WFAA, Dallas; WGAN, Portland, Me.; WGN, Chicago; WHAM and auxiliary, Rochester, N. Y.; WHAS, Louisville, Ky.; WHB, Kansas City, Mo.; WHDH and auxiliary, Boston; WHEB, Portsmouth, N. H.; WHKC, Columbus, Ohio; WIBC, Indianapolis, Ind.; WIBG, Glenside, Pa.; WINS, New York City; WJJD, Chicago; WJR and auxiliary, Detroit; WJSV, Washington, D. C.; WKAR, E. Lansing, Mich.; WLAC, Nashville, Tenn.; WLAW, Lawrence, Mass.; WLS, Chicago; WMAZ and auxiliary, Macon, Ga.; WMBI, Chicago; WNYC and auxiliary, New York City; WOAI and auxiliary, San Antonio, Tex.; WOI, Ames, Ia.; WOR and auxiliary, Newark, N. J.; WPTF and auxiliary, Raleigh, N. C.; WRUF, Gainesville, Fla.; WRVA, Richmond, Va.; WSAZ, Huntington, W. Va.; WSM, Nashville, Tenn.; WSPR, Springfield, Mass.; WSM auxiliary, Nashville; WTAM, Cleveland, Ohio; WTBO, Cumberland, Md.; WTIC, Hartford, Conn.; WWVA and auxiliary, Wheeling, W. Va.; WMFR, High Point, N. C.; WSOC, Charlotte, N. C.; WTOL, Toledo, Ohio; KGFI, Brownsville, Tex.; KTEM, Temple, Tex.; WFOR, Hattiesburg, Miss.; WLLH, Lowell, Mass.; WSVS, Buffalo, N. Y.; WGIL, Galesburg, Ill.; KCRJ, Jerome, Ariz.; KRE, Berkeley, Cal.; WMSD, Muscle Shoals City, Ala.; WPRP, Ponce, P. R.; WTMC, Ocala, Fla.; KSOO, Sioux Falls, S. Dak.; WMAQ, Chicago; WENR, Chicago; WEAF, New York City; WJZ, New York City; WLW, Cincinnati; KFAB, Lincoln, Neb.; WOWO, Fort Wayne, Ind.; WHIP, Hammond, Ind.; WKBW, Buffalo, N. Y.; KFI, Los Angeles; KFI, auxiliary; KJR and auxiliary, Seattle; KGA, Spokane, Wash; KOA, Denver, Colo.; KGO and auxiliary, San Francisco; KEX, Portland, Ore.; WEAF, auxiliary; WJZ, auxiliary.

Licenses for the following stations were extended upon a temporary basis only until March 1, 1940, pending receipt of and determination upon application for renewals:

WSB and auxiliary, Atlanta, Ga.; KGKY, Scottsbluff, Neb.

Licenses for the following stations were extended on a temporary basis for the period ending March 1, 1940, pending determination upon applications for renewal:

KTHS, Hot Springs National Park, Ark.; WCFL, auxiliary, Chicago; WHO, Des Moines, Ia.; WLB, Minneapolis; WMFJ, Daytona Beach, Fla.; KGBU, Ketchikan, Alaska; WKAT, Miami Beach, Fla.

KSUB—Leland M. Perry, Cedar City, Utah.—Special temporary authorization to Leland M. Perry, surviving partner of Johnson & Perry, a partnership, to operate station KSUB, was extended upon a temporary basis only to March 1, 1940, subject to whatever action may be taken upon formal application for regular authorization that may be submitted with respect to station KSUB.

WSM—National Life & Accident Ins. Co., Nashville, Tenn.—Special temporary experimental authority to operate regular broadcast transmitter for transmission of facsimile signals 12 midnight to 6 a. m., using 50 KW, was extended for a period of 1 month from February 1 to March 1, 1940.

WHO—Central Broadcasting Co., Des Moines, Ia.—Special temporary experimental authority to operate regular broadcast transmitter for transmission of facsimile signals 12 midnight to 6 a. m., using 50 KW, was extended for a period of 1 month from February 1 to March 1, 1940.

WOR—Bamberger Broadcasting Service, Inc., Newark, N. J.—Special temporary experimental authority to operate regular broadcast transmitter for transmission of facsimile signals 12 midnight to 6 a. m., using 50 KW, was extended for a period of 1 month from February 1 to March 1, 1940.

The following applications for renewal of television broadcast station licenses were renewed for the regular period:

W2XAB, New York City; W2XVT, Passaic, N. J.; W2XH, Schenectady, N. Y.; W6XAO, Los Angeles; W2XBS, New York City; W2XBT, New York City; W3XAE, Philadelphia; W3XP, Philadelphia, and W9XZV, Chicago.

Licenses for the following television stations were extended upon a temporary basis only, for the period ending March 1, 1940:

W9XAL, Kansas City, Mo.; W1XG, Boston; W9XG, W. Lafayette, Ind.; W2XDR, Long Island City; W3XAD, Portable (Camden, N. J.); W3XEP, Camden, N. J.; W9XK, Iowa City, Ia.; W9XUI, Iowa City, Ia.

FM BROADCASTERS ELECT SHEPARD PRESIDENT

The Board of Directors of FM Broadcasters, Inc., met in New York on Monday, January 29, to perfect the organization of the FM Broadcasters and to make plans for the FM hearing on February 28. At the meeting John Shepard, 3d, Yankee Network, was elected President, John V. L. Hogan, WQXR, Vice President, and Robert Bartley, Yankee Network, Secretary-Treasurer. The Board adopted by-laws, approved for membership applications from about 25 organizations, and instructed Philip G. Loucks, Washington attorney for the group, to

file an appearance for the February 28 High Frequency Hearing before the FCC. Plans for correlating and presenting the available information on FM were discussed. Paul de Mars, engineer for the Yankee Network, was appointed engineering counsel for the group and he has opened headquarters at the Willard Hotel in Washington in order to prepare the engineering testimony.

The Executive Engineering Committee of the FM Broadcasters also met on Monday to perfect plans for the technical presentation. The members of the Executive Engineering Committee are: Paul de Mars, Yankee Network; S. L. Bailey, Jansky & Bailey; Professor Daniel E. Nobel, Connecticut State College; I. R. Weir, General Electric; Jack Poppele, WOR; and John De Witt, WSM.

COMMISSION TO INQUIRE INTO MANAGEMENT CONTRACTS

To determine whether broadcast licensees are themselves discharging the rights, duties, and obligations under their licenses or whether, on the other hand, such rights have been turned over to and are being exercised by outside operating companies under so-called management contracts, the FCC has ordered hearing on certain pending applications for renewal of radio station licenses, and for other and similar renewal applications as they come before it.

Those stations already designated for hearing under this move, at a date to be set later, are Westinghouse Electric & Manufacturing Company, licenses for WBZ and WBZA, both at Boston; KYW, Philadelphia, and KDKA, Pittsburgh; WGY, General Electric Company, Schenectady, N. Y.; WESG, Cornell University, Elmira, N. Y.; WWL, Loyola University, New Orleans; and WAPI, Alabama Polytechnic Institute and University of Alabama, Birmingham, Ala.

FCC SUSTAINED IN TWO COURT CASES

In two decisions handed down Monday—FCC vs. Pottsville Broadcasting Co. and Fly vs. Heitmeyer—the Supreme Court reversed the Court of Appeals for the District of Columbia and sustained the FCC's contention that under the Communications Act of 1934 as amended, the Commission was vested with power to decide on the merits of competing applications for licenses irrespective of priority of filing and intervening judicial determination of questions of law. In the Heitmeyer case the court further held, according to the principles enunciated in the Pottsville case, that the Commission was empowered to reopen the record and take new evidence on the comparative ability of all the rival applicants to satisfy "public convenience, interest, or necessity" after previous erroneous denial of license to one of them.

The decisions are of far-reaching importance in delineating the proper spheres of activity of administrative commissions and the courts. They emphasize the large measure of administrative discretion vested by Congress in the FCC. To quote from the opinion:

"The present case makes timely the reminder that 'legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts.' . . . Congress which creates and sustains these agencies must be trusted to correct whatever defects experience may reveal."

The opinions of the court follow:

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 265

FEDERAL COMMUNICATIONS COMMISSION, *Petitioner*,
vs.
THE POTTSVILLE BROADCASTING COMPANY

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia

(January 29, 1940)

Mr. Justice Frankfurter delivered the opinion of the Court.

The court below issued a write of mandamus against the Federal Communications Commission, and, because important issues of administrative law are involved, we brought the case here. 308 U. S. ——. We are called upon to ascertain and enforce the spheres of authority which Congress has given to the Commission and the courts, respectively, through its scheme for the regulation of radio broadcasting in the Communications Act of 1934, c. 652, 48 Stat. 1064, as amended by the Act of May 20, 1937, c. 229, 50 Stat. 189; 47 U. S. C. Sec. 151.

Adequate appreciation of the facts presently to be summarized requires that they be set in their legislative framework. In its essentials the Communications Act of 1934 derives from the Federal Radio Act of 1927, c. 169, 44 Stat. 1162, as amended, 46 Stat. 844. By this Act Congress, in order to protect the national interest involved in the new and far-reaching science of broadcasting, formulated a unified comprehensive regulatory system for the industry.[1] The common factors in the administration of the various statutes by which Congress had supervised the different modes of communication led to the creation, in the Act of 1934, of the Communications Commission. But the objectives of the legislation have remained substantially unaltered since 1927.

Congress moved under the spur of a widespread fear that in the absence of governmental control the public interest might be subordinated to monopolistic domination in the broadcasting field. To avoid this Congress provided for a system of permits and licenses. Licenses were not to be granted for longer than three years. Communications Act of 1934, Title iii, Sec. 307(d). No license was to be "construed to create any right, beyond the terms, conditions, and periods of the license." *Ibid.* Sec. 301. In granting or withholding permits for the construction of stations, and in granting, denying, modifying or revoking licenses for the operation of stations, "public convenience, interest, or necessity" was the touchstone for the exercise of the Commission's authority. While this criterion is as concrete as the complicated factors for judgment in such a field of delegated authority permit, it serves as a supple instrument for the exercise of discretion by the expert body which Congress has charged to carry out its legislative policy. Necessarily, therefore, the subordinate questions of procedure in ascertaining the public interest, when the Commission's licensing authority is invoked—the scope of the inquiry, whether applications should be heard contemporaneously or successively, whether parties should be allowed to intervene in one another's proceedings, and similar questions—

[1] For the legislative history of the Act of 1927, see H. Rep. No. 464, S. Rep. No. 772, 69th Cong., 1st Sess.; 67 Cong., Rec. 5473-5504, 5555-86; 5645-47; 12335-59; 12480, 12497-12508; 12614-18; 68 Cong., Rec. 2556-80, 2750-51, 2869-82, 3025-39, 3117-34, 3257-62, 3329-36, 3569-71, 4109-55. A summary of the operation of previous regulatory laws may be found in Herring and Gross, Telecommunications, pp. 239-45.

were explicitly and by implication left to the Commission's own devising, so long, of course, as it observes the basic requirements designed for the protection of private as well as public interest. *Ibid.*, Title I, Sec. 4(j). Underlying the whole law is recognition of the rapidly fluctuating factors characteristic of the evolution of broadcasting and of the corresponding requirement that the administrative process possess sufficient flexibility to adjust itself to these factors. Thus, it is highly significant that although investment in broadcasting stations may be large, a license may not be issued for more than three years; and in deciding whether to renew the license, just as in deciding whether to issue it in the first place, the Commission must judge by the standard of "public convenience, interest, or necessity." The Communications Act is not designed primarily as a new code for the adjustment of conflicting private rights through adjudication. Rather it expresses a desire on the part of Congress to maintain, through appropriate administrative control, a grip on the dynamic aspects of radio transmission.[2]

Against this background the facts of the present case fall into proper perspective. In May, 1936, The Pottsville Broadcasting Company, respondent here, sought from the Commission a permit under Sec. 319 *Ibid.*, Title iii, for the construction of a broadcasting station at Pottsville, Pennsylvania. The Commission denied this application on two grounds: (1) that the respondent was financially disqualified; and (2) that the applicant did not sufficiently represent local interests in the community which the proposed station was to serve. From this denial of its application respondent appealed to the court below. That tribunal withheld judgment on the second ground of the Commission's decision, for it did not deem this to have controlled the Commission's judgment. But, finding the Commission's conclusion regarding the respondent's lack of financial qualification to have been based on an erroneous understanding of Pennsylvania law, the Court of Appeals reversed the decision and ordered the "cause . . . remanded to the . . . Communications Commission for reconsideration in accordance with the views expressed." *Pottsville Broadcasting Co. v. Federal Communications Commission,* 98 F. (2d) 288.

Following this remand, respondent petitioned the Commission to grant its original application. Instead of doing so, the Commission set for argument respondent's application along with two rival applications for the same facilities. The latter applications had been filed subsequently to that of respondent and hearings had been held on them by the Commission in a consolidated proceeding, but they were still undisposed of when the respondent's case returned to the Commission. With three applications for the same facilities thus before it, and the facts regarding each having therefore been explored by appropriate procedure, the Commission directed that all three be set down for argument before it to determine which, "on a comparative basis" "in the judgment of the Commission will best serve public interest." At this stage of the proceedings, respondents sought and obtained from the Court of Appeals the writ of mandamus now under review. That writ commanded the Commission to set aside its order designating respondent's application "for hearing on a comparative basis" with the other two, and "to hear and reconsider the application" of The Pottsville Broadcasting Company" on the basis of the record as originally made and in accordance with the opinions" of the Court of Appeals in the original review (98 F. (2d) 288), and in the mandamus proceedings. *Pottsville Broadcasting Co. v. Federal Communications Commission,* 105 F. (2d) 36.

The Court of Appeals invoked against the Commission the familiar doctrine that a lower court is bound to respect the mandate of an appellate tribunal and cannot reconsider questions which the mandate has laid at rest. See *In Re Sanford Fork & Tool Co., Petitioner,* 160 U. S. 247, 255-56. That proposition is indisputable, but it does not tell us which issues are laid at rest. Cf. *Sprague v. Ticonic Bank,* 307 U. S. 161. Nor is a court's interpretation of the scope of its own mandate necessarily conclusive. To be sure the court that issues a mandate is normally the best judge of its content, on the general theory that the author of a document is ordinarily the authoritative interpreter of its purposes. But it is not even true that a lower court's interpretation of its mandate is controlling here. Cf. *United States v. Morgan,* 307 U. S. 183. Therefore, we would not be foreclosed by the interpretation which the Court of Appeals gave to its mandate, even if it had been directed to a lower court.

A much deeper issue, however, is here involved. This was not a mandate from court to court but from a court to an administrative agency. What is in issue is not the relationship of federal courts *inter se*—a relationship defined largely by the courts themselves—but the due observance by courts of the distribution of authority made by Congress as between its power to regulate commerce and the reviewing power which it has conferred upon the courts under Article III of the Constitution. A review by a federal court of the action of a lower court is only one phase of a single unified process. But to the extent that a federal court is authorized to review an administrative act, there is superimposed upon the enforcement of legislative policy through administrative control a different process from that out of which the administrative action under review ensued. The technical rules derived from the interrelationship of judicial tribunals forming a hierarchical system are taken out of their environment when mechanically applied to determine the extent to which Congressional power, exercised through a delegated agency, can be controlled within the limited scope of "judicial power" conferred by Congress under the Constitution.

Courts, like other organisms, represent an interplay of form and function. The history of Anglo-American courts and the more or less narrowly defined range of their staple business have determined the basic characteristics of trial procedure, the rules of evidence, and the general principles of appellate review. Modern administrative tribunals are the outgrowth of conditions far different from those.[3] To a large degree they have been a response to the felt need of governmental supervision over economic enterprise—a supervision which could affectively be exercised neither directly through self-executing legislation nor by the judicial process. That this movement was natural and its extension inevitable was a quarter century ago the opinion of eminent spokesmen of the law[4] Perhaps the most striking characteristic of this movement has been the investiture of administrative agencies with power far exceeding and different from the conventional judicial modes for adjusting conflicting claims—modes whereby interested litigants define the scope of injury and determine the data on which the judicial judgment is ultimately based. Administrative agencies have power themselves to initiate inquiry, or, when their authority is invoked, to control the range of investigation in ascertaining what is to satisfy the requirements of the public interest in relation to the needs of vast regions and sometimes the whole nation in the enjoyment of facilities for transportation, communication and other essential public services.[5] These differences in origin and function preclude wholesale transplantation of the rules of procedure, trial and review, which have evolved from the history and experience of courts. Thus, this Court has recognized that bodies like the Interstate Commerce Commission, into whose mould Congress has cast more recent administrative agencies, "should not be too narrowly constrained by technical rules as to the admissibility of proof," *Interstate Commerce Commission v. Baird,* 194 U. S. 25, 44, should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties.[6] Compare *New England Divisions Case,*

[2] Since the beginning of regulation under the Act of 1927 comparative considerations have governed the application of standards of "public convenience, interest, or necessity" laid down by the law. . . ." . . . the commission desires to point out that the test—'public interest, convenience, or necessity'—becomes a matter of a comparative and not an absolute standard when applied to broadcasting stations. Since the number of channels is limited and the number of persons desiring to broadcast is far greater than can be accommodated, the commission must determine from among the applicants before it which of them will, if licensed, best serve the public. In a measure, perhaps, all of them give more or less service. Those who give the least, however, must be sacrificed for those who give the most. The emphasis must be first and foremost on the interest, the convenience, and the necessity of the listening public, and not on the interest, convenience, or necessity of the individual broadcaster or the advertiser." Second Annual Report, Federal Radio Commission, 1928, pp. 169-70.

[3] See Maitland, the Constitutional History of England, pp. 415-18; Landis, The Administrative Process, *passim.*

[4] See, for instance, the address of Elihu Root as President of the American Bar Association;

"There is one special field of law development which has manifestly become inevitable. We are entering upon the creation of a body of administrative law quite different in its machinery, its remedies, and its necessary safeguards from the old methods of regulation by specific statutes enforced by the courts. . . . There will be no withdrawal from these experiments. . . . We shall go on; we shall expand them, whether we approve theoretically or not, because such agencies furnish protection to rights and obstacles to wrong doing which under our new social and industrial conditions cannot be practically accomplished by the old and simple procedure of legislatures and courts as in the last generation." 41 A. B. A. Rep. 355, 368-69.

[5] See United States v. Lowden, *ante,* p. — decided Dec. 4, 1939; Herring Public Administration and the Public Interest, *passim.*

[6] The Communications Commission's Rules of Practice, Rule 106.4, provided that "the Commission will, so far as practicable, endeavor to fix the same date . . . for hearing on all applications which . . . present conflicting claims . . . excepting, however, applications filed after any such application has been designated for hearing." Respondent contends, and the court below seemed to believe that this rule bound the Commission to give respondent a non-comparative consideration because its application had been set down for hearing before the later and rival applications were filed. The Commission interprets this rule simply as governing the order in which applications shall be heard, and not touching upon the order in which they shall be acted upon or the manner in which they shall be considered. That interpretation is binding upon the courts. A. T. & T. Co. v. United States. 299 U. S. 232.

261 U. S. 184. To be sure, the laws under which these agencies operate prescribe the fundamentals of fair play. They require that interested parties be afforded an opportunity for hearing and that judgment must express a reasoned conclusion. But to assimilate the relation of these administrative bodies and the courts to the relationship between lower and upper courts is to disregard the origin and purposes of the movement for administrative regulation and at the same time to disregard the traditional scope, however far-reaching, of the judicial process. Unless these vital differentiations between the functions of judicial and administrative tribunals are observed, courts will stray outside their province and read the laws of Congress through the distorting lenses of inapplicable legal doctrine.

Under the Radio Act of 1927 as originally passed, the Court of Appeals was authorized in reviewing action of the Radio Commission to "alter or revise the decision appealed from and enter such judgment as to it may seem just." Sec. 16 of the Radio Act of 1927, 44 Stat. 1169. Thereby the Court of Appeals was constituted "a superior and revising agency in the same field" as that in which the Radio Commission acted. *Radio Comm. v. General Electric Co.,* 281 U. S. 464, 467. Since the power thus given was administrative rather than judicial, the appellate jurisdiction of this Court could not be invoked. *Radio Comm. v. General Electric Co., supra.* To lay the basis for review here, Congress amended Sec. 16 so as to terminate the administrative oversight of the Court of Appeals. c. 788, 46 Stat. 844. In "sharp contrast with the previous grant of authority" the court was restricted to a purely judicial review. "Whether the Commission applies the legislative standards validly set up, whether it acts within the authority conferred or goes beyond it, whether its proceedings satisfy the pertinent demands of due process, whether, in short, there is compliance with the legal requirements which fix the province of the Commission and govern its action, are appropriate questions for judicial decision." *Radio Comm'n v. Nelson Bros. Co.,* 289 U. S. 266, 276.

On review the court may thus correct errors of law and on remand the Commission is bound to act upon the correction. *Fed. Power Comm'n v. Pacific Co.,* 307 U. S. 156. But an administrative determination in which is imbedded a legal question open to judicial review does not impliedly foreclose the administrative agency, after its error has been corrected, from enforcing the legislative policy committed to its charge. Cf. *Ford Motor Co. v. Labor Board,* 305 U. S. 364.

The Commission's responsibility at all times is to measure applications by the standard of "public convenience, interest, or necessity." The Commission originally found respondent's application inconsistent with the public interest because of an erroneous view regarding the law of Pennsylvania. The Court of Appeals laid bare that error, and in compelling obedience to its correction, exhausted the only power which Congress gave it. At this point the Commission was again charged with the duty of judging the application in the light of "public convenience, interest, or necessity." The fact that in its first disposition the Commission had committed a legal error did not create rights of priority in the respondent, as against the later applicants, which it would not have otherwise possessed. Only Congress could confer such a priority. It has not done so. The Court of Appeals cannot write the principle of priority into the statute as an indirect result of its power to scrutinize legal errors in the first of an allowable series of administrative actions. Such an implication from the curtailed review allowed by the Communications Act is at war with the basic policy underlying the statute. It would mean that for practical purposes the contingencies of judicial review and of litigation, rather than the public interest, would be decisive factors in determining which of several pending applications was to be granted.

It is, however, urged upon us that if all matters of administrative discretion remain open for determination or remand after reversal, a succession of single determinations upon single legal issues is possible with resulting delay and hardship to the applicant. It is always easy to conjure up extreme and even oppressive possibilities in the exertion of authority. But courts are not charged with general guardianship against all potential mischief in complicated tasks of government. The present case makes timely the reminder that "legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts." *Missouri, Kansas & Texas Ry. Co. v. May,* 194 U. S. 267, 270. Congress which creates and sustains these agencies must be trusted to correct whatever defects experience may reveal. Interference by the courts is not conducive to the development of habits of responsibility in administrative agencies. Anglo-American courts as we now know them are themselves in no small measure the product of a historic process.

The judgment is reversed, with directions to dissolve the writ of mandamus and to dismiss respondent's petition.

Reversed.

Mr. Justice McReynolds concurs in the result.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 316

J. Lawrence Fly, et al., Petitioners
vs.
Paul R. Heitmeyer

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia

(January 29, 1940)

Mr. Justice Frankfurter delivered the opinion of the Court.

On March 25, 1935, Heitmeyer, respondent here, applied for a permit from the Federal Communications Commission under Sec. 319 of the Communications Act of 1934, c. 652, 48 Stat. 1089, 47 U.S.C. 319, to construct a broadcasting station at Cheyenne, Wyoming. His application and a competing one were heard by an examiner. The Commission, on May 1, 1936, denied respondent's application on the sole ground that he was financially disqualified. He appealed to the United States Court of Appeals for the District of Columbia and the Commission's decision was reversed. *Heitmeyer v. Federal Communications Commission,* 95 F. (2d) 91. To proceed in conformity with this opinion, the case was remanded to the Commission.

After Heitmeyer's appeal two other applications for the same facilities were filed with the Commission. Following intermediate litigation, needless here to recount, the Commission directed that respondent's case be reopened in conjunction with the pending rival applications. Before this hearing could be had, respondent obtained from the Court of Appeals a writ of mandamus directing the Commission to restrict consideration of his application to the record originally before it. *McNinch v. Heitmeyer,* 105 F. (2d) 41. Because important questions of administrative law were involved, we granted certiorari. 308 U. S. ——.

This case is controlled by our decision No. 265, *Federal Communications Commission v. Pottsville Broadcasting Co.,* decided this day.

The only relevant difference between the two cases is that here the Commission proposed on remand not only to reconsider respondent's application on oral argument with subsequently filed rival applications, but to reopen the record and take new evidence on the comparative ability of the various applicants to satisfy "public convenience, interest, or necessity." But the Commission's duty was to apply the statutory standard in deciding which of the applicants was to receive a permit after it fell into legal error as well as before. If, in the Commission's judgment, new evidence was necessary to discharge its duty, the fact of a previously erroneous denial should not, according to the principles enunciated in the *Pottsville* case, *ante,* bar it from access to the necessary evidence for correct judgment.

The judgment is reversed, with directions to dissolve the writ of mandamus and to dismiss respondent's petition.

Reversed.

Mr. Justice McReynolds concurs in the result.

FCC APPROPRIATION CUT

Senate Committee on Appropriations this week cut $40,000 from the Federal Communications Commission appropriation. The $40,000 was for the establishment of a radio monitoring station at Anchorage, Alaska.

The Commission's total appropriation as it passed the House was for $2,116,340 and as reported by the Senate Committee is $2,076,340.

NAB THANKS STATIONS, SPONSORS, FOR "MARCH OF DIMES" SUPPORT

The NAB through Neville Miller desires to extend its heartfelt thanks to stations, networks, sponsors, and radio artists who so generously gave of their time and talent to move along the March of Dimes, in celebration of the President's birthday, so that the scourge of infantile paralysis may be wiped from the homes of the nation.

Mr. Miller's statement:

"Again, American radio was the backbone of the March of Dimes. Again, American radio gave the March of Dimes tempo, scope, results. Again, American radio reached into the hearts of its millions of listeners for a contribution so that those who dance may help others to walk.

"The results are more than a tribute to radio. They are a tribute to the responsive heart of the American people, who have never yet failed to answer a radio call for neighborly help."

SESAC ADDITION

SESAC has notified its licensees that it has added the catalogue of Leopoldo Orduña, Barcelona, Spain.

CARTER—JACK TAYLOR

The NAB would like to know the whereabouts of Eddie Carter, piano marathon king, who has been broadcasting on the Pacific Coast. Anyone knowing his whereabouts, please advise headquarters.

The whereabouts of Jack Taylor and his Rail Splitters, a hillbilly radio show, is requested. Anyone knowing the location of this troupe should communicate with WJHL, Johnson City, Tennessee, or headquarters office.

FEDERAL LEGISLATION

S. 517 (Sen. Johnson, Colo.) LIQUOR ADVERTISING—Amendment (in the nature of a substitute) to the committee amendment to the bill (S. 517) to amend the Communications Act of 1934 to prohibit the advertising of alcoholic beverages by radio. Ordered to lie on the table and to be printed.

STATE LEGISLATION

KENTUCKY:

S. 73 (Keenon) LOTTERY—An act to amend and re-enact section 2573 of the statutes relating to lottery. Referred to Ways and Means Committee.

MISSISSIPPI:

H. 43 (Woodliff) OPTOMETRY—To completely revise Chapter 140 "Optometry" of the Code of 1930 by combining certain pertinent features of the act as it now exists into new sections; by revising old sections to meet present conditions and problems; by eliminating duplicate provisions. Being an act defining optometry; providing for the licensing of persons to practice Optometry and the issuance of branch office licenses. Referred to Public Health and Quarantine Committee.

NEW YORK:

A. 786 (Goldstein) RADIO ADVERTISEMENTS—Makes it a misdemeanor to broadcast over a radio station, untrue and misleading advertisements and requires the advertiser to file with owner or operator of a station, his true name and name under which business is transacted. Referred to Codes Committee.

NEW YORK:

S. 802 (Williamson) POLICE RADIO CARS—Authorizes village trustees to appoint radio technician who shall keep in repair all police radio cars and equipment owned and operated by the village and perform such other duties as may be imposed. Referred to Villages Committee.

FCC ASSIGNMENTS

The FCC announces that the work, business and functions of the Commission for the month of February have been assigned as follows:

Commissioner Case	Designated to determine, order, report or otherwise act upon all applications or requests for special temporary standard broadcast authorizations.
Commissioner Brown	Designated to hear and determine, order, certify, report or otherwise act upon; (a) except as otherwise ordered by the Commission, all motions, petitions or matters in cases designated for formal hearing, including motions for further hearing, excepting motions and petitions requesting final disposition of a case on its merits, those having the nature of an appeal to the Commission and those requesting change or modification of a final order made by the Commission; *provided,* however, that such matters shall be handled in accordance with the provisions of Sections 1.251 and 1.256, inclusive, of the Commission's Rules of Practice and Procedure; (b) the designation pursuant to the provisions of Sections 1.231 to 1.232 of the Commission's Rules of Practice and Procedure of officers, other than Commissioners, to preside at hearings.

FEDERAL COMMUNICATIONS COMMISSION DOCKET

Following hearings and oral arguments are scheduled before the Commission in broadcast cases for the week beginning Monday, February 5. They are subject to change.

Monday, February 5

WPIC—Sharon Herald Broadcasting Co., Sharon, Pa.—C. P., **780 kc.**, 1 KW, daytime. Present assignment: **780 kc.**, 250 watts, daytime.

Wednesday, February 7

WQDM—E. J. Regan and F. Arthur Bostwick, d/b as Regan & Bostwick, St. Albans, Vt.—Renewal of license, **1390 kc.**, 1 KW, daytime.

Thursday, February 8

Further Hearing

KFIO—Spokane Broadcasting Corp., Spokane, Wash.—C. P., **950 kc.**, 1 KW, unlimited time. Present assignment: **1120 kc.**, 100 watts, daytime.

Thursday, February 8

Oral Argument Before the Commission

WRTD—The Times Dispatch Radio Corp., Richmond, Va.—C. P., **590 kc.**, 1 KW, unlimited time (DA night). Present assignment: **1500 kc.**, 100 watts, unlimited time.

FUTURE HEARINGS

During the week the Commission has announced the following tentative dates for broadcast hearings. They are subject to change.

March 5

WBHP—Wilton Harvey Pollard, Huntsville, Ala.—Renewal of license, **1200 kc.**, 100 watts, unlimited time.

March 6

KXL—KXL Broadcasters, Portland, Ore.—C. P., **740 kc.**, 10 KW, 10 KW LS, limited time (DA day and night). Present assignment: **1420 kc.**, 250 watts, shares KBPS.

KTRB—Thomas R. McTammany and William H. Bates, Jr., Modesto, Calif.—C. P., **740 kc.**, 1 KW, 1 KW LS, limited to WSB, Atlanta, Ga. Present assignment: **740 kc.**, 250 watts, daytime.

FEDERAL COMMUNICATIONS COMMISSION ACTION

APPLICATIONS GRANTED

WCKY—L. B. Wilson, Inc., Licensee George L. Hill & C. D. Seiler, Cincinnati, Ohio.—Granted authority to transfer control of station WCKY, from George L. Hill and C. D. Seiler, to L. B. Wilson. Station operates on **1490 kc.**, with 50 KW, unlimited time.

KADA—C. C. Morris, Ada, Okla.—Granted construction permit for changes in equipment and increase in power from 100 to 250 watts on **1200 kc.**

DESIGNATED FOR HEARING

Guy S. Cornish (Cincinnati, Ohio), Portable-Mobile.—Application for construction permit for new public address relay station to operate on frequency **310,000 kc.**; emission A3, power 1 watt; unlimited time in accordance with Sections 5.15 and 5.18. The proposed station would provide a voice circuit between the announcer and the public address amplifying equipment under conditions where wire facilities are not available or are impractical to install.

Miami Broadcasting Co., Miami, Fla.—Application for construction permit for new broadcast station to operate on **1420 kc.**, 250 watts, unlimited time. Exact transmitter site and type of antenna to be determined with Commission's approval.

West Virginia Newspaper Publishing Co., Morgantown, W. Va.—Application for construction permit for a new broadcast station to operate on **1200 kc.**, 250 watts, unlimited time. Exact studio and transmitter site and type of antenna to be determined with Commission's approval.

MISCELLANEOUS

WEAN-WAAB-WNAC-WICC—The Yankee Network, Inc., Boston, Mass.—Granted special temporary authority to pick up and rebroadcast programs being broadcast by FM Stations W1XOJ, W1XPW, W2XMN, W2XAG, or High Frequency Broadcast Station W1XER, for a period not to exceed 30 days, in order to secure information for the high frequency hearing on February 28, 1940.

WSOY—Commodore Broadcasting, Inc., Decatur, Ill.—Granted special temporary authority to operate from 7:30 p. m., CST, to the conclusion of basketball games on February 26, and March 2, 1940, and from 7:15 p. m., CST, to the conclusion of a basketball game on March 4, 1940, in order to broadcast basketball games only using 250 watts power.

M. C. Reese, Phoenix, Arizona.—Adopted final order, effective January 26, 1940, granting the application for a new station to operate on **1200 kc.**, 100 watts night, 250 watts local sunset, subject to approval of transmitter and antenna system.

WRTD—The Times Dispatch Radio Corp., Richmond, Va.—Postponed oral argument on application for construction permit to change frequency and install new equipment, now scheduled for February 1, to February 8.

W2XWG—National Broadcasting Co., Inc., New York, N. Y.—Granted license to cover construction permit for new high frequency station; frequency **42600 kc.**, power 100 watts, granted on experimental basis only, conditionally.

WSPB—WSPB, Inc., Sarasota, Fla.—Granted authority to determine operating power by direct measurement of antenna input.

Lookout Mountain Co. of Georgia, Lookout Mountain, Ga.—Granted motion for order to take depositions in re its application for construction permit for new station to operate on **1370 kc.**, 250 watts night, 250 watts LS, unlimited time.

KGMB—Hawaiian Broadcasting System, Inc., Honolulu, Hawaii.—Granted modification of construction permit for change in frequency, increase in power, and new transmitter and antenna and move of transmitter, for extension of completion date from February 20, 1940, to August 20, 1940.

KVGB—Helen Townsley, Great Bend, Kansas.—Granted license to cover construction permit for changes in transmitting equipment and increase in power to **1370 kc.**; power 250 watts, unlimited time.

KVGB—Helen Townsley, Great Bend, Kansas.—Granted authority to determine operating power by direct measurement of antenna input.

KFRU—KFRU, Inc., Columbia, Mo.—Granted special temporary authority to operate simultaneously with station WGBF, with reduced power of 250 watts, from 7:30 p. m. to 9:00 p. m., CST, on January 24, 1940, in order to permit WGBF to broadcast proceedings at Farmers Business Men Banquet, Vincennes, Indiana.

WGBF—Evansville on the Air, Evansville, Ind.—Granted special temporary authority to operate simultaneously with station KFRU as above in order to broadcast proceedings at Farmers Business Mens Banquet, Vincennes, Indiana.

KFAH—A Bruce Fahnestock, Fahnestock South Sea Expedition, Portable mobile, aboard *Director II* (area of Fahnestock South Sea Expedition).—Granted license to cover construction permit for new special relay broadcast station; frequencies **4797.5, 6425, 9135, 12862.5, 17310** and **23100 kc.**; power 1000 watts; granted on an experimental basis only, conditionally.

Anthracite Broadcasting Co., Inc., Scranton, Pa.—Designated for hearing application for construction permit to erect a new station to operate on **1370 kc.**, 250 watts, unlimited time; exact transmitter site and type of antenna to be determined with Commission's approval.

WMIP—Northwest Airlines, Inc., Washington, D. C.—Granted special temporary authority to operate aircraft station KHDIW on **2790 kc.**, January 27, 1940, in order to relay broadcast program material in connection with Winter Carnival of Twin Cities, Minnesota to Radio Station WMIN.

WJNP—Jack R. Butler, Palm Beach, Fla.—Granted special temporary authority to operate the radio transmitter aboard the Motor Yacht *Dutchess II*, bearing call letters WPYW, as a relay broadcast station utilizing the frequency **2790 kc.**, from 5:15 p. m. to 5:30 p. m., EST, for the period ending not later than February 4, 1940, in order to relay broadcast the Sailfish Derby programs to radio station WJNO.

Metropolitan Broadcasting Corp., New York, N. Y.—Granted request to withdraw without prejudice the application for voluntary assignment of license of station WINS from Hearst Radio, Inc., assignor, to Metropolitan Broadcasting Corp., assignee. Hearing scheduled for March 4 cancelled.

Radiomarine Corp. of America.—Granted motions to take depositions in Buffalo, N. Y., February 14; Cleveland, Ohio, February 16; Detroit, Mich., February 17; and New York, N. Y., February 19; in re applications for Radiomarine Corp. of America for construction permit for coastal harbor stations WCY and WBL.

WHBY—WHBY, Inc., Appleton, Wis.—Granted license to cover construction permit as modified for installation of new transmitter and antenna and move of transmitter and studio; **1200 kc.**, 250 watts, unlimited time.

WMBO—WMBO, Inc., Auburn, N. Y.—Granted authority to determine operating power by direct measurement of antenna input.

WTOL—The Community Broadcasting Co., Toledo, Ohio.—Granted license to cover construction permit for changes in transmitting equipment and increase in power to 250 watts; frequency **1200 kc.**, unlimited.

WTOL—The Community Broadcasting Co., Toledo, Ohio.—Granted authority to determine operating power by direct measurement of antenna input.

KPAC—Port Arthur College, Port Arthur, Tex.—Granted license to cover construction permit as modified for installation of new transmitter; move transmitter 500 feet; change frequency; change hours of operation, and install directional antenna for night use; frequency **1220 kc.,** power 500 watts, unlimited time; also granted authority to determine operating power by direct measurement of antenna input.

KTOL—Tulsa Broadcasting Co., Inc., Tulsa, Okla.—Granted authority to determine operating power by direct measurement of antenna input.

KICA—Western Broadcasters, Inc., Clovis, N. Mex.—Granted authority to determine operating power by direct measurement of antenna input.

KORN—Nebraska Broadcasting Corp., Fremont, Nebr.—Granted license to cover construction permit as modified for new broadcast station, **1370 kc.,** 100 watts night, 250 watts daytime, unlimited time; also granted authority to determine operating power by direct measurement of antenna input.

KABC—Alamo Broadcasting Co., Inc., San Antonio, Tex.—Granted authority to determine operating power by direct measurement of antenna input.

KLSM—Harold M. Finlay and Mrs. Eloise Finlay, LaGrande, Ore. —Granted construction permit to make changes in equipment.

WJBO—Baton Rouge Broadcasting Co., Inc., Baton Rouge, La.—Granted license to cover construction permit for changes in equipment and increase in power to 1 KW; frequency **1120 kc.,** unlimited time.

Woodmen of the World Life Insurance Society, Portable-Mobile (area of Omaha, Nebr.).—Granted construction permit for new relay (low frequency) broadcast station to be used with applicant's standard broadcast station WOW, Omaha, Nebr.; frequencies **1622, 2058, 2150** and **2790 kc.,** power 10 watts.

Albert S. and Robert Drohlich, d/b as Drohlich Brothers, Portable-Mobile (area of Sedalia, Mo.).—Granted construction permit for new relay (high frequency) broadcast station to be used with applicant's standard broadcast station KDRO; frequencies **30820, 33740, 35820, 37980 kc.,** power 25 watts.

National Broadcasting Co., Inc., Portable-Mobile (area of Washington, D. C.).—Granted construction permit for new high frequency relay broadcast station to be used with applicant's standard broadcast stations WRC and WMAL; frequencies **31220, 35620, 37020** and **39260 kc.,** power 25 watts.

National Broadcasting Co., Inc., Portable-Mobile (area of Chicago, Ill.).—Granted construction permit for new high frequency relay broadcast station to be used with applicant's standard broadcast stations WENR and WMAQ; frequencies **31220, 35620, 37020, 39260 kc.,** power 25 watts.

National Broadcasting Co., Inc., Portable-Mobile (area of San Francisco, Calif.).—Granted construction permit for new high frequency relay broadcast station to be used with applicant's standard broadcast stations KGO and KPO; frequencies **31220, 35620, 37020, 39260 kc.,** power 25 watts.

National Broadcasting Co., Inc., Portable-Mobile (area of Cleveland, Ohio).—Granted construction permit for new high frequency relay broadcast station to be used with applicant's standard broadcast station WTAM; frequencies **31220, 35620, 37020, 39260 kc.,** power 0.25 watt.

National Broadcasting Co., Inc., Portable-Mobile (area of Chicago, Ill.).—Granted construction permit for new high frequency relay broadcast station to be used with applicant's standard broadcast stations WENR and WMAQ; frequencies **31220, 35620, 37020, 39260 kc.,** power 0.25 watt.

National Broadcasting Co., Inc., Portable-Mobile (area of Chicago, Ill.).—Granted construction permit for new high frequency relay broadcast station to be used with applicant's standard broadcast stations WENR and WMAQ; frequencies **31220, 35620, 37020, 39260 kc.,** power 2 watts.

National Broadcasting Co., Inc., Portable-Mobile (area of Denver, Colo.).—Granted construction permit for new high frequency relay broadcast station to be used with applicant's standard broadcast station KOA; frequencies **31220, 35620, 37020, 39260 kc.,** power 25 watts.

National Broadcasting Co., Inc., Portable-Mobile (area of Cleveland, Ohio).—Granted construction permit for a new high frequency relay broadcast station to be used with applicant's standard broadcast station WTAM; frequencies **31220, 35620, 37020, 39260 kc.,** power 25 watts.

WXYZ—King-Trendle Broadcasting Corp., Detroit, Mich.—Granted license to use old W.E. 106-B transmitter which is located at 5057 Woodward Ave., Detroit, Mich., as auxiliary transmitter for emergency use only, with power of 1 KW; **1240 kc.**

Springfield Radio Service, Inc., Springfield, Ohio.—Continued without date the hearing now scheduled for February 5, 1940, in re application for new broadcast station.

WPRA—Puerto Rico Advertising Co., Inc., Mayaguez, P. R.—Granted special temporary authority to operate from 9:00 a. m. to 11:00 a. m., and from 2:00 p. m. to 6:00 p. m., AST, on February 4, 11, 18, 22 and 25, 1940, in order to broadcast baseball games only; to operate from 10:00 p. m. to 12:00 p. m., AST, on February 22, 1940, in order to broadcast festivities pertaining to Washington's Birthday.

WAGM—Aroostook Broadcasting Corp., Presque Isle, Maine.—Granted special temporary authority to operate from 7:00 p. m. to 9:00 p. m., EST, on February 16 and 23, 1940, in order to broadcast basketball games only.

WLAP—American Broadcasting Corp. of Ky., Lexington, Ky.—Granted special temporary authority to operate with power of 250 watts from 8:00 p. m. to 9:30 p. m., CST, on February 10, 12, 13, 17, 19, and 24, 1940, for broadcasts of University of Kentucky basketball games only.

WHJB—Pittsburgh Radio Supply House, Greensburg, Pa.—Granted special temporary authority to operate from 9:00 p. m., January 30, 1940 to 1:00 a. m., EST, January 31, 1940, in order to broadcast program in connection with the "Fight Infantile Paralysis Campaign".

WKAQ—Radio Corp. of Porto Rico, San Juan, Puerto Rico.—Granted extension of special temporary authority to rebroadcast sustaining programs to be received from International broadcast stations WCBX and WCAB over WKAQ, on non-commercial basis only, from January 29, 1940, pending consideration and reply to Commission's letter of January 19, 1940, but not beyond February 27, 1940.

WMBQ—Metropolitan Broadcasting Corp., Brooklyn, N. Y. (and four other Brooklyn stations.)—Extended effective date of Provision (3) of the Commission's order of December 5, 1938, for a period of 30 days from January 30, 1940, in re applications involving the operating time previously utilized by station WMBQ.

WPRA—Puerto Rico Advertising Co., Inc., Mayaguez, P. R.—Denied petition for reconsideration, reopening of proceeding, and setting for hearing the application of Portorican American Broadcasting Co., Inc., for a new station to operate on **1340 kc.,** with power of 1 KW, unlimited time, which was granted by the Commission on December 12, 1939.

WPRP—Julio M. Conesa, Ponce, P. R.—Denied protest and request to vacate Commission's action of December 12th and set application of Portorican American Broadcasting Co., Inc., for hearing.

Samuel M. Emison, Vincennes, Ind.—Denied petition for rehearing in re application of Vincennes Newspapers, Inc., Vincennes, Ind., for a construction permit to erect a new station to operate on frequency **1420 kc.,** 100 watts, unlimited time, which was granted by the Commission on November 22, 1939.

WNYC—City of New York, Municipal Broadcasting System, New York City.—The application of WNYC requesting authority to increase time of operation from daytime, local sunset at WCCO, Minneapolis, to specified hours (6 a. m. to 11 p. m., EST), on frequency **810 kc.,** which has been designated for hearing, will be heard on the following issues at a date to be set: (1) To determine whether or not the Commission's rules governing standard broadcast stations, particularly Secs. 3.22 and 3.25 (Part III), properly applied, preclude the granting of the application; (2) to determine the nature, extent, and effect of any interference which would result should the applicant's proposed station operate simultaneously with WCCO and WGY; (3) to determine the nature, extent, and effect of any interference which would result should applicant's proposed station operate simultaneously with WGY, operating as proposed in its pending application, or with WHAS, operating as proposed in its pending application; and (4) to determine whether the DA system will comply in all respects with Sec. 3.45 of Standard Broadcast Rules and requirements of good engineering practice.

Peoria Broadcasting Co., Portable-Mobile (area of Peoria, Ill.).—Granted construction permit for new relay broadcast station to operate on frequencies **33380, 35020, 37620, 39820 kc.,** power 1 watt.

Peoria Broadcasting Co., Portable-Mobile (area of Peoria, Ill.).—Granted license to cover construction permit for above relay broadcast station.

WSAJ—Grove City College, Grove City, Pa.—Granted special temporary authority to operate from 8 p. m. to 10:30 p. m.,

EST, on February 8, 16, 22, 27 and March 1, 1940, in order to broadcast basketball games only.

WAGM—Aroostook Broadcasting Corp., Presque Isle, Maine.—Granted special temporary authority to operate from 7:00 p. m. to 8:00 p. m., EST, on February 14 and 15, 1940, in order to broadcast special events of the Caribou Winter Carnival.

KUMA—A. H. Schermann, Yuma, Ariz.—Denied authority to continue operation of Station KUMA until the new station which has been authorized to be constructed at Yuma is ready for operation.

W2XVT—Allen B. DuMont Laboratories, Passaic, N. J.—Granted special temporary authority to operate experimental television broadcast station W2XVT from 9:00 a. m. to 7:00 p. m., EST, (provided W2XBS remains silent) for the period beginning January 29, 1940 to not later than February 3, 1940, in order to permit necessary adjustments for demonstration to be given to the Commission.

WILL—University of Illinois, Urbana, Ill.—Granted special temporary authority to operate simulatneously with Stations WIBW and WCHS, with power of 1,000 watts, from 7:25 p. m. to 9:25 p. m., CST, on February 3, 10, 12, 17, 19, 24, and 26, 1940, in order to broadcast University of Illinois basketball games only.

KWJJ—KWJJ Broadcast Company, Inc., Portland, Ore.—Granted special temporary authority to operate simultaneously with stations WTIC and KRLD on **1040 kc.,** from 7:25 p. m. to 9 p. m., PST, on February 3, 9, 10, 12, 13, 17, 23, 27, and 28, 1940, in order to broadcast basketball games only.

WMRO—Martin R. O'Brien, Aurora, Ill.—Granted special temporary authority to operate from 7:00 p. m. to 10:30 p. m., CST, on February 2, 3, 9, 12, 16, 17, 23, 28, 29, 1940, in order to broadcast basketball games only, and from 7:00 p. m. to 10:30 p. m., CST, on February 20, 1940, in order to broadcast proceedings of civic dinner sponsored by the Rotary Culb of the City of Aurora; using 100 watts only.

WCLS—WCLS, Inc., Joliet, Ill.—Granted special temporary authority to operate from 8:30 p. m. to 10:30 p. m., CST, on February 2, 9, 16, 21, and 23, 1940, in order to broadcast basketball games only.

WAOG—New York State Conservation Dept., Albany, N. Y.—Granted extension of special temporary authority to operate portable radiophone forestry station WRAI on frequencies **31620, 35260, 37340** and **39620 kc.,** for the period February 5, 1940, to not later than March 5, 1940, as a relay broadcast station to relay programs from the Olympic Bobsled Run to Standard Broadcast Station WNBZ.

WFMD—The Monocacy Broadcasting Co., Frederick, Md.—Granted special temporary authority to operate from 8:00 p. m. to 9:30 p. m., EST, on February 6, 1940, in order to broadcast a special dinner meeting with U. S. Senator Millard E. Tydings as the principal speaker.

Mutual Broadcasting System, Washington, D. C.—Granted special temporary authority to eliminate station identification as required by Sec. 3.92 of the Rules and Regulations from 11:15 p. m. to 12:15 p. m., EST, on January 30, 1940, during the President's Birthday Ball Program broadcast.

Columbia Broadcasting System, Inc., New York City.—Granted special temporary authority to eliminate station identification as required by Sec. 3.92 of the Rules and Regulations from 11:15 p. m. to 12:15 p. m., EST, on January 30, 1940, during the President's Birthday Ball Program broadcast.

National Broadcasting Co., Inc., New York City.—Granted special temporary authority to eliminate station identification as required by Sec. 3.92 of the Rules and Regulations from 11:15 p. m. to 12:15 p. m., EST, on January 30, 1940, during the President's Birthday Ball program.

APPLICATIONS FILED AT FCC

610 Kilocycles

KFRC—Don Lee Broadcasting System, San Francisco, Calif.—Modification of construction permit (B5-P-335) for increase in power, further requesting authority to use present licensed site and antenna.

630 Kilocycles

NEW—R. E. Troxler, High Point, N. C.—Construction permit for a new station to be operated on **630 kc.,** 500 watts, daytime operation.

680 Kilocycles

WLAW—Hildreth & Rogers Co., Lawrence, Mass.—Construction permit to install new transmitter and directional antenna, for night use, increase power from 1 to 5 KW, change hours of operation from daytime to unlimited time.

1120 Kilocycles

WCOP—Massachusetts Broadcasting Corp., Boston, Mass.—Construction permit to install directional antenna for night use, change hours of operation from daytime to unlimited time, using 500 watts power.

WTAW—Agricultural & Mechanical College of Texas, College Station, Texas.—Construction permit to install new vertical antenna and move transmitter from E. E. Bldg., College Station, Texas, to College Station, Texas.

1200 Kilocycles

WSOO—Hiawathaland Broadcasting Co., Sault Ste. Marie, Mich.—Modification of construction permit (B2-P-2423) for a new station, for approval of antenna, new transmitter, studio site at Sault Ste. Marie, Mich., and transmitter located at South of town, Sault Ste. Marie, Mich. Amended: Re: antenna and studio site as 107 W. Portage St., Sault Ste. Marie, Mich.

NEW—The Peninsula Broadcasting Co., Salisbury, Md.—Construction permit to erect a new broadcast station to be operated on **1200 kc.,** 250 watts, unlimited time. Requesting facilities of station WSAL.

1270 Kilocycles

NEW—Edward J. Doyle, Rochester, N. Y.—Construction permit to erect a new broadcast station to be operated on **1270 kc.,** 500 watts, daytime. Amended: To request **1340 kc.,** 1 KW power, unlimited time, install directional antenna for day and night use, make changes in equipment, give studio site as site to be determined, Rochester, N. Y., and transmitter site as Clinton Ave. & Henrietta, Town Line Road, near Ridgeland, N. Y.

NEW—Cuyahoga Valley Broadcasting Co., Cleveland, Ohio.—Construction permit for a new broadcast station to be operated on **1500 kc.,** 100 watts, daytime operation. Amended: To request **1270 kc.,** 1 KW power, and make changes in equipment.

1310 Kilocycles

KSUB—Harold Johnson & Leland M. Perry, d/b as Johnson & Perry, Cedar City, Utah.—Voluntary assignment of license from Harold Johnson and Leland M. Perry, d/b as Johnson & Perry, to Southern Utah Broadcasting Co.

WSAV—WSAV, Inc., Savannah, Ga.—Modification of license to increase power from 100 watts to 250 watts.

1340 Kilocycles

WFNC—W. C. Ewing & Harry Layman, d/b as Cumberland Broadcasting Co., Fayetteville, N. C.—Modification of construction permit (B3-P-1926) as modified, for a new station, requesting extension of completion date from 2-20-40 to 5-20-40.

WCOA—Pensacola Broadcasting Co., Pensacola, Fla.—Construction permit to install new transmitting equipment.

1370 Kilocycles

KVFD—Northwest Broadcasting Co., Fort Dodge, Iowa.—License to cover construction permit (B4-P-2042) as modified, for new broadcast station.

KVFD—Northwest Broadcasting Co., Ft. Dodge, Iowa.—Authority to determine operating power by direct measurement of antenna power.

WTSP—Pinellas Broadcasting Co., St. Petersburg, Fla.—Authority to transfer control of corporation from Sam H. Mann, McKinney Barton & Dorothy Line, to Nelson P. Poynter, 50 shares common stock.

1420 Kilocycles

WMBS—Fayette Broadcasting Corp., Uniontown, Pa.—Construction permit to install new transmitter, and directional an-

tenna, for night use, change frequency from **1420** to **590 kc.,** and increase power from 250 watts to 1 KW.

1430 Kilocycles

KGNF—Great Plains Broadcasting Co., North Platte, Nebr.—Modification of license to change hours of operation from daytime to unlimited time, using 1 KW power day and night.

1500 Kilocycles

NEW—E. W. Williams, Corbin, Ky.—Construction permit for a new broadcasting station to be operated on **1500 kc.,** 100 watts power, unlimited time. Amended: Re: antenna, and to specify transmitter and studio site as on U. S. Highway 25-E, Corbin, Ky.

KWEW—W. E. Whitmore, Hobbs, N. Mex.—Authority to determine operating power by direct measurement of antenna power.

KNEL—G. L. Burns, Brady, Texas.—Authority to determine operating power by direct measurement of antenna power.

MISCELLANEOUS

NEW—Cherry & Webb Broadcasting Company, Providence, R. I.—Construction permit for a new high frequency broadcast station to be located in or near Providence, R. I., to be operated on **42800 kc.,** 1 KW power, unlimited time, special emission.

WEKD—Onondaga Radio Broadcasting Corporation, Portable-Mobile.—License to cover construction permit (B1-PRE-254) to install new equipment and increase power.

NEW—The Cincinnati Times-Star Company, Cincinnati, Ohio.—Construction permit for new high frequency broadcast station to be located between Highland Avenue and Reading Road and Dorchester St., Cincinnati, Ohio, to be operated on **43400 kc.,** 1 KW power, unlimited time, special emission.

NEW—A. Bruce Fahnestock, Director, Fahnstock South Sea Expedition, Portable-Mobile.—License to cover construction permit (B-PRE-335) for new special relay broadcast station.

W2XQR—John V. L. Hogan, New York, N. Y.—Modification of license to add A4 emission.

WBAR—Bamberger Broadcasting Service, Inc., Newark, N. J.—License to cover construction permit (B1-PRE-319) for new relay broadcast station.

WBAS—Bamberger Broadcasting Service, Inc., Newark, N. J.—License to cover construction permit (B1-PRE-320) for new relay broadcast station.

NEW—Peoria Broadcasting Co., Peoria, Ill.—Construction permit for a new high frequency broadcast station to be located at 200 Alliance Life Bldg., Peoria, Ill., to be operated on **43400 kc.,** 1 KW, unliimted time, special emission.

FEDERAL TRADE COMMISSION ACTION

COMPLAINTS

The Federal Trade Commission has alleged unfair competition in complaints issued against the following firms. The respondents will be given an opportunity to show cause why cease and desist orders should not be issued against them.

Best Gardens—See Middle West Supply Company.

Davidson Enamel Company, Clyde, Ohio, is charged, in a complaint with misrepresentation in the sale and distribution of its products. The respondent manufactures and distributes an interior wall covering described in advertisements in magazines and newspapers as "tile" and "porcelain tile."

The complaint charges that the word "tile" is generally understood in the trade and by the general public as meaning a hard, homogeneous clay product which has been baked in kilns and, in its final form, shaped into comparatively small sized units; and that "porcelain" is similarly understood to mean a fine, baked, homogeneous earthenware product. The respondent's product, the complaint continues, is a vitreous or glassy enamel applied to a steel base. Respondent's product is not "tile" as that word, unaccompanied by other descriptive words, is generally understood in various trades and by the general public, nor is it a "porcelain tile." (4001)

F. W. Fitch Company—See Thomsen-King & Company, Inc.

Joseph Hagn Company, Chicago, Ill., in the sale of jewelry, clocks, wearing apparel, knives and other articles, is alleged to have sold to dealers assortments of merchandise so packed and assembled as to involve the use of a gift enterprise or lottery scheme when the articles were distributed to ultimate consumers. It is alleged that clocks were sold by means of a punchboard device, pocket knives by means of a push card and other articles by means of pull cards. (3997)

Ladies Aid Company—See Progressive Medical Company.

Middle West Supply Company—Charles T., Elbert C., and Ernest C. Pike, trading as Middle West Supply Company and The Best Gardens, are alleged to have advertised and distributed so-called "free" offers of merchandise in a manner misleading buyers into accepting them and purchasing the respondents' products by paying the full value in the belief that such payment was merely the cost of mailing and packing.

Allegedly the respondents addressed postal cards to individuals in various States stating that "This card was addressed to you by your friend so that you can also receive a $1.00 box of our new 'Velve-Ritz' Face Powder FREE. * * * Just tell us what shade you use and enclose 6 postal cards each addressed to friends of yours who use powder * * * together with a dime for postage, packing and handling * * *." When such offers were accepted by recipients of the cards, the complaint continues, the respondents duplicated the same offer on the backs of the 6 postal cards sent with each dime and mailed them to the addressees, thus establishing an endless chain of prospective customers.

The complaint charges that in a large number of cases no face powder was sent to customers on receipt of their dimes and that in instances where powder actually was sent, it was not reasonably worth $1.00 or more than the 10 cents paid by the customer. In cases where the powder actually was sent, the complaint continues, and the customer was entitled to a "promptness" prize for sending in the postal cards, the respondents did not send such prize with the powder, but made a further offer of other so-called "free" merchandise. The respondents allegedly made additional similar offers involving either cosmetics, flowers or flower seed, including a proposition for customers to earn money by addressing cards. (3996)

Progressive Medical Company—Blanche Kaplan, trading as Progressive Medical Company and as Ladies Aid Company, 3944 Pine Grove Ave., Chicago, engaged in the sale and distribution of medicinal preparations consisting of two formulae known as "Ladies' Aid No. 2, Ordinary Strength," and "Ladies' Aid No. 3, Extra Strength," is charged, in a complaint issued, with the dissemination of false advertisements concerning the preparations.

The complaint charges that the respondent represents her medicinal preparations as cures or remedies for delayed menstruation, and as being non-irritating, mild, efficient and specific treatments.

It is alleged in the complaint that the preparations do not constitute such treatments; will not accomplish the results claimed by the respondent, and that they are not safe and harmless, but contain powdered aloes, powdered extract cotton root bark, iron sulphate dried, powdered extract black hellebore, ergotin, and oil Savin, and that the drugs are present in the preparations in quantities sufficient to cause serious and irreparable injury to health if used under the conditions prescribed in the advertisements or under conditions that are customary or usual.

In the United States District Court for the Northern District of Illinois, Eastern Division, a restraining order was granted last

month on petition of the Federal Trade Commission, restraining Blanche Kaplan and all other persons participating with her having notice, from disseminating any advertisements for the purpose of inducing the purchase of the preparations. The restraining order prohibits further dissemination of such advertising pending the issuance of a complaint by the Federal Trade Commission under its regular procedure, and until such complaint is dismissed, set aside by United States Courts on review, or until the order of the Commission to cease and desist has become final. The Court ruled that the advertisements failed to reveal that the preparations, when taken under conditions prescribed by the advertisements or conditions that are customary and usual, may result in serious or irreparable injury to health. (4002)

Sheffield Silver Company—A complaint has been issued against The Sheffield Silver Company, Jersey City, N. J., charging misrepresentation.

The complaint charges that the respondent, by use of its corporate name "The Sheffield Silver Company" on its letterheads, invoices, labels and other printed matter in the sale of its ware, represents and implies that it is engaged in the sale of silver plated ware manufactured and fabricated in Sheffield, England, and that its product had its origin in that city and is fabricated by skilled artisans located there.

In fact, the complaint continues, all its ware offered for sale is manufactured by the respondent at its place of business in New Jersey.

The name "Sheffield", the complaint alleges, employed in the designation of silver plated hollow ware, has been used for a long period of time to refer to such ware manufactured in Sheffield, England, where, nearly two hundred years ago, a type of silver plated ware designated "Sheffield" plate was originated. Sheffield, England, has been the seat of manufacture of silver plated ware as well as of cutlery of various kinds. Its artisans in these lines of production have achieved a reputation for skill wherever such ware and cutlery are sold. The name "Sheffield", when used in connection with such products, immediately suggests the City of Sheffield, England, to a substantial part of the purchasing public and use by the respondent of the word "Sheffield" allegedly has a tendency to mislead and deceive purchasers. (4000)

Thomsen-King & Company, Inc.—A complaint has been issued charging three cosmetic corporations and 44 individuals with violation of the Federal Trade Commission Act in the conduct of a series of prize contests to promote the sale of cosmetics.

The corporate respondents are Thomsen-King & Co., Inc., 710 South Plymouth Court, Chicago, and the Winship Corporation, 112-114 West Eleventh St., Des Moines, both engaged in the sale of cosmetics, and F. W. Fitch Company, 304 Fifteenth St., Des Moines, cosmetics manufacturer.

Preliminary injunctions against Thomsen-King & Co., Inc., and George Thomsen and Merrold Johnson and the Winship Corporation and Don Parmelee were obtained by the Commission January 11 and 19 in United States District Courts of Northern Illinois and Southern Iowa, respectively. Both concerns and the individuals named were restrained from further dissemination of false advertising in connection with prize contests for promoting the sale of cosmetics pending issuance of and final action on a complaint to be issued by the Federal Trade Commission.

In the Commission's complaint now issued the respondents are charged with (1) entering into unlawful agreements and conspiracies to render ineffectual the orders and other processes of the Federal Trade Commission and (2) dissemination of false advertisements with respect to prize contests and the effectiveness of the use of their various cosmetics. (3998)

Tone Company—Michael S. Chiolak, trading as Tone Company, 64 West Randolph St., Chicago, engaged in the sale and distribution of medicinal preparations designated "Silver Label Formula No. 6," and "Gold Label Formula No. 8," both of which are also known as "Tone Periodic Compound," is charged, in a complaint with the dissemination of false advertising.

In advertisements in periodicals, circulars and other printed matter, the complaint charges, the respondent represented that the preparations distributed by him are cures or remedies for delayed menstruation, and that the preparations are safe and harmless. Among such advertisements were: "Take one capsule every 4 hours. Continue Persistently until desired results are obtained. The important thing to remember is to keep up the treatment without a break or lapse until desired results are evident. * * * "

It is alleged in the complaint that the preparations contain ergotin, aloes, extract black hellebore, and extract cotton root bark. These drugs are present in the preparations, the complaint charges, in quantities sufficient to cause serious and irreparable injury to health if used under the conditions prescribed in the advertisements or under such conditions as are customary or usual. Gastro-intestinal disturbances such as catharsis, nausea and vomiting may result, and their use, when used to interfere with the normal course of pregnancy, may result in uterine infection and in the condition known as septicemia or blood poisoning. (4003)

Winship Corporation—See Thomsen-King & Company, Inc.

CEASE AND DESIST ORDERS

The Commission has issued the following cease and desist orders during the past week:

Frye Company—Prohibiting certain misleading representations in the sale of a medicinal preparation designated "Pancreobismuth," "Pancreo Bismuth," or "Pancreobismuth and Pepsin," an order has been issued against the Frye Company, distributor, 36 Pleasant St., Watertown, Mass.

Findings are that in newspaper, periodical and circular advertising matter the respondent company, by using the name it gives to its preparation, tended to mislead prospective purchasers into believing that they would obtain some physiological effect from the presence of pancreatin and pepsin, when in fact these substances are only minor ingredients which are rendered physiologically inert when taken internally in the respondent's preparation, the active ingredients being bismuth subnitrate, sodium bicarbonate and ginger.

The findings continue that while the respondent's preparation possesses the therapeutic value of a simule antacid and carminative, which tends temporarily to neutralize excess acid and to relieve the symptoms of distress from gastric hyperacidity, it has no effect on the causative factors of gastric hyperacidity or the systemic causes of excess acid in the system.

In the sale of its preparation, the respondent company is directed to cease and desist from representing that it has therapeutic value in the treatment of upset stomach, or in the relief of indigestion due to acid stomach, or in the neutralization of excess acid and allaying of irritation, over and above being a simple antacid and carminative tending to give temporary relief from distress caused by such symptoms.

Other representations to be discontinued are that the preparation is beneficial in aiding the digestion of, or in relieving distress caused by, starchy foods, and that it possesses physiological or therapeutic value due to the presence of pancreatin or pepsin, when such ingredients are not present in such amounts and such form as to be active ingredients.

The order prohibits use of the trade names "Pancreobismuth," "Pancreo-Bismuth," or "Pancreobismuth and Pepsin," or other trade names containing the words "Pancreatin" or "Pepsin," or any other adaptation of such words, to describe or refer to the respondent's present product or any similar preparation which does not possess pancreatin and pepsin in such amounts and in such form as to be active ingredients.

Under the order, the respondent company is to cease disseminating advertisements which represent, directly or through implication, by use of the trade name "Pancreobismuth" or any other trade name containing the word "Pancreatin," or any adaptation thereof, that the preparation contains pancreatin as an active ingredient. (3741)

Southern Art Stone Company—Prohibiting certain misleading representations in the sale of imitation marble and granite tombstones and memorials, an order to cease and desist has been issued against Roy D. Burnsed, trading as Southern Art Stone Company, 1927 Piedmont Road, N. E., Atlanta.

In the sale of his products designated "Marbletexture" and "Granitexture," which were found to have been produced from a

mixture of crushed marble or granite, cement and other ingredients, and known as cast stone, the respondent was directed to cease representing them as being natural marble or granite, as being capable of retaining as high a polish as marble or granite, or as being superior to or lasting longer than natural marble or granite.

The respondent was ordered to desist from the representation that his products will not crack, crumble or disintegrate from natural causes or that they are everlasting. He was also directed to discontinue using the term "free" to refer to merchandise regularly included in a combination offer and to cease representing that his products are from 33⅓ per cent to 50 per cent or any extent lower in price than similar products of comparable quality and weight sold by competitors, unless the prices are in fact lower to such extent, the quality and weight being considered. (3697)

STIPULATIONS

The following stipulations have been entered into by the Commission:

General Mills, Inc., trading as Sperry Flour Company, Minneapolis, agrees to cease advertising that the amount of wheat germ in a package of "Wheat Hearts" is equivalent to that in any specified quantity of wheat when the wheat germ content of such a quantity of wheat is greater than that of a package of "Wheat Hearts"; that "Wheat Hearts" has a Vitamin B 1 content greater than any other cereal; that its caloric value is directly transmissible into or is an equivalent of bodily energy or vitality, and that any amount of "Wheat Hearts" will supply a quota of Vitamin B 1, unless the amount stated is in accord with scientific determinations. (02500)

S. H. Hamm & Son—Misleading representation in the sale of slate used for building purposes will be discontinued under a stipulation entered into by Seba H. and John D. Hamm, trading as S. H. Hamm & Son, Bangor, Pa.

The stipulation relates that in connection with their sale of "Stoddard Albion Certificate Slate," quarried in the Pen Argyl district of Pennsylvania, the respondents disseminated to the trade a circular containing statistics purporting to be the results of tests conducted by independent testing agencies showing the respondents' Albion slate to be superior to "Genuine Bangor Certificate Slate," a competitive product quarried in the Bangor, Pa., district, both in physical strength and in resistance to moisture absorption. The stpulation continues that in fact no original reports or other data have been furnished showing a basis for the respondents' statements, which are inaccurate and contrary to the weight of scientific evidence, and misleading and deceptive insofar as they indicate superior qualities in Albion slate not actually present.

Under their stipulation, the respondents agree to desist from publishing comparative tests purporting to show that slate distributed by them is of higher quality than competitive products when, n fact, the figures given and assertions made are not warranted by the weight of scientific evidence. They also agree to cease representing in any other way that their slate has greater strength, or greater resistance against absorption of moisture, than specified competitive products, when such is not a fact, or that it possesses any other superior quality not actually present. (2656)

H. Korach Company—Herman Korach, trading as H. Korach Company, Chicago, Ill., stipulates that in the sale of women's coats he will cease using the word "Pony" or any other word simulating it in sound or spelling; the words "Lamed" or "Lambed" or words containing the letters "Lam" or simulating the word "Lamb"; the word "Persian" or other words imitating it; the word "Koracal" or any word simulating "Karacul" or "Caracul"; the words "Seal" or "Seal Plush" or any terms containing the word "Seal" or imitation of it; or the name of any animal, pelt or fur to designate any cloth coat or garment not made of the pelt or fur of the animal designated, unless such terms are immediately preceded by the words "Cloth Imitation of" in conspicuous type. The respondent also agrees to desist from the representation that his sales-persons purchase his coats at a price permitting them to charge a customer an excessive price and at the time have the customer believe that she is obtaining a bargain. The stipulation relates that the respondent advertised: "Even though you were to charge $45.00 for this coat that will only cost you $9.75 at wholesale prices, your customers will swear that they are buying the bargain of their lives." (02502)

Henry D. Mack, New York City, agrees to cease representing that the "Tasco Arithmometer" does the work of higher priced adding machines; that the "Tasco Arithmometer" is as accurate, fast or dependable as more expensive machines used for the same purpose; that the price charged for it or other articles or devices offered for sale is either "low" or "special" so long as the figure quoted is the regular price or more than the regular price for which the devices have been sold or offered for sale by him, or that the advertised offer is special or unusual, so long as no price reduction or other trade concession is made therewith. (2657)

McAlester Fuel Company, McAlester, Okla., agrees to cease representing that "Paranay Motor Oil" possesses qualities never before known in any oil; has the toughest film in oildom and the longest life; prevents the excessive friction and wear in the motor caused by other oils, especially while breaking in the motor, and will keep an automobile, tractor, truck or any other machine running just as smoothly, powerfully or economically the second, third or fourth year as it ran the first year. Other representations which the respondent agrees to discontinue are that the so-called "Miracle Test" is the best test ever devised for determining the lubricating qualities of motor oils; that the strength of the oil film alone on motor bearings determines the quality of lubrication obtained from any oil and the ability of any oil to prevent excessive friction, and that use of the respondent's oil will cause a motor to produce more pep, mileage, horsepower and speed than all other motor oils. (02501)

George A. Morhard Company, Philadelphia, agrees to cease representing that its "Kauri-Congo Varnish" contains a high percentage of Kauri-Congo gum or tung oil, unless such is a fact, or in any other way over-stating or misrepresenting the gum or tung oil content actually present in the product. The respondent also agrees to discontinue representing that the product is water-resistant or has a low acid number or that it is non-reactive to zinc oxide, and that the product can be used as an all-purpose spar varnish when such are not the facts. (2658)

Ohio Truss Company, 12 East Ninth St., Cincinnati, agrees to cease labeling or otherwise designating a shoulder brace or similar product offered for sale as "Long-Life Health Brace," or to cease representing in any other way that the user may expect thereby to attain health and other desirable conditions, or that such results are to be obtained through correct breathing or erect posture, in and of themselves. (2661)

Plast-O-Dent Company—J. D. Hagey, trading as Plast-O-Dent Company, Detroit, Mich., agrees to desist from advertising that plates can be refitted by using "Plast-O-Dent"; that this product is healing or kindly to the tissues and will perfect the fit of dental plates; that the simplicity of its application assures its success; that "Plast-O-Dent" will eliminate in every instance the discomfort and embarrassment due to loose plates, and that it is an amazing, new discovery. (02504)

Innis, Speiden & Co., New York, agrees to cease representing that "Larvacide" is a safer fumigant than other similar products, unless conspicuous notice is given with every claim for safety that all fumigants are a deadly poison but that "Larvacide", by its capacity to produce tears, warns persons to get away from it. The respondent also stipulates that it will cease advertising that "Larvacide" provides complete control of pests; that, when used on lumber or other forest products, it will effect a permanent or continued freedom from insect life; that it is the most powerful fumigant yet developed; that it penetrates every berry in every bushel of wheat, and that one fumigation a year with "Larvacide" will provide protection from moths, unless it is clearly stated in direct connection with such representation that usually general spot treatment is needed. (02503)

Sperry Flour Company—See General Mills, Inc.

E. H. Tate Company, 251 Causeway St., Boston, dealers in merchandise including upholstery nails or tacks, agrees to cease employing the words "Boston, Massachusetts" or the letters "U. S. A." or such words and letters in connection to indicate that the products so marked are of domestic manufacture, when such is not a fact; and to discontinue causing the brands or marks on imported products, which indicate their foreign origin or manufacture, to be omitted, erased or concealed so as to mislead or deceive purchasers with respect to the foreign origin or manufacture of the products. The stipulation relates that the respondent packed certain of its products in cartons on which appeared the wording: "Bull Dog Thumb Tacks—50—E. H. Tate Co., Boston, Mass., U. S. A.," when in fact such products were not of domestic manufacture but were made in Germany. The original cartons in which the products were imported were marked to indicate the country of origin but this did not appear on the cartons in which the products were ultimately sold to consumers in this country, according to the stipulation. (2660)

Vadsco Sales Corporation, New York, agrees to cease representing that "Quinlax Cold Tablets" are a competent or effective treatment to stimulate circulation or to eliminate acids through the pores, and that the preparation treats seven symptoms or phases of a cold, is a complete treatment or effective remedy for colds, a new preparation, a new method for treating colds or their symptoms, and especially suitable for children. (02499)

Watertown Mattress Company—Leon T. and Lawrence R. Clickner, trading under the firm name of Watertown Mattress Company, 139 Mill St., Watertown, N. Y., agree to cease supplying customers with mattresses for resale, such products being tagged or marked with fictitious or misleading prices which are in excess of the regular, customary prices. (2659)

FTC DISMISSES COMPLAINTS

The Federal Trade Commission has dismissed complaints aganist 6 of some 14 companies which had been charged with unfair competition through sale of Philippine hardwood as "Philippine Mahogany." Dismissal was ordered as to proceedings against Sea Sled Corporation, New York; Louis Bossert & Sons, Inc., Brooklyn; Pacific Door & Sash Company, Los Angeles; Chicago Warehouse Lumber Company, Chicago; Dart Boats, Inc., Toledo; and Boyd-Martin Boat Company, Delphi, Ind.

These respondents were found to be no longer in the business of selling Philippine hardwoods under the name "Philippine Mahogany." The Commission's dismissal action was taken without prejudice to the reopening of these cases if any or all of the respondent parties should resume the practice charged.

Similar charges against 8 other companies are in process of being tried under an order reopening these cases, before a Commissioner trial examiner.