



Convention August 4 in San Francisco

The NAB convention is set for August 4-5-6-7 in San Francisco. The hotel will be announced later.

The Board of Directors fixed these dates at its meeting this week after it was determined that the political conventions probably would be out of the way by August 1 at the latest.

Within a few weeks, the NAB will ask all Eastern and Midwestern members whether they would be interested in an all-expense tour from Chicago, that would include a circle trip through the principal scenic areas of the West. If sufficient interest is shown, such a tour will be arranged for members and their families.

Howard Lane, KFBK, Sacramento, District 15 Director, will be in charge of arrangements for activities outside the convention.

The progress of Broadcast Music, Inc., and pending legislation were thoroughly discussed at the Board's two day meeting. Neville Miller's report on Broadcast Music, Inc., was enthusiastically received and approved. The Legislative Committee, headed by John A. Kennedy, WCHS, met with the Board to discuss the Johnson (D-Colo.) bill to ban radio advertisement of alcoholic beverages; the new Ditter (R-Penna.) radio bill, copyright, and other legislation.

Among important plans approved by the Board were the following:

1. The development of a unit plan for the measurement of radio advertising and various classifications thereof in local markets. Since the Board abandoned the measurement of radio advertising in terms of dollar volume, the industry has been in need of some uniform measuring method. In the past few months a new unit plan has been under development by the NAB Research Department and the Bureau of Radio Advertising. With the Board's approval, this will be brought to completion and will be presented to the Board for final consideration at its next meeting.

2. A national survey of children's programs, jointly sponsored by the NAB and the newly formed Radio Council on Children's Programs. Representatives of the Council will visit stations, advertisers, program builders and women's groups in 44 states in the next eight months. Information uncovered will be made available to stations, sponsors and program building agencies.

3. A coordinated industry-wide effort to inform the listening public of improvements to be expected in the switch-over of stations called for in the reallocations to be made this

Neville Miller, *President* Edwin M. Spence, *Secretary-Treasurer*

Edward M. Kirby, *Director of Public Relations*; Joseph L. Miller, *Director of Labor Relations*; Paul F. Peter, *Director of Research*; Russell P. Place, *Counsel*; Lynne C. Smeby, *Director of Engineering*; Andrew W. Bennett, *Special Copyright Counsel*

CONVENTION AUGUST 4 IN SAN FRANCISCO

(Continued from page 4047)

year in conformity with the Havana Treaty. As soon as definite instructions are received from the Commission, Headquarters will proceed with its plans to assist in an orderly switch-over which will prevent listener confusion and loss of audience.

4. The development of a consumer-relations program in cooperation with representative industries and business groups.

5. The development of an institutional campaign during the presidential election year, around the theme "Listen Before You Vote."

6. A new schedule of dues for associate members was adopted.

DITTER SEEKS "FREE SPEECH" IN NEW RADIO BILL

A bill (H. R. 8509) to amend the Communications Act which was introduced in the House last Friday by Representative J. William Ditter (R-Penna) is of great interest to broadcasters.

In explaining its purposes, Representative Ditter said:

"This bill consists of a series of amendments designed, so far as possible, to protect broadcasting against any encroachment on liberty of expression, including freedom of speech and of the press guaranteed by the First Amendment to our Constitution and freedom from censorship generally. It is unnecessary that I point out how vitally important it is that the public be afforded this protection. Broadcasting rivals the press as an agency of mass-communication. Freedom of expression is the cornerstone of representative government. Censorship of radio is a characteristic of autocracy and totalitarianism.

"Contrary to the clearly expressed intent of Congress, the Federal Communications Commission is claiming the power to censor radio programs. It appears to have found a gap in the present law in the phraseology 'public interest, convenience or necessity', which, together with the device of short-term licenses and a procedure built on applications for renewal of license, enables it to force broadcasters to comply with its own conception of what

programs should or should not be, under threat of having to go through hearings and with the hazard of losing their right to continue in business.

"The law also gives altogether too much power to the President to reach the same result. He may put a station out of existence or severely cripple it by simply assigning its frequency to a government station without any statement of reasons or hearing. Also, he may do about anything he chooses with a station, even including taking it over and letting a government department operate it, by simply declaring that there exists a 'national emergency' or in order to preserve the neutrality of the United States'.

"In this bill, I am seeking to cure the defects in the existing law.

"Section 1 inserts a clear statement of the purpose of Congress to secure liberty of expression for radio so there may be no doubt in the matter.

"Section 2 places a limitation on the power of the President to assign a frequency used by a privately-owned station, to a government station, by requiring that either an equally desirable frequency be given to the privately-owned station or that there be a hearing.

"Section 3 prescribes a minimum license period of three years for broadcasting stations, with a maximum of five years, and eliminates a clause which might otherwise be susceptible of an interpretation giving the Commission power to consider program service on renewal applications.

"Section 4 removes an ambiguity in the hearing provisions of the Act under which the Commission is now claiming the power to take action adversely affecting existing stations without giving their owners any right to be heard.

"Section 5 eliminates an unduly harsh section of the provisions governing revocation of license so as to make it clear that the hearing is to be held *before* and not after the order of revocation.

"Section 6 is the most important provision of this bill. It states in language which I hope is too clear to be misunderstood that the Commission is not to refuse renewal applications or take any other action against licensees on the ground that a station's programs do not meet the Commission's ideas of what constitutes 'public interest, convenience or necessity'.

"Section 7 limits the power of the President to take over stations to cases of imperative military need during actual war or a state of insurrection equivalent to war.

"I need not dwell on how vitally important it is that freedom of speech be preserved for radio. It is the public platform of today and should have a protection corresponding to that given to the press. At least, it should be for Congress to determine, and not for a bureaucratic board in Washington, whether any types of utterance, further than those already specifically forbidden by the law, should be prohibited."

Broadcasters' attention is directed to Representative Ditter's remarks on the bill printed in the Congressional Record, February 16, 1940, page 2450.

The text of the bill follows:

H. R. 8509

A BILL

To amend the Communications Act of 1934 in order to preserve and protect liberty of expression in radio communication.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 301 of the Communications Act of 1934 is hereby amended by inserting after the words, "It is the purpose of this Act, among other things, to maintain the control of the United States over all the channels of interstate and foreign radio transmission;" the words, "to preserve to radio communication, and to persons subject to the provisions of this Act, freedom from governmental abridgement of, or interference with, liberty of expression, including freedom of speech and of the press, and other rights guaranteed under the Constitution of the United States and the amendments thereof;"

SEC. 2. Section 305 (a) of the Communications Act of 1934 is hereby amended by adding thereto the following:

"The President may not, however, either permanently or temporarily assign a frequency to any Government station or class of Government stations if the use of such assignment will make impossible the further operation of, or cause objectionable interference to, any radio station duly licensed or authorized to be constructed by the Commission under this Act unless (a) another frequency assignment of substantially equal or superior desirability is made immediately available for use by such licensed or authorized radio station or (b) the Commission, after notice and hearing pursuant to the procedure prescribed in section 312 (b) of this Act, shall have determined that public interest, convenience, or necessity will be promoted by such assignment and shall have entered an order modifying the permit or license accordingly."

SEC. 3. Section 307 (d) of the Communications Act of 1934 is hereby amended to read as follows:

"No license granted for the operation of any class of station shall be for a longer term than five years, and any license granted may be revoked for cause as hereinafter provided. No license granted for the operation of a station regularly engaged in broadcasting (other than a station of experimental, auxiliary, or temporary character) shall be for a term less than three years. Upon the expiration of any license, upon application therefor, a renewal of such license may be granted from time to time for a term not to exceed five years and, in the case of stations regularly engaged in broadcasting, not less than three years."

SEC. 4. Section 309 (a) of the Communications Act of 1934 is hereby amended to read as follows:

"If upon examination of any application for a construction permit, for a station license, or for the renewal or modification of a construction permit or a station license and the securing of full information with respect thereto, the Commission shall determine that public interest, convenience, or necessity would be served by the granting thereof, it shall authorize the issuance of such construction permit or station license, or of such renewal or modification thereof, in accordance with said finding. In the event the Commission does not reach such a decision with respect thereto, or in the event that the issuance of a construction permit or a station license or of any modification thereof would aggrieve or adversely affect the interests of the holder of any permit or license or any applicant therefor, the Commission shall notify the applicant and other interested parties, shall fix and give notice of a time and place for hearing thereon, and shall afford such applicant and other interested parties an opportunity to be heard under such rules and regulations as it may prescribe."

SEC. 5. Section 312 (a) of the Communications Act of 1934 is hereby amended to read as follows:

"SEC. 312. (a) Any station license may be revoked for false statements either in the application or in the statement of fact which may be required by section 308 hereof, or because of conditions revealed by such statements of fact as may be required from time to time which would warrant the Commission in refusing to grant a license on an original application, or for

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failure to operate substantially as set forth in the license, or for violation of or failure to observe any of the restrictions and conditions of this Act or of any regulation of the Commission authorized by this Act or by a treaty ratified by the United States: *Provided however*, That no such order of revocation shall be entered unless the Commission shall first have given the licensee written notice stating clearly and definitely the charges against the licensee and fixing a time and place for a hearing thereon, and shall have given the licensee an opportunity for hearing. Such hearing shall be held not less than fifteen days after service of such notice on the licensee, and the Commission shall sustain the burden of proving the truth of the charges."

SEC. 6. Section 326 of the Communications Act of 1934 is hereby amended by adding thereto the following:

"No construction permit or station license shall be revoked, modified, or otherwise adversely affected by any action of the Commission, and no application for construction permit, station license, renewal, or modification of station license, or other instrument of authorization required or authorized by the Act shall be refused in whole or in part, because of the character or contents of any program or other communication transmitted or proposed to be transmitted by a radio station, unless such program or other communication contains matter expressly forbidden by specific provision of this Act or by regulation of the Commission authorized by this Act and then only after the licensee has been finally adjudged guilty by a Federal court of one or more violations of such provision or provisions and the offense is of so serious or repeated a nature as to show clearly that the licensee or applicant is not qualified in character to operate or to continue to operate a radio station."

SEC. 7. Section 606 (c) of the Communications Act of 1934 is hereby amended by adding thereto the following:

"Nothing in this section, however, shall be construed to modify or affect section 326 of this Act. No station regularly engaged in broadcasting shall be closed, nor shall its apparatus or equipment be removed, nor shall the use or control of any such station or of its apparatus or equipment by any department of the Government be authorized in whole or in part because of the character or contents of any program or other communication transmitted or proposed to be transmitted by such station, or in order to permit the Government or any department or agency thereof to engage in or control broadcasting or otherwise to communicate with the public, or for any cause other than imperative military need for such radio communication facilities on the part of the armed forces of the United States and then only upon proclamation by the President that there actually exists war in which the United States is engaged or a state of insurrection within the United States equivalent to war."

CLARK BLOCKS JOHNSON BILL CONSIDERATION

Monday afternoon Senator Clark (D-Missouri) blocked consideration of the bill (S. 517) to prohibit radio advertising of alcoholic beverages. Senator Johnson (D-Colo), proponent of the measure, which is strongly opposed by NAB, had intended to move consideration of his bill. In

anticipation of the motion, Senator Clark six times made the point of "no quorum" after Senate action on various bills, before S. 517 was reached on the calendar. He later said that he had intended to continue doing so under his constitutional right to the end that no time would remain for Senator Johnson to make his motion. Senator Johnson objected to the "obstructionist policy" as not in keeping with the dignity of the Senate. He said that as it was not his purpose to work any hardship upon the Senate, he would not move consideration at the time, but would do so at a future date. Senator Clark thereupon introduced an amendment which he intends to propose to the bill. The amendment is the anti-lynching bill.

After consideration of Senator Johnson's proposed amendment to the bill (NAB REPORTS, February 2, 1940, p. 3999) by the NAB Directors and Legislative Committee at a joint meeting in Washington on Monday, President Neville Miller stated:

The National Association of Broadcasters is opposed to this bill as an unnecessary and unwise restriction on the American system of broadcasting. That system has resulted in the most entertaining, educational and informative radio programs in the world. It owes its preeminent place today to the sensitivity of broadcasters and advertisers to the wishes of their listening public in a highly competitive field, and to its freedom from censorship of program content. It is not perfect, but it is incomparably the best.

Broadcasters have continued to demonstrate that they are keenly mindful of the demands of the American audience. Since this bill was introduced, the NAB, representing about 90% of radio advertising income, has adopted a Code of Program Standards which has met with the enthusiastic approval of important organized groups active in the public interest in the fields of religion, education and child welfare. That Code prohibits the advertising of hard liquor. If the country is opposed to advertising beer and wine by radio, the broadcasters will be the first to recognize it and act accordingly.

The alleged abuses sought to be corrected are minor and infrequent. The Code has banned hard liquor advertising on which only slightly more than \$23,000* was spent in 1938, the year before its adoption. The distilled spirits industry does not use radio as an advertising medium. Revenue to broadcasters from advertising malt beverages in 1938 was \$1,268,000,* and from wine advertising about \$101,000.* It has been urged upon this Committee that Congress alone has the power to regulate radio advertising of alcoholic beverages for the protection of the several states. It is legal to sell beer in every state of the union. In South Carolina and West Virginia the state legislatures have declared that 5% beer is not an intoxicating beverage. We submit that the small amount of beer advertising on the radio cannot seriously interfere with the exercise of the police power of the states. Surely the object of the bill cannot be prohibition of about \$100,000 of wine advertising in those states where wine above certain alcoholic content cannot be bought. Broadcasters' revenue from liquor advertising in 1938 was less than one per cent of their indicated revenue.* They can and will meet the public wishes in this matter when those wishes become articulate, just as they have in the matter of hard liquor.

We believe it is unwarranted and dangerous to interfere by Congressional mandate with the content of broadcast programs. Prohibitions are the rule in Europe today with the results known to all of us. The inherent nature of competitive American broadcasting in the public interest as operated under the present law would best serve the interests of all the people.

The bill is special legislation, grossly unfair to radio in that it discriminates against radio in favor of other advertising media. It cannot fairly be said that an occasional spot advertisement of beer can influence a child's mind to as great an extent as pages of beautifully colored pictures in magazines and Sunday newspapers depicting gentlemen in pink coats around the flowing bowl or blaring billboards on every highway when the family goes out for a Sunday drive. Passage of this bill would merely result in diverting the relatively small sum spent on beer and wine advertising by radio to these other media.

We object to the way the bill is drawn. It makes compliance a condition of the license and in the event of non-compliance it becomes mandatory on the Commission to revoke the license. Under the Communications Act compliance with the prohibition against profane, indecent and obscene language is not made a condition of the license, nor is compliance with the requirement of equal treatment of political candidates before the microphone. To be sure, in those cases the Commission has authority to revoke the license after notice and hearing, but it is not mandatory. The Commission is vested with discretion, after hearing all the facts and any extenuating circumstances, to act as best serves the public interest. Do we want the seal of Congress upon the proposition that a spot advertisement of beer is more reprehensible and dangerous to public morals than profanity and obscenity?

In conclusion, we submit that Congress can safely leave the matter where it has lain for 20 years. We are opposed on principle to legislation of this kind, seeking as it does to regulate program content. We are confident that the American people do not want what may well be the entering wedge of censorship driven into the American system of broadcasting by passage of this bill. We doubt the wisdom of taking the risk of burning the barn in order to get a mouse, or rather to chase that mouse into the other fellow's barn.

* * * * *

* RESULTS OF A SURVEY OF BROADCASTING STATIONS ON THE ADVERTISING OF ALCOHOLIC SPIRITS

Distribution of questionnaire

(Questionnaire was mailed to 691 broadcasting stations; replies were received from 438 broadcasting stations; percentage of replies to total, 63 per cent.)

Revenue from alcoholic spirits (year 1938)	Amount	Estimated total advertising revenue (year 1938)	Percentage of alcoholic advertising to total
Liquor	\$ 23,212.36	
Beer	1,268,638.29	
Wine	101,279.77	
Total	\$1,393,120.42	¹ \$150,118,400	¹ / ₁₀ of 1 per cent

¹ 1931 Yearbook, Broadcasting Publications, Inc.

NOTE.—This questionnaire was sent by the National Association of Broadcasters to all commercial stations on March 17, 1939.

NAB Asks FCC to Relax Recording Rules

The NAB has requested the FCC to give a measure of relief to broadcasters under the new Record Rules. Members will be advised as soon as word is received from the Commission.

The NAB letter:

February 16, 1940.

Mr. T. J. Slowie, Secretary,
Federal Communications Commission,
Washington, D. C.

DEAR MR. SLOWIE:

Permit me to direct your attention to the amendment of Section 3.93 (e) of the Standard Broadcast Rules effective January 4, 1940, pertaining to the identifying announcement of mechanical records.

A literal construction of the rule would require that thousands of one-minute and five-minute transcriptions now on hand using the word "transcribed" instead of "transcription" would have to be made over with great difficulty, and at considerable expense.

These were manufactured at the expense of advertisers at a time when use of the word "transcribed" was permissible. We believe it harsh and unjust if their use be barred under the new rule. It is believed that by August 1, 1940, those electrical transcriptions not in compliance with the rule will have become obsolete.

Because of the burden involved in this connection, it is respectfully requested that as to such transcriptions the operation of the rule may be suspended until August 1, 1940.

It is further requested that Section 3.93 (e) be amended to include appropriate use of the words "transcribed," "electrically transcribed" and "recorded." In support of this request it is submitted (1) that the public has become familiar with their meaning and consequently would not be deceived by their use, and (2) that the interests of the listening public would in reality be served by using such an intelligible variation of the announcement to prevent monotonous repetition.

Respectfully yours,

NATIONAL ASSOCIATION OF BROADCASTERS

RUSSELL P. PLACE, Counsel.

Labor

WAGE AND HOUR ACT

Questions and answers about the application of the Wage and Hour Act to broadcasting station employees, gathered from the Act, subsequent rules and regulations, opinions of the enforcement agency, and correspondence with member stations:

Q. What, in brief, does the Act provide?

A. That all employees, except those exempt, shall receive at least 30 cents an hour, and shall be paid time and one-half for overtime above 42 hours a week.

Q. What employees are exempt?

A. Executives, professional workers and outside salesmen.

Q. What is an executive?

A. To be an executive, an employee must (a) receive \$30 or more a week, (b) regularly direct the work of others, (c) have authority to hire and fire or be consulted seriously about hiring and firing, (d) do no substantial amount of work of the same nature as that performed by those under him, and (e) regularly make decisions of his own.

Q. What is a professional?

A. The ordinary station has none, except musicians and actors. Research engineers usually could be called professionals, as long as they confined their work to research and experimenting.

Q. What is an outside salesman?

A. A salesman who ordinarily does his work away from the office and who does no substantial amount of work of the same character as that done by non-exempt employees.

Q. Is a "chief engineer" or "program director" ordinarily exempt?

A. Not in small and medium-sized stations, because the "chief engineer" usually takes a regular trick at the transmitter or in the studio, while the "program director" usually does quite a bit of announcing and writing.

Q. What records must be kept?

A. For those employees covered by the Act, records must show (a) name in full, (b) home address, (c) date of birth if under 19, (d) hours worked each workday and each workweek, (e) regular rate of pay, (f) amount paid each week at the regular rate, (g) amount paid each week for overtime, (h) any deductions, (i) total wages paid for each workweek, and (j) date of payment.

Q. How do you determine the "regular rate of pay" in (e) above?

A. For those employees who regularly work the same number of hours each week, divide the weekly wage by the number of hours regularly worked. For those employees who customarily work a different number of hours each week, divide the weekly wage by the number of hours worked each week to determine that week's regular rate.

For instance, the regular rate of the employee who ordinarily works 40 hours for \$40 is \$1 an hour, and his overtime rate, for hours above 42, is \$1.50.

If an employee works 38 hours one week, 43 the next, 52 the next, and 25 the next, for \$50 a week—divide \$50 by 43 to determine his overtime rate for that week; divide \$50 by 52 to determine his overtime rate for that week.

Q. Can an employee be compensated for overtime one week by time off the next week?

A. Yes, if he is paid once every two weeks and the overtime comes during the first week of the pay period. Say he ordinarily works 42 hours for \$42. During the first week of the pay period he works three hours overtime. Credit him with \$46.50 for that week (3 hours overtime at \$1.50 per hour). Next week give him time and one half off, making him work 37.5 hours. Credit him with \$37.50 pay. His total pay will be his usual \$84 for the two weeks. The Administration has ruled that all overtime is due and payable each payday. That makes it impossible to give time off for overtime if (a) employees are paid every week or (b) the overtime comes during the second week of a pay period.

Q. Is it advisable to obtain pay receipts from employees?

A. Yes. They should state the number of hours worked, the amount of regular pay, and the amount of overtime, as well as the total.

Q. What are the penalties for violation of the Act?

A. Criminal penalties are fines up to \$10,000 and jail sentences up to six months for second offenders. Employees may sue for double the amount of unpaid wages due them.

Q. Can Wage and Hour inspectors demand a station's payroll records at any time?

A. Yes.

Q. If an employee works more than eight hours a day, must he be paid overtime?

A. No. The Act places no limit on the number of hours he may work without overtime in a day. It merely limits the work week, without overtime, to 42 hours.

Q. How does the employer compute the number of hours worked by the employee?

A. Hours worked include all time during which an employee is required to be on duty, or to be on the employer's premises, or to be at a prescribed workplace.

Q. Should an announcer or an engineer, enroute to or from a remote control job, be paid for traveling time?

A. The rule of common sense should be used in computing time in such cases. If an announcer leaves the station at 8 a. m. for a remote job and returns at 10 p. m. the same day, he should be credited with 14 hours. If he goes away for three days, spends all the first day traveling, works a few hours the second day, and spends all the third day returning, credit him with a normal three days work. He needn't be paid for sleeping or sitting in hotel lobbies out of town.

Q. How about engineers who live at the transmitter?

A. The fact that the employee makes his home at the employer's place of business in this case does not mean that the employee is necessarily working 24 hours a day. If the engineer has a normal night's sleep, ample time for meals, and a certain amount of time for relaxation and private pursuits, and freedom to come and go as he pleases during certain periods, a "reasonable" computation of hours will be acceptable.

Q. Are talent charges passed on to the announcer to be considered as part of his base wage, in computing overtime?

A. Yes, if paid to the announcer by the station. Bonuses also must be included.

The NAB Labor Relations Director would be glad to discuss any of the above questions and answers further with any member. Any other questions would be appreciated.

WAGE AND HOUR EXEMPTION FOR SOME CHIEF ENGINEERS

The Wage and Hour Administration says that an employee, to be a bona fide executive and thus exempt from the overtime provisions of the Act, must do no "substantial" amount of work of the same character as that performed by those under him.

Many "chief engineers" in the broadcasting industry meet all the other requirements for a "bona fide execu-

tive" but do a certain amount of work of the same character as that performed by their subordinates.

The NAB Labor Relations Department asked the Administration to set up guide posts for determining whether "chief engineers" were "executives" within the meaning of the Act.

The following correspondence was exchanged:

NATIONAL ASSOCIATION OF BROADCASTERS

WASHINGTON, D. C.

February 1, 1940.

Mr. Rufus Poole,
Associate General Counsel,
Wage and Hour Division,
Department of Labor,
Washington, D. C.

DEAR MR. POOLE:

I have been besieged with requests from the managers of broadcasting stations as to whether their chief engineers, under certain conditions, were bona fide executives and thus exempt from the hours limitations of the Fair Labor Standards Act.

In all instances these chief engineers customarily and regularly direct the work of other employees, have the authority to hire and fire or are highly influential in hiring and firing, customarily and regularly exercise discretionary powers and receive \$30 a week or more.

However, there is some question as to whether they do any "substantial amount of work of the same nature as that performed by non-exempt employees of the employer". Below are three typical instances. If we could have your opinion as to whether these would be exempt, it would be extremely helpful to an industry that is endeavoring to comply with the Act in every respect.

Chief Engineer X—relieves a subordinate at the studio controls one hour each day while his subordinate goes to lunch.

Chief Engineer Y—acts in a purely executive capacity four days a week but does the work of a subordinate on the fifth day which is the subordinate's day off.

Chief Engineer Z—does no "regular" work of the same character as that done by a subordinate, but, irregularly relieves subordinates in an emergency, in cases of illness, etc.

Very truly yours,

S/JOSEPH L. MILLER,
Director of Labor Relations.

U. S. DEPARTMENT OF LABOR

Wage and Hour Division

WASHINGTON, D. C.

February 15, 1940.

Mr. Joseph L. Miller,
Director of Labor Relations,
National Association of Broadcasters,
Normandy Building,
1626 K Street, N. W.,
Washington, D. C.

DEAR MR. MILLER:

This is in reply to your letter of February 1, 1940 in which you inquire as to whether or not three chief engineers of broadcasting companies are engaged in doing a "substantial amount of work of the same nature as that performed by nonexempt employees of the employer" in the three examples given by you.

You state that Chief Engineer X "relieves a subordinate at the studio controls one hour each day while his subordinate goes to lunch". I am enclosing a copy of the Act, together with Regulations, Part 541, dealing with the executive and administrative exemption provided by Section 13(a)(1). If the only "nonexempt" work performed by Chief Engineer X is four or five hours in a 42 hour week, it is our opinion that such non-exempt work does not constitute a "substantial amount of work". However, the caution should be stated that the requirement that an executive and administrative employee must not do a substantial amount of work of the same nature as that performed by the nonexempt employees of an employer is only one of several requirements contained in section 541.1. All of the requirements of the section must be met in order for the exemption to apply. We have refrained from making definite rulings as to the applicability of the exemption in particular cases because we are not in possession of the facts in such cases.

February 23, 1940

You state that Chief Engineer Y spends one day out of five in doing the work of a subordinate. It is our opinion that the courts will probably consider 20 per cent of an employee's work to be a "substantial amount", in which event, Chief Engineer Y would be considered to be performing a substantial amount of work of the same nature as that performed by non-exempt employees of the employer.

You state that Chief Engineer Z "does no 'regular' work of the same character as that done by his subordinate, but, irregularly relieves subordinates in an emergency, in cases of illness, etc." It is a question of fact whether or not the "irregularity" of the substitute work performed by Chief Engineer Z constitutes a substantial amount of nonexempt work, and we are unable to add to what has been said in the preceding two paragraphs.

Very truly yours,

S/RUFUS G. POOLE,
Associate General Counsel.

ARBITRATE AFRA DISPUTE

The dispute between Chicago stations and AFRA as to whether announcers should be given fees for local commercial programs is to be submitted to arbitration. This was the decision of a three-man arbitration board, picked to determine whether the dispute should be arbitrated.

FOUR A'S CONVENTION

The 1940 Convention of the American Association of Advertising Agencies will be held May 16-17 at the Waldorf-Astoria, New York.

Sessions for members only are scheduled for Thursday, May 16. On Friday, May 17, advertiser and media guests will be invited to join the agency men in morning and afternoon meetings, and at dinner in the evening.

FCC NOTIFIES STATIONS TO APPLY FOR LICENSES BY JUNE 1

The FCC sent the following notices to all broadcast licensees on February 21:

The Commission having under consideration the carrying out of the provisions of the North American Regional Broadcasting Agreement, on January 29, 1940, issued an order of modification of all outstanding licenses and instruments of authorization for standard broadcast stations, bearing expiration dates after August 1, 1940, and providing that holders thereof should have until February 15, 1940, to show cause why such licenses and authorizations should not be modified so as to expire at 3 a. m., EST, August 1, 1940. No returns to the order to show cause, requests for hearing or protests of any kind have been received by the Commission. Accordingly, the Commission has entered an order making the order of modification final, effective March 1, 1940.

Under the provisions of Sec. 1.360 of the Rules of Practice and Procedure applications for renewal of licenses are required to be filed with the Commission at least 60 days prior to the expiration date of the license sought to be renewed. Accordingly, to comply with the rule, the holders of all standard broadcast station licenses or authorizations which expire August 1, 1940, including those which are modified by the Commission's order of January 29, 1940, are required to file applications for renewal prior to June 1, 1940.

NO RESERVATIONS TO MEXICAN AGREEMENT

The Department of State has advised the FCC that no reservations have been made by Mexico in approving the North American Regional Broadcasting Agreement as

published in the "Diario Oficial" of February 15. It was expected that Cuba, as the depository government, would be notified February 16.

The North American Regional Broadcasting Agreement was signed at Habana, Cuba, at the conclusion of the First Inter-American Radio Conference on December 13, 1937. It was signed by representatives of Canada, Cuba, the Dominican Republic, Haiti, Mexico, and the United States.

The agreement was not to become effective until ratified by Canada, Cuba, Mexico, and the United States. The ratification by Mexico is the last required to make the agreement valid, and permits starting the necessary engineering measures to carry out its provisions.

As pointed out in the Commission's release of January 22, the assignment of some 730 standard broadcast stations may be affected. However, it is not possible to determine definitely any individual assignments until the entire plan is worked out with respect to stations in all the countries which are parties to the agreement. A shift in any one assignment may affect materially the entire plan. Accordingly, all assignments must be worked out in relation to the entire pattern and can be announced only concurrently. The Commission will give due notice to all licensees when the general plan is determined.

NEW UNIVERSITY OF KENTUCKY STATION LICENSED

Proposal by the University of Kentucky to bring mountain people radio programs of cultural and educational value was speeded by the FCC in granting that university a construction permit for a new non-commercial educational broadcast station to operate from Beattyville, Ky., on 41900 kilocycles, 100 watts power, A-3 emission, unlimited time.

Program service of value to both schools and adults is contemplated by the University of Kentucky. Operation will be two hours daily—from noon to 2 o'clock—Mondays through Fridays, and as emergencies and special events warrant. The period from noon to 1 o'clock will be devoted to adult interests, and the remaining period will be intended for the county schools, but will be patterned to appeal to adults as well. Programs will be of a civic, educational, agricultural, and entertaining nature.

The applicant plans to equip the between 50 and 60 mountain schools in Lee County with receivers. The university will bear the cost of the transmitter and receivers, will retain ownership of the equipment, and will supervise the operation through the Lee County Board of Education. The board, for its part, will pay operating expenses including the salary of a supervisor who will promote the use of the service by communities and schools adjacent to the area.

In 1933 the University of Kentucky established a sys-

tem of remote listening centers where people could hear educational radio programs of standard broadcast stations. On the basis of results, the university feels that there is need for establishment of a system by which localized education and information, both for school children and adults, should be provided for in each of the mountain communities.

This makes only three institutions which have taken advantage of the 25 amplitude modulated channels (41020 to 41980 kilocycles) set aside for non-commercial educational broadcast purposes. The others availing themselves of these frequencies are WBOE, operated by the Cleveland, Ohio, Board of Education, and WNYE, by the New York City Board of Education.

Legislation

FEDERAL LEGISLATION

H. R. 8509 (Mr. Ditter, R., Pa.) TO AMEND THE COMMUNICATIONS ACT OF 1934 IN ORDER TO PRESERVE AND PROTECT LIBERTY OF EXPRESSION IN RADIO COMMUNICATION—Prohibits Federal Communications Commission's taking adverse action for alleged program offenses; establishes for broadcast stations minimum license period of 3 years and maximum of 5 years; requires hearing where the Commission's action would adversely affect the interest of any holder of a license or any applicant therefor; requires a hearing prior to any order of revocation of license; limits powers of the President in time of peace and war. Referred to Interstate and Foreign Commerce Committee.

STATE LEGISLATION

KENTUCKY:

H. 359 (Barry) ELECTRICAL ADMINISTRATIVE BOARD—An act to create an electrical administrative board.

VIRGINIA:

H. 333 (Long) LOTTERIES—To amend and re-enact Section 4694 of the Code, relating to forfeiture of money and things of value drawn or received or proposed to be drawn in a lottery, so as to include money and personal property used in connection with the promotion, operation and conduct of a lottery or attempted lottery. Referred to Courts of Justice.

VIRGINIA:

S. 217 (Wright) ELECTRICAL WIRING—To regulate and control the installation and alteration of electrical wiring, fixtures, appliances and equipment, to this end to require certain permits to be obtained, to prescribe the fees therefor and to establish standards for electrical equipment. Referred to Finance Committee.

CONGRESSIONAL COMMITTEES

The following are the members of the principal Congressional Committees dealing with Legislation affecting broadcasters:

Senate Committee on Interstate Commerce

Burton K. Wheeler, of Montana, Dem., Chairman.
Ellison D. Smith, of South Carolina, Dem.
Robert F. Wagner, of New York, Dem.
Alben W. Barkley, of Kentucky, Dem.
Matthew M. Neely, of West Virginia, Dem.
Homer T. Bone, of Washington, Dem.
Vic Donahey, of Ohio, Dem.

Sherman Minton, of Indiana, Dem.
 Harry S. Truman, of Missouri, Dem.
 Charles O. Andrews, of Florida, Dem.
 Edwin C. Johnson, of Colorado, Dem.
 H. H. Schwartz, of Wyoming, Dem.
 Lister Hill, of Alabama, Dem.
 Tom Stewart, of Tennessee, Dem.
 Ernest Lundeen, of Minnesota, F-Labor.
 Wallace H. White, Jr., of Maine, Rep.
 Warren R. Austin, of Vermont, Rep.
 Henrik Shipstead, of Minnesota, F-Labor.
 Charles W. Tobey, of New Hampshire, Rep.
 Clyde M. Reed, of Kansas, Rep.
 Chan Gurney, of South Dakota, Rep.

Senate Committee on Patents

Homer T. Bone, of Washington, Dem., Chairman.
 Ellison D. Smith, of South Carolina, Dem.
 Claude Pepper, of Florida, Dem.
 Bennett Champ Clark, of Missouri, Dem.
 Scott W. Lucas, of Illinois, Dem.
 Wallace H. White, Jr., of Maine, Rep.
 John A. Danaher, of Connecticut, Rep.

House Committee on Interstate and Foreign Commerce

Clarence F. Lea, of California, Dem., Chairman.
 Robert Crosser, of Ohio, Dem.
 Alfred L. Bulwinkle, of North Carolina, Dem.
 Virgil Chapman, of Kentucky, Dem.
 William P. Cole, Jr., Maryland, Dem.
 Edward A. Kelly, of Illinois, Dem.
 Herron Pearson, of Tennessee, Dem.
 Lyle H. Boren, of Oklahoma, Dem.
 Martin J. Kennedy, of New York, Dem.
 Elmer J. Ryan, of Minnesota, Dem.
 Charles L. South, of Texas, Dem.
 James P. McGranery, of Pennsylvania, Dem.
 Donald L. O'Toole, of New York, Dem.
 Luther Patrick, of Alabama, Dem.
 Rudolph G. Tenerowicz, of Michigan, Dem.
 Charles A. Wolverton, of New Jersey, Rep.
 James Wolfenden, of Pennsylvania, Rep.
 Pehr G. Holmes, of Massachusetts, Rep.
 B. Carroll Reece, of Tennessee, Rep.
 James W. Wadsworth, of New York, Rep.
 Charles A. Halleck, of Indiana, Rep.
 Oscar Youngdahl, of Minnesota, Rep.
 Carl Hinshaw, of California, Rep.
 Clarence J. Brown, of Ohio, Rep.
 Charles F. Risk, of Rhode Island, Rep.

House Committee on Patents

Charles Kramer, of California, Dem., Chairman.
 Fritz G. Lanham, of Tex., Dem.
 Matthew A. Dunn, of Pennsylvania, Dem.
 Frank W. Boykin, of Alabama, Dem.
 Lawrence J. Connery, of Massachusetts, Dem.
 Charles A. Buckley, of New York, Dem.
 John M. Coffee, of Washington, Dem.
 Francis J. Myers, of Pennsylvania, Dem.
 Thomas D'Alesandro, Jr., of Maryland, Dem.
 Albert S. Camp, of Georgia, Dem.
 Fred A. Hartley, Jr., of New Jersey, Rep.
 Leslie C. Arends, of Illinois, Rep.
 Ralph E. Church, of Illinois, Rep.
 Charles A. Wolverton, of New Jersey, Rep.
 Robert Luce, of Massachusetts, Rep.
 L. L. Marshall, of Ohio, Rep.

CALENDAR OF MARCH EVENTS

The following dates will be of interest to members in connection with plans for special programs, promotions, etc. NAB REPORTS will publish a similar list each month.

March 3—Alexander Graham Bell, born 1847.
 March 12-18—Girl Scout Anniversary Week.
 March 14—Eli Whitney patented cotton gin, 1794; Albert Einstein, born 1879.

March 17—Palm Sunday; St. Patrick's Day.
 March 17-23—Wild Life Week.
 March 20—Spring begins today.
 March 22—Good Friday.
 March 24—Easter Sunday.
 March 30-April 6—Baseball Week.

FEDERAL COMMUNICATIONS COMMISSION DOCKET

The following hearing is scheduled before the Commission in a broadcast case during the week beginning Monday, February 26. It is subject to change.

Monday, February 26

NEW—William F. Huffman, Wisconsin Rapids, Wisc.—C. P., 1310 kc., 100 watts, 250 watts LS, unlimited time.

FUTURE HEARINGS

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

March 11

NEW—Lookout Mountain Company of Georgia, Lookout Mountain, Ga.—C. P., 1370 kc., 250 watts, unlimited time.

March 14

NEW—J. D. Falvey, Ottumwa, Iowa.—C. P., 1210 kc., 100 watts, unlimited time.

NEW—Louis R. Spiwak & Maurice R. Spiwak, d/b as L & M Broadcasting Co., Ottumwa, Iowa.—C. P., 1210 kc., 100 watts, 250 watts LS, unlimited time.

FEDERAL COMMUNICATIONS COMMISSION ACTION

APPLICATIONS GRANTED

Hazlewood, Inc., Orlando, Fla.—Granted construction permit for new station to operate on 1200 kc., 250 watts, unlimited time, Class IV; exact transmitter site and antenna to be determined subject to Commission's approval.

KICA—Western Broadcasters, Inc., Clovis, N. Mex.—Granted modification of license to change hours of operation from unlimited daytime and specified hours night, to unlimited time; station operates on 1370 kc., 100 watts power.

University of Kentucky, Beattyville, Ky.—Granted construction permit for new non-commercial educational broadcast station to operate on 41900 kc., 100 watts power, A-3 emission, unlimited time.

DESIGNATED FOR HEARING

Grand Rapids Broadcasting Corp., Grand Rapids, Mich.—Application for construction permit for new station to operate on 1200 kc., 250 watts, unlimited time, Class IV station.

Worcester Broadcasting Corp., San Diego, Calif.—Application for construction permit for new station to operate on 1420 kc., 250 watts, unlimited time.

MISCELLANEOUS

W9XEH—Zenith Radio Corp., Chicago, Ill.—Granted license to cover construction permit for new high frequency broadcast

- station; frequency **42500 kc.**, power 1000 watts; granted upon an experimental basis only, conditionally.
- W1XKB**—Westinghouse Electric & Mfg. Co., Baltimore, Md.—Granted special temporary authority to operate simultaneously with high frequency (experimental) station **W1XSN** on **42.6 mc.**, for a period not to exceed 30 days in order to obtain data for the hearing on aural broadcasting on frequencies above **25 mc.**
- Louis R. Spiwak & Maurice R. Spiwak, d/b as L & M Broadcasting Co.**, Ottumwa, Iowa.—Granted petition for intervention in re application of **J. D. Falvey**, Ottumwa, Iowa, for construction permit for new station to operate on **1210 kc.**, 100 watts, unlimited time.
- J. D. Falvey**, Ottumwa, Iowa.—Granted petition to intervene in re application of **Louis R. Spiwak and Maurice R. Spiwak, d/b as L & M Broadcasting Co.**, Ottumwa, Iowa, for construction permit for new station to operate on **1210 kc.**, 100 watts, 250 watts LS, unlimited time; also, the Commission, on its own motion, consolidated the **L & M Broadcasting Co.** case and the **Falvey** case.
- WKAQ**—Radio Corp. of Porto Rico, San Juan, P. R.—Denied petition to reopen hearings in re applications of **Enrique Abarca Sanfeliz**, San Juan, P. R., for construction permit for new station to operate on **580 kc.**, 1 KW, 5 KW LS, unlimited time, and of **United Theatres, Inc.**, San Juan, P. R., for construction permit for new station to operate on **580 kc.**, 1 KW, unlimited time, DA day and night.
- WCNW**—Arthur Faske, Brooklyn, N. Y.—Granted motion for extension of time to file proposed findings of fact and conclusions, to February 27, 1940, in re applications of **Lillian E. Kiefer**, Metropolitan Broadcasting Corp. (WMBQ), Long Island Broadcasting Corp. (WWRL), **Paul J. Gollhofer**, and **Arthur Faske (WCNW)**, all of Brooklyn, N. Y.
- Lookout Mountain Co. of Georgia**, Lookout Mountain, Ga.—Granted petition for continuance of hearing from February 19 to March 11, 1940, in re application for construction permit for new station to operate on **1370 kc.**, 250 watts, unlimited time.
- WGBF**—Evansville On the Air, Inc., Evansville, Ind.—Granted motion to accept amendment so as to designate a new site and to slightly modify the proposed directional antenna, in re application for construction permit to change from **630 kc.**, 500 watts, 1 KW LS, simultaneous day, shares **KFRU** night, to **1250 kc.**, 1 KW, 5 KW LS, unlimited time (DA night).
- WFDF**—Flint Broadcasting Co., Flint, Mich.—Continued for one week consideration of petition to intervene in re application of **Thumb Broadcasting Co.**, Brown City, Mich., for construction permit for new station to operate on **880 kc.**, 250 watts, daytime.
- E. E. Krebsbach**, Miles City, Mont.—Continued for one week consideration of petition to intervene in re application of **Star Printing Co.**, Miles City, Mont., for construction permit for new station to operate on **1310 kc.**, 250 watts, unlimited time.
- Louis R. Spiwak & Maurice R. Spiwak, d/b as L & M Broadcasting Co.**, Ottumwa, Iowa.—Granted motions for order to take depositions on March 4 and 5, 1940, re application for construction permit for new station to operate on **1210 kc.**, 100 watts, 250 watts LS, unlimited time.
- WCLS**—WCLS, Inc., Joliet, Ill.—Granted special temporary authority to operate from 8:30 p. m. to 10:45 p. m., CST, on February 20, 1940, in order to broadcast finals of **Joliet Gloves Tournament**.
- Edwin H. Armstrong**, New York, N. Y.—Granted extension of special temporary authority to operate frequency modulated transmitter with power of 10000 watts on **43 mc.** at the site of the transmitter of Station **W2XMN**, Alpine, N. J.; to be operated simultaneously with Station **W2XMN (40 kc. on 42.8 mc.)**, in order to secure data on adjacent channel operations and to obtain data on the overlapping of services between this transmitter and that of the **Yankee Network, Inc.**, high frequency station **W1XOJ**, in preparation of the high frequency hearing, for the period February 29, 1940, to not later than March 18, 1940.
- KGCA**—Charles Walter Greenley, Decorah, Iowa.—Granted extension of special temporary authority to remain silent for the period beginning February 18, 1940, to not later than March 18, 1940, pending the filing of modification of license and completion of arrangements with Station **KWLC**.
- KFIO**—Spokane Broadcasting Corp., Spokane, Wash.—Granted special temporary authority to operate from 7:15 p. m., PST, to the conclusion of basketball games on February 24, 27, 28, March 1, and 2, 1940, in order to broadcast basketball games only.
- WSOY**—Commodore Broadcasting, Inc., Decatur, Ill.—Granted special temporary authority to operate from 6:30 p. m., CST, to the conclusion of basketball games on February 21, 22, 23, 24, 28, 29, March 6, 7, 8, 9, 1940, in order to broadcast basketball games only, using 250 watts power.
- W2XOY**—General Electric Co., Schenectady, N. Y.—Granted special temporary authority to operate high frequency (experimental) station **W2XOY**, using 250 watts power, frequency modulated on **43200 kc.**, at the site of television broadcast station **W2XB** (New Scotland, N. Y.), for a period not to exceed 30 days, in order to obtain data for Hearing Docket 5805.
- WAID**—Onondaga Radio Broadcasting Corp., Portable-Mobile (area of Syracuse, N. Y.).—Granted license to cover construction permit for new relay broadcast station, frequencies **1646, 2090, 2190, 2830 kc.**, power 20 watts.
- WIBX**, Inc., Portable-Mobile (area of Utica, N. Y.).—Granted construction permit for new relay broadcast station, frequencies **1622, 2058, 2150, 2790 kc.**, power 100 watts.
- KQB**—Edwin A. Kraft, Portable-Mobile (area of Juneau, Alaska).—Granted license to cover construction permit for new relay broadcast station, frequencies **1622, 2058, 2150, 2790 kc.**, power 50 watts.
- WDZ**—WDZ Broadcasting Co., Tuscola, Ill.—Granted authority to determine operating power by direct measurement of antenna input in compliance with Section 3.54.
- KORE**—Frank L. Hill and C. G. Phillips, d/b as Eugene Broadcast Station, Eugene, Oregon.—Granted authority to determine operating power by direct measurement of antenna input in compliance with Section 3.54.
- WTRY**—Troy Broadcasting Co., Inc., Troy, N. Y.—Granted modification of construction permit and modification thereof for new station, for extension of time of completion from February 27, 1940 to August 27, 1940.
- WDRC**—WDRC, Inc., Hartford, Conn.—Granted modification of construction permit for installation of directional antenna for day and night use, and increase in power, for changes in directional antenna and extension of commencement date to 30 days after grant and completion date 150 days thereafter.
- WMFJ**—W. Wright Esch, Daytona Beach, Fla.—Granted license to cover construction permit for new equipment and increase in power from 100 watts to 250 watts; frequency **1420 kc.**, 250 watts, unlimited time; granted conditionally.
- WEEI**—Columbia Broadcasting System, Inc., Boston, Mass.—Granted license to cover construction permit for increase in power from 1 KW, 5 KW day, to 5 KW day and night, and use present daytime directional antenna patterns for both day and night; **590 kc.**, 5 KW, unlimited time, directional antenna for day and night use; also granted authority to determine operating power by direct measurement of antenna input in compliance with Section 3.54.
- WBAB**—Press Union Publishing Co., Atlantic City, N. J.—Granted license to cover construction permit and modification thereof for new broadcast station, for move of studio location locally; frequency **1200 kc.**, 100 watts night, 250 watts day power, unlimited time; also granted authority to determine operating power by direct measurement of antenna input in compliance with Section 3.54.
- WEKD**—Onondaga Radio Broadcasting Corp., Portable-Mobile (area of Syracuse, N. Y.).—Granted license to cover construction permit to install new equipment and increase power to 20 watts.
- KEHR**—Donald C. Treloar, Portable-Mobile (area of Kalispell, Mont.).—Granted license to cover construction permit for new relay broadcast station, frequencies **30820, 33740, 35820 and 37980 kc.**, power 10 watts.
- WENH**—WJR, The Goodwill Station, Portable-Mobile (area of Detroit, Mich.).—Granted license to cover construction permit to change frequencies and make changes in equipment, frequencies **1646, 2090, 2190, 2830 kc.**, power 150 watts.
- WLBC**—Donald A. Burton, Muncie, Ind.—Granted authority to determine operating power by direct measurement of antenna input in compliance with Section 3.54.
- WGTC**—J. J. White, d/b as Greenville Broadcasting Co., Greenville, N. C.—Granted modification of construction permit for new broadcast station, for change in type of transmitter, approval of antenna, and approval of studio site at **Falkland Highway**, Greenville, N. C., and transmitter site on

Falkland Highway, 1½ miles West of town, near Greenville, N. C.

KEX—The Oregonian Publishing Co., Portland, Ore.—Granted special temporary authority to operate a portable 100 watt transmitter on frequency 1190 kc., in the vicinity of Portland, Ore., for a period not to exceed 30 days, in order to make tests for a suitable transmitter location.

W9XYH—Head of the Lakes Broadcasting Company, Superior, Wis.—Granted modification of construction permit as modified, for new station, to extend date of completion to May 12, 1940.

WEHK—Columbia Broadcasting System, Inc., Portable-Mobile (area of New York, N. Y.).—Granted license to cover construction permit to change equipment and increase power to 2 watts.

WAUW—J. T. Ward, tr/as WLAC Broadcasting Service, Portable-Mobile (area of Nashville, Tenn.).—Granted license to cover construction permit for new relay broadcast station; frequencies 30820, 33740, 35820 and 37980 kc., power 2 watts.

WBHP—Wilton Harvey Pollard, Huntsville, Ala.—Denied petition for hearing before a Commissioner in re application for renewal of license; station operates on 1200 kc., 100 watts, unlimited time.

KFRO—Voice of Longview, Longview, Tex.—Granted special temporary authority to operate from 7:45 p. m. to 9:15 p. m., CST, on March 10, 17, 24, and 31, 1940, in order to broadcast church services only, using 250 watts power.

WMFD—Richard Austin Dunlea, Wilmington, N. C.—Granted special temporary authority to operate from 8:00 p. m. to 9:00 p. m., EST, on February 24, 1940, in order to broadcast an address by the National President of Exchange.

WLAP—American Broadcasting Corp. of Ky., Lexington, Ky.—Granted special temporary authority to operate with power of 250 watts from 5:15 p. m. to 5:30 p. m., CST, on February 22, 23, 24, and 29, 1940, and from 8:00 p. m. to 9:30 p. m., CST, on February 22, 23, 29, March 1 and 2, 1940, in order to broadcast basketball games, only to listeners within WLAP's coverage not adequately served by 100 watts power.

WMRO—Martin R. O'Brien, Aurora, Ill.—Granted special temporary authority to operate with power of 100 watts from 7:00 p. m. to 10:30 p. m., CST, on February 24, 1940, in order to broadcast basketball game only.

W1XKB—Westinghouse Electric & Manufacturing Co., Boston, Mass.—Granted special temporary authority to operate on frequency of 42.4 mc., using both A-3 and special emission, the special emission being frequency modulation, for a period not to exceed 30 days, in order to obtain additional data for the forthcoming hearing on aural broadcasting on frequencies above 25 mc.

KQRS—Mason City Globe-Gazette Co., Portable-Mobile (area of Mason City, Iowa).—Granted license to cover construction permit for a new relay broadcast station, frequencies 1622, 2058, 2150, 2790 kc., power 2 watts.

KEHI—WDAY, Inc., Fargo, N. D.—Granted license to cover construction permit to change location of transmitter from portable-mobile to fixed location.

KGKL, Inc., Portable-Mobile (area of San Angelo, Tex.).—Granted construction permit for new relay broadcast station, frequencies 1622, 2058, 2150, 2790 kc., power 20 watts.

WEAF—National Broadcasting Co., Inc., New York, N. Y.—Granted modification of construction permit for move of transmitter and changes in antenna, for extension of completion date from March 6, 1940 to September 6, 1940.

WTIC—The Travelers Broadcasting Service Corp., Hartford, Conn.—Granted authority to determine operating power by direct measurement of antenna input in compliance with Section 3.54.

KCMO—KCMO Broadcasting Co., Kansas City, Mo.—Granted license to cover construction permit for installation of new transmitting equipment and increase in power from 1 KW to 1 KW night, 5 KW daytime; frequency 1450 kc., unlimited time, directional antenna night.

WLEU—WLEU Broadcasting Corp., Erie, Pa.—Granted authority to determine operating power by direct measurement of antenna input in compliance with Section 3.54.

WIRE—Indianapolis Broadcasting, Inc., Indianapolis, Ind.—Granted authority to determine operating power of main transmitter and of auxiliary transmitter by direct measurement of antenna input in compliance with Section 3.54.

WAWZ—Pillar of Fire, Zarephath, N. J.—Granted construction permit to make changes in transmitting equipment.

WEPA—Edwin H. Armstrong, Portable-Mobile (area of New York, N. Y.).—Granted modification of construction permit for new special relay broadcast station for extension of completion date to October 7, 1940.

APPLICATIONS FILED AT FCC

560 Kilocycles

WIND—Johnson-Kennedy Radio Corp., Gary, Ind.—Construction permit to increase power from 1 KW; 5 KW day to 5 KW day and night. Make changes in directional antenna. Amended: changes in antenna system.

570 Kilocycles

WMCA—Knickerbocker Broadcasting Co., Inc., New York, N. Y.—Authority to determine operating power by direct measurement of antenna power.

WSYR—WSYU—Central New York Broadcasting Corp., Syracuse, N. Y.—Authority to transfer control of corporation from M. S. Wilder to H. C. Wilder, 1500 shares common stock.

580 Kilocycles

KMJ—McClatchy Broadcasting Co., Fresno, Calif.—License to cover construction permit (B5-P-2277) as modified for increase in power, move transmitter and install new transmitter and antenna.

KMJ—McClatchy Broadcasting Co., Fresno, Calif.—Authority to determine operating power by direct measurement of antenna power.

WCHS—Charleston Broadcasting Co., Charleston, W. Va.—Construction permit to install directional antenna for night use and increase power from 500 watts night 5 KW day to 5 KW day and night.

820 Kilocycles

WHAS—The Louisville Times Co., Louisville, Ky.—Modification of license to change corporate to Courier-Journal and Louisville Times Company.

860 Kilocycles

WHB—WHB Broadcasting Co., Kansas City, Mo.—Construction permit to install new transmitter, new antenna, increase power from 1 KW to 50 KW and move transmitter from North Kansas City to in or near Kansas City, Mo. Amended re equipment.

890 Kilocycles

WBAA—Purdue University, W. Lafayette, Ind.—Construction permit to install new transmitter, make changes in antenna, change hours from specified to unlimited time, increase power from 500 watts night, 1 KW day to 1 KW night, 5 KW day and move transmitter. Amended re transmitter site.

KTKC—Tulare-Kings Counties Radio Associates, Chas. A. Whitmore, Pres., Visalia, Calif.—Construction permit to make changes in equipment. Amended re equipment.

920 Kilocycles

WSPA—Virgil V. Evans, tr. as Voice of South Carolina, Spartanburg, S. C.—Construction permit to install auxiliary transmitter at Evanston Hts., Spartanburg, S. C., using 500 watts. Amended re equipment.

930 Kilocycles

NEW—Granite District Radio Broadcasting Co., Murray, Utah.—Construction permit for a new broadcast station to be operated on 930 kc.,* 250 watts, unlimited time.

1050 Kilocycles

WIBC—Indiana Broadcasting Corp., Indianapolis, Ind.—Authority to determine operating power by direct measurement of antenna power.

1100 Kilocycles

WOV—Greater New York Broadcasting Corp., New York, N. Y.—Construction permit to install new transmitter, directional

* 960 kc. requested if Havana treaty effective.

antenna for day and night use, and increase power from 5 KW to 10 KW.

1120 Kilocycles

WDEL—WDEL, Inc., Wilmington, Del.—Construction permit to install directional antenna for night use; increase power from 250 watts, 1 KW day, to 1 KW day and night.

1130 Kilocycles

KSL—Radio Service Corp. of Utah, Salt Lake City, Utah.—License to use old licensed transmitter as auxiliary.

KSL—Radio Service Corp. of Utah, Salt Lake City, Utah.—License to cover construction permit (B5-P-2427) for installation of new transmitter.

1190 Kilocycles

WOAI—Southland Industries, Inc., San Antonio, Tex.—Construction permit to make changes in equipment.

1200 Kilocycles

WMOB—S. B. Quigley, Mobile, Ala.—Modification of license to increase power and hours of operation from 100 watts daytime to 100 watts night, 250 watts day, unlimited time. Amended to request 100 watts power day and night.

WBOW—Banks of Wabash, Inc., Terre Haute, Ind.—Authority to determine operating power by direct measurement of antenna power.

1210 Kilocycles

WJLS—Joe L. Smith, Jr., Beckley, W. Va.—Construction permit to install new transmitter; install directional antenna for night use; change frequency from 1210 ke. to 900 ke.; and increase power from 250 watts to 1 KW.

KWJB—Sims Broadcasting Co. (Bartley T. Sims, Mgr.), Globe, Ariz.—Voluntary assignment of license from Sims Broadcasting Co. (Bartley T. Sims, Mgr.) to Bartley T. Sims, d/b as Sims Broadcasting Co.

WJTN—James Broadcasting Co., Inc., Jamestown, N. Y.—Authority to determine operating power by direct measurement of antenna power.

WJBW—Gadsden Broadcasting Co., Inc., Gadsden, Ala.—Authority to determine operating power by direct measurement of antenna power.

1220 Kilocycles

KPAC—Port Arthur College, Port Arthur, Tex.—Modification of license to increase power from 500 watts to 500 watts night, 1 KW day.

1250 Kilocycles

KXOK—Star-Times Publishing Co., St. Louis, Mo.—Construction permit to install new transmitter; make changes in directional antenna (for use day and night); change frequency from 1250 ke. to 630 ke.; increase power from 1 KW to 5 KW; and move transmitter (contingent on B4-P-2321, WGBF, and B4-P-2322, KFRU). Amended re directional antenna and transmitter site (near Granite City, Ill.).

1270 Kilocycles

WFBR—The Baltimore Radio Show, Inc., Baltimore, Md.—Authority to determine operating power by direct measurement of antenna power. Main transmitter.

WFBR—The Baltimore Radio Show, Inc., Baltimore, Md.—Authority to determine operating power by direct measurement of antenna power. Auxiliary transmitter.

1330 Kilocycles

NEW—General Broadcasting, Inc., Miami, Fla.—Construction permit for a new broadcast station to be operated on 1330 or 1360 ke., when Havana treaty goes into effect, 500 watts night, 1 KW day, unlimited.

1350 Kilocycles

WMBG—Havens and Martin, Inc., Richmond, Va.—Modification of construction permit (B2-P-1912) as modified for changes in equipment and increase in power from 500 watts to 1 KW night, 5 KW day, requesting extension of completion date from 2-28-40 to 4-28-40.

1360 Kilocycles

KSLM—Oregon Radio, Inc., Salem, Ore.—Modification of license to increase power from 500 watts night, 1 KW, to 1 KW day and night.

1370 Kilocycles

WTSP—Pinellas Broadcasting Co., St. Petersburg, Fla.—Authority to determine operating power by direct measurement of antenna power.

NEW—Harbenito Broadcasting Co., Cameron County, Tex.—Construction permit for a new broadcast station to be operated on 1370 ke., 250 watts, unlimited.

1380 Kilocycles

WALA—W. O. Pape, tr. as Pape Broadcasting Co., Mobile, Ala.—Modification of construction permit (B3-P-2242) as modified for move of transmitter, new antenna, increase in power, requesting extension of commencement date from 3-8-40 to 6-8-40, and completion date from 9-8-40 to 12-8-40.

1420 Kilocycles

NEW—Kingsul Broadcasting Corp., Kingsport, Tenn.—Construction permit for a new broadcast station to be operated on 1420 ke., 250 watts, unlimited time.

1500 Kilocycles

WOLF—Civic Broadcasting Corp., Syracuse, N. Y.—Modification of construction permit (B1-P-2100) for new station requesting approval of antenna, approval of transmitter and studio sites and change type of transmitter.

WNLC—Thames Broadcasting Corp., New London, Conn.—Construction permit to make changes in equipment and increase power from 100 watts to 250 watts. Amended: re equipment.

KYSM—F. B. Clements & Co., a co-partnership composed of F. Braden Clements, Clara D. Clements and C. C. Clements, d/b as Southern Minnesota Supply Co., Mankato, Minn.—Authority to determine operating power by direct measurement of antenna power.

1530 Kilocycles

WBRY—American Republican, Inc., Waterbury, Conn.—Construction permit to install new transmitter, directional antenna for day and night use, increase power from 1 to 5 KW.

MISCELLANEOUS

NEW—WKBN Broadcasting Corp., Youngstown, Ohio.—Construction permit for a new high frequency broadcast station to be operated on 43400 ke., 1000 watts special emission for frequency modulation.

NEW—The Louisville Times Co., N. E. of Eastwood, Ky.—License for a new high frequency broadcast station to be operated on 25300 ke., 500 watts, emission A-3. (Using transmitter of facsimile station W9XWT).

WCLA—Larus & Brother Co., Inc., Portable-Mobile.—License to cover construction permit (B2-PRY-176) as modified, for a new relay broadcast station.

W9XWT—The Louisville Times Co., N. E. of Eastwood, Ky.—License to cover construction permit (B2-PFB-12) as modified for a new facsimile broadcast station.

NEW—Jerome Raymond Popkin-Clurman, New York, N. Y.—Construction permit for a new high frequency broadcast station to be operated on 42000 to 42400 ke., 1000 watts, unlimited time, special emission for frequency modulation. Amended: To request 42400 ke.

NEW—The Fort Industry Co., Toledo, Ohio.—Construction permit for a new high frequency broadcast station to be operated on 43200 ke., 250 watts, unlimited time, special emission for frequency modulation. Amended: To change power to 1000 watts and change type of transmitter.

NEW—The May Department Stores Co., Los Angeles, Calif.—Construction permit for a new television broadcast (experimental) station to be operated on 84000-90000 ke., aural and visual power, 1 KW, emission A-3 and A-5. Amended: To add Model No. of sound transmitter.

NEW—Frequency Broadcasting Corp., Brooklyn, N. Y.—Construction permit for a new high frequency broadcast station on 42200 ke., 50,000 watts, unlimited time. Special emission. Location: 1 Hansom Place, Brooklyn, N. Y.

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.

Cup and Container Institute, Inc., 420 Lexington Ave., New York, 10 of its officers and directors and 12 corporations controlling more than 60 per cent of the national output and sale of products of the paper drinking cup and paper food container industry, have been served by the Federal Trade Commission with a complaint alleging a combination and conspiracy to restrain trade through the fixing and maintaining of uniform minimum prices. Eleven of the 12 respondent corporations are or have been members of the institute.

The respondents include Granville P. Rogers, president and executive director of the institute; Dale H. Eckerman, vice president and director; K. L. Stoler, secretary and director, and Alexander Herz and Henry Nias, directors, all of New York; Robert J. Kieckhefer, Milwaukee; William S. Bacon, Kensington, Conn.; Robert C. Fenner, Chicago; E. W. Skinner, Fulton, N. Y., and R. L. Allison, Springfield, Mass., directors; Dixie-Vortex Company, Chicago and Easton, Pa.; Lily-Tulip Cup Corporation, New York and its subsidiary, Crystal Paper Service Corporation, Los Angeles; Herz Cup Company, a division of Herz Manufacturing Corporation, New York; American Lace Paper Company and Milwaukee Lace Paper Company, both of Milwaukee; Eagle Cup Corporation, Brooklyn; The American Paper Goods Company, Kensington, Conn.; Logan Drinking Cup Company, a division of the United States Envelope Company, Springfield and Worcester, Mass.; Sutherland Paper Company, Kalamazoo, Mich.; Sealright Company, Inc., a division of the Oswego Falls Corporation, Fulton, N. Y., and Cupples-Hesse Envelope and Lithographing Company, St. Louis. The last named company, while not a member, allegedly cooperated with the institute in its activities.

Beginning with the formation of the respondent institute in January, 1933, the corporate respondents, through the respondent institute, are alleged to have effectuated agreements and understandings for suppression of all price competition by fixing and maintaining uniform prices of paper drinking cups, paper food containers, ice cups, ice tubs and related products.

Among specific methods used, the complaint continues, were: (1) adherence to a schedule of minimum prices and uniform discounts, terms and conditions of sale, including maximum discounts and classification of customers; (2) maintenance of identical price lists on comparable products, and simultaneous changing of prices at which comparable products are to be sold in the United States; (3) filing with the institute of a schedule of prices including discounts and the terms and conditions of all sales; maintenance of an agreement not to deviate therefrom, and notification of the institute of any deviations therefrom; (4) publication and issuance of their franchised distributors, wholesalers, and jobbers of "Public Business Price Lists" and "Public Business Policy Sheets" in which the prices and terms of sale were uniform as to comparable products; (5) operation of a procedure for the introduction of new products by any member respondent or other manufacturer cooperating with the institute whereby, among other things, prices and terms of sale were furnished the institute in advance of sale, and (6) offering uniform and identical bids on comparable products either directly or through their distributor agents to Municipal, State or Federal purchasing departments.

In order to better effectuate their understandings and agreements the corporate respondents and those manufacturers cooperating with the institute are alleged to have agreed upon a division of the products of the industry into 9 different groups and to have classified their respective products falling within each group, and to have filed with the institute, daily, weekly, monthly, or periodic statistics, including, among other things contracts, invoices,

and gross or net sales in both dollars and in units for the previous month's operations.

Through its president and executive director, Granville P. Rogers, and its vice president, Dale H. Eckerman, the institute is alleged to have so supervised the activities of the corporate respondents and cooperating manufacturers that adherence to the agreed prices and terms of sale has been obtained. According to the complaint, this was accomplished by collecting from and disseminating among them information as to prices, discounts and conditions of sale and other useful information.

The effect of the respondents' acts and practices is alleged to have been unlawful restriction of trade, artificial enhancement of prices and elimination of competition, with a tendency to create a monopoly in the member respondents and those cooperating with them and the institute. (4036)

Le Flor Company—Leland F. Benham, trading as Le Flor Company, 620 North Orleans St., Chicago, distributor of a medicinal preparation for the treatment of obesity, is charged in a complaint with misrepresentation.

The medicinal preparation is described as "Le Flor Weight Reduction Tablets" and is sold under the name "Le Flor Method". Prior to August, 1937, the respondent conducted his business under the trade name Dixie Products Company, and subsequent to that time as Le Flor Company.

In advertisements in newspapers and periodicals, the complaint continues, the respondent has represented:

"We do not ask you to believe, we merely ask you to try the Le Flor Method and judge for yourself. You may have become skeptical after trying other highly advertised methods that were not suited to you, but we ask that you do yourself the favor of trying the Le Flor Method with the certain knowledge that if you are not entirely satisfied with the results you obtain, your money will be refunded."

* * * * *

"The usual price is \$2.00 per box. As an introductory feature we are offering the LE FLOR method as a six weeks' treatment at the price of 6 boxes for \$5.00. If you are skeptical, we offer a one week's supply of 84 tablets (one box) at the astoundingly low price of only \$1.00."

Through these advertisements and other representations, the complaint continues, the respondent represents that the treatment and a so-called "deficient element" diet is a cure or remedy for obesity and a competent and scientific treatment which does not contain any dehydration drugs.

In truth, the complaint continues, the preparation is not a cure or remedy for obesity, and is of no therapeutic value in its treatment. Among other drugs contained in the tablets is phenolphthalein, a dehydration drug. The only therapeutic value in the tablets, the complaint alleges, is a laxative or cathartic. The price of \$1.00 per box or 6 boxes for \$5.00, is alleged to be the regular, customary and usual price at which the tablets are offered for sale by the respondent and not a special, reduced or introductory price. (4031)

Oxol Laboratories—A complaint has been issued charging William S. McClymonds, trading as Oxol Laboratories and Western Research Laboratories, 1046 Santa Fe St., Denver, with misrepresentation in the sale of "Quinox Capsules."

In periodical advertising matter the respondent allegedly represented the preparation as a cure, remedy and competent treatment for delayed menstruation. The complaint alleges that the representation is untrue and that the preparation is without substantial therapeutic value aside from its effect as an ordinary laxative. (4035)

Robinson Clay Products Company—Alleging a combination and conspiracy in restraint of trade to fix and maintain uniform prices for building materials, including vitrified sewer pipe, in the Rochester, N. Y. area, a complaint has been issued against The Robinson Clay Products Company, Akron, Ohio, and its sales subsidiary, The Robinson Clay Product Company of New York, the Universal Sever Pipe Corporation, Cleveland, the Rochester Builders Supply Association and its secretary, Edwin C. Kaelber, and 32 builders' supply dealers selling in the Rochester area.

It is alleged that pursuant to their agreement and combination the respondent manufacturers and dealers, in cooperation with each other and their association and its officers, fixed and maintained uniform delivered prices to consumers, including municipalities and other Government agencies and projects; maintained minimum prices at which building materials, including vitrified pipe, were sold by the respondent jobbers, dealers or contractors; induced certain of the respondents to raise the prices quoted by them to the uniform delivered prices as fixed; interfered with or prevented competitors of the respondent dealers from obtaining building supplies from manufacturers located in States other than New York, and established and maintained uniform terms, discounts and conditions of sale.

The complaint also alleges that the respondents held meetings among themselves or with their association, its members and officers, to devise methods of exerting influence, pressure, coercion, or other means to require manufacturers and producers to fix and maintain delivered prices to consumers, including municipalities and other Government agencies or projects, and to establish, publish and adhere to such fixed uniform delivered prices.

The respondents' practices are alleged to have had the effect of monopolizing in the respondents or some of them the business and industry of manufacturing, dealing in and distributing building materials, including vitrified sewer pipe, ultimately consumed in the Rochester vicinity, and of unreasonably eliminating and suppressing competition and depriving purchasers of the advantages in price, service and other considerations which they would receive under normal competitive conditions, all in violation of the Federal Trade Commission Act. (4034)

Rochester Builders Supply Association—See Robinson Clay Products Co.

Sears, Roebuck & Co., Chicago, has been served with a complaint alleging unfair and deceptive acts and practices in the sale of automobile tires and tubes.

The complaint alleges that in conducting nation-wide tire sales through its retail stores, the respondent company misrepresented that its tires and tubes were being sold at various purported discounts and savings from the regular and usual prices.

It is alleged that the respondent advertised its "Crusader" tires as being sold at a saving or discount of 30 to 35 per cent when in fact such purported savings were exaggerated because not computed on the regular list price in effect at the time of the advertisements. Based upon the regular list price, the advertised sale prices allegedly would have provided for percentage savings ranging from 9.45 per cent to 10.8 per cent rather than the advertised saving of 30 to 35 per cent.

According to the complaint, a 25 per cent trade-in allowance for old tires allegedly was advertised as a 25 per cent discount and as an extra trade-in allowance when in fact a 25 per cent trade-in allowance for old tires is always allowed and therefore does not provide a 25 per cent discount or extra trade-in allowance but represents only the regular selling price.

"Allstate" tires are alleged to have been advertised at half-price when in fact it was necessary for the purchaser to buy one tire at the full price in order to get one at half-price and the advertised price, contrary to the advertisement, represented no saving to the purchaser since no allowance was made for old tires. Taking the 6.00 x 16 tire as an example, the complaint alleges that the advertised sale price for two tires was \$20.25; that the regular list price for two tires of this size as shown in the advertisement was \$27, and that, giving effect to the customary old tire allowance of 25 per cent, the usual selling price was \$20.25 for two tires, or exactly the advertised sale price for the two tires.

Again, in advertising its "Allstate Standard Tires," the respondent company is alleged to have represented that the list price designated in its advertisement was the regular list price and the lowest price of all time for such tires; that by paying the designated price, with old tire, the purchaser was paying only 10 cents for a tube. However, the complaint alleges that the designated sales price required the purchaser to pay practically the full price for the tube in each instance, because the various prices shown in the advertisement were higher than the correct list price in effect at the time of the advertisement and because the purchaser received no credit for his old tires, although he was required to turn them in at the time of sale. The complaint charges that the customer, instead of paying 10 cents for a tube, would be required to pay amounts ranging from \$1.10 to \$1.31. (4033)

Universal Sewer Pipe Corporation—See Robinson Clay Products Co.

John A. Wathen Distillery Company—Misrepresentation which involves misuse of the name of one of the oldest distilling families in the country, is charged in a complaint issued against John A. Wathen Distillery Company, 133-135 South Fourth St., Louisville, Ky.

The complaint recites that since the year 1788, five generations of the Wathen family have been engaged in the distillery business, and since about 1875 members of the family have engaged in the distillery business in the State of Kentucky. The name has been publicized through use of advertisements, labels and otherwise, so that a substantial part of the purchasing public has identified it with liquors distilled by or under the direction of some member of the family and by methods of distilling used for more than a century by them.

The John A. Wathen Distillery Company was incorporated in 1933 under the laws of Missouri, and since that time has engaged in distilling liquor in Kentucky. The complaint alleges that the respondent has used the name Wathen in its corporate name, advertised literature, labels and letterheads, and that use of the name has caused confusion in the trade and among the liquor-buying public.

In advertisements in newspapers, magazines and other periodicals, the complaint continues, the respondent has caused the following representations to be made: "John A. Wathen, Distillers for 148 years. . . . Over a CENTURY of Distilling Experience. . . . JOHN A. WATHEN DISTILLERY CO. Before George Washington was President of the United States a Wathen was making whiskey in Kentucky. Backed by the proud traditions and EXPERIENCE OF 150 years, it is natural that Wathen produces a bourbon of the highest excellence."

The complaint declares that the respondent's liquor is not distilled by the Wathen family nor under its supervision. John A. Wathen, the complaint continues, from whom the respondent acquired its name, was never a distiller nor engaged in the distilling business with any member of the Wathen family, nor has the respondent anyone connected with it who from actual experience through connection with members of the Wathen family, obtained knowledge of the formula and method used by the Wathen family in distilling liquor.

The acts and practices of the respondent, the complaint alleges, constitute unfair and deceptive acts and practices and unfair methods of competition within the intent and meaning of the Federal Trade Commission Act. (4032)

Western Research Laboratories—See Oxol Laboratories.

CEASE AND DESIST ORDER

The following cease and desist order has been issued during the past week:

Steel Office Furniture Institute, Cleveland, and 12 member companies which manufacture more than 50 per cent of the industry's products, have been served with an order requiring them to cease and desist from agreeing or combining to fix and maintain identical delivered prices, uniform discounts and terms and conditions of sale, and other practices deemed to be in violation of the Federal Trade Commission Act.

Manufacturing and selling steel vertical filing cabinets, steel horizontal sections, bookcases and other steel furniture for offices, the respondent companies are Art Metal Construction Company, Jamestown, N. J.; Bentson Manufacturing Company, Aurora, Ill.; Browne-Morse Company, Muskegon, Mich.; Corry-Jamestown Manufacturing Corporation, Corry, Pa.; The General Fireproofing Company, Youngstown, Ohio; The Globe-Wernicke Co., Norwood, Cincinnati; Invincible Metal Furniture Company, Manitowoc, Wis.; Metal Office Furniture Company, Grand Rapids, Mich.; Remington Rand Inc., Buffalo, N. Y.; The Shaw-Walker Company, Muskegon, Mich.; Victor Safe & Equipment Company, Inc., North Tonawanda, N. Y.; and Yawman and Erbe Manufacturing Company, Rochester, N. Y.

During its existence, including the period from about June 15, 1935, to March 9, 1938, the respondent institute, according to find-

ings, collected and compiled statistical information which it made available to its members and the public; collected from its members and other members of the industry the published price lists of their products and distributed them among those of its members who requested this data, and performed other services. During the same period, the findings continue, the respondent manufacturing companies, through and by means of the Institute and by agreement among themselves, fixed and maintained identical delivered prices, uniform discounts and uniform terms and conditions of sale, and, in some instances, induced their dealers and customers purchasing the industry products for resale to maintain resale prices fixed by the manufacturing companies and to join and form local associations of dealers having for an objective the maintenance of such resale prices. During this period, the findings continue, the respondent companies many times in accordance with an agreement among themselves abided by and did not deviate from the identical delivered prices, uniform discounts and terms and conditions of sale filed by them with the respondent institute.

The Commission order directs that the institute, the 12 respondent manufacturing companies and their officers, agents and employees, directly or through any corporate or other device, or through the respondent institute, cease and desist from agreeing, combining or conspiring among themselves to fix and maintain identical delivered prices, uniform discounts and terms and conditions of sale; cease and desist, pursuant to agreement, from inducing their dealers and customers to join or form local associations having for their objective the maintenance of resale prices, from requiring such dealers and customers to maintain resale prices fixed by the respondent manufacturers, and from abiding by and not deviating from prices, discounts and terms of sale filed by the respondent manufacturers with the institute; and cease and desist from filing prices with the institute for the purpose of fixing and maintaining such prices arrived at by agreement among themselves, and from disseminating such prices among the respondents.

The Commission directed that its proceeding be dismissed as to Columbia Steel Equipment Company, Philadelphia, and Tidewater Office Equipment Dealers' Association, Norfolk, Va., and its former respondent members without prejudice to the Commission's right, should the facts so warrant, to reopen the case and resume prosecution insofar as these respondents are concerned.

Under a stipulation of the facts entered into January 15, 1940, the respondent institute and the 12 manufacturing companies stated that they do not contest this proceeding, and that their statement of facts as stipulated might be accepted in lieu of testimony. (3319)

STIPULATIONS

During the week the Commission entered into the following stipulations:

Alto Products Company—See Santo Alioto & Sons.

Automatic Sealing Vault Company, 25 Riverside Drive, Peru, Ind., agrees to cease representing that concrete burial vaults manufactured in molds or forms sold by the respondent and containing materials sold by the respondent, will afford or assure enduring or permanent protection to the caskets or bodies encased in them, or that the vaults will remain permanently waterproof, or that application of the respondent's so-called waterproofing paints or other preparations to the vaults will prevent permanently the intrusion of water. (2678)

Bodie-Hoover Petroleum Corporation, Chicago, Ill., agrees to cease representing itself to be a refiner of petroleum or advertising that the products it sells are sealed at the refinery when in fact it neither owns, operates nor controls a plant in which the oil products sold by it are refined. The respondent company also stipulates that it will desist from representing that the oils processed and sealed in its own plant are "Refinery Sealed" or "Sealed at Refinery", when such is not a fact. (2676)

Dagmar Plant Industries—Emil Bergman, trading as Dagmar Plant Industries, New York, who formerly operated at 1123 Broadway, New York, agrees to cease representing that his

chemical product "Quik-Gro", for soilless plant growing, has been endorsed or approved by the National Resources Committee, Washington, or any other authoritative body, when such is not a fact, or that such body is authority for a claim that potatoes, tomatoes or much of the household food may be produced by use of the respondent's product; that reports from any agency of the Soviet Government indicate successful tests made with "Quik-Gro"; that by the "Quik-Gro" method one can have a beautiful flower or vegetable garden in the basement or other place where sunlight is not available, or that fruits and vegetables grown by such soilless method will be free from insects or insecticides. (2674)

Federal Instrument Corporation, 7919 Exchange Ave., Chicago, a dealer in fountain pens, electric shavers and cameras, has entered into a stipulation to discontinue misrepresentations in the sale of its products.

The respondent company agrees to cease representing its regular method of sale is a "close-out sale" or offers "reduced close-out prices"; that its customers receive their goods "direct from factory" or that it manufactures the goods it sells, when such are not the facts. It also agrees to desist from price misrepresentations and to discontinue issuance of so-called "cash discount vouchers" so long as the prices charged for articles are the same with or without the alleged coupon, voucher or certificate.

Under its stipulation, the respondent also agrees to desist from advertising that an article is given free to the purchaser of another article, when the cost of the alleged gift is included, either in whole or in part, in a deceptive price charged for the article offered for sale; to cease advertising or issuing a "Lifetime Guarantee" for any of its merchandise; to discontinue using the language "Genuine Duotone Durium Point" to convey the impression that its pen points are made of or tipped with any purported substance, when such is not a fact, and to cease representing that a fountain pen which it offers for sale "Writes 3 Months on One Filling" or in any other way exaggerating the actual qualities or capacity. (2681)

Iod-Ise Manufacturing Company, Inc., Clifton, N. J., agrees to cease representing that the preparation designated "Iodo-Ise" is an "iodine" corn remover or an "iodine" discovery or preparation; that the product "ends" or "stops" soreness or pain, will afford permanent relief, or that it will rid one of corns or prevent their return, or that the product heals tissue. The respondent also agrees to cease representing that the actual removal of corns is due in any way to the iodine content of its product. (25110)

Mamary Brothers, Inc., 330 Fifth Ave., New York, manufacturer of lingerie and men's and women's handkerchiefs, agrees to desist from representing that it owns or operates a factory in Shanghai or Swatow, China, or that it manufactures goods which it imports from China or owns or controls the plant in which such products are made, when such is not the fact. (2680)

Santo Alioto & Sons—Santo, Joseph, Christopher, Frank, John, Samuel and Dominick Alioto, trading as Santo Alioto & Sons and Alto Products Company, 9th and Catherine Sts., Philadelphia, dealers in canned foods, including tuna fish, stipulate that they will cease employing on labels affixed to containers of their products the word "Tonno" in connection with any other Italian word, picture, insignia or otherwise, implying that such products were obtained from the coasts of Italy or were packed in and imported from that country, when such is not a fact. (2679)

Scott Paper Company, Chester, Pa., in the sale of "Waldorf Brand" tissue, agrees to desist from representations to the effect that all products, regardless of their quality, which are sold in competition with "Waldorf Brand" contain splinters, rough or thin spots, dirt or other defects, and from use of any representation unfairly disparaging competitive products. (2675)

Wonder-Tone Laboratories—M. Maltz, trading as Wonder-Tone Laboratories, Chicago, Ill., agrees to cease representing that

mechanical devices designated "Wonder-Tone Line Noise Eliminator" and "Wonder-Tone Aerial Eliminator," or any similar devices constructed on similar mechanical principles, will improve radio reception on all kinds of receiving sets; that the noise eliminator will eliminate or have any effect in doing away with audible interference coming in over the antenna or power line, under all conditions, or coming in over the ground system; that either device is a new invention or different from other devices used for the same purposes, or that their use will insure clear tone reception of broadcasts from distant radio stations. The respondent also agrees to discontinue representations that the aerial eliminator is given free, or that any other item of merchandise regularly included in a combination offer is given free, when the price or cost of the item is included in the selling price charged for the combination offer. He also agrees to discontinue use of the word "Laboratories" in his trade name until he owns or operates a laboratory under the supervision of a person or persons competent to conduct scientific research and experiments. (02509)

FTC CLOSES CASE

Distillers Products Corporation of Kentucky, Inc., Shively, Ky., having entered into a stipulation as to the facts and an agreement to cease and desist from certain enumerated practices, the Federal Trade Commission has ordered that the case growing out of the complaint issued February 1, 1940, charging misleading use of the word "Distillers," be closed without prejudice to the right of the Commission, should the facts so warrant, to reopen the case and resume prosecution in accordance with its regular procedure.

Under its stipulation, the respondent company agrees to cease using the word "Distillers" as part of or in connection with its corporate or trade name and from using this word or other words of similar meaning on its letter-heads or printed matter or in advertisements in any way to convey the belief to purchasers that the corporation is a distiller or actually owns and operates a distillery or that the products which it sells are distilled by it, when such is not a fact.