

## THE WEEK IN WASHINGTON

The NAB won an outstanding victory for the broadcasting industry this week when the U. S. Circuit Court of Appeals in New York decided that broadcasters had the right to broadcast phonograph records without a license. (p. 4465.)

Both CBS and NBC have urged advertising agencies and band leaders to start using music that the networks will be able to broadcast after December 31. Both networks likewise have told their affiliates that they intend to make no deal with ASCAP that would work to the disadvantage of affiliates. (p. 4468.)

ASCAP's request to send a speaker to the NAB convention followed repeated refusals to talk to the NAB about a new contract. (p. 4472.)

Neville Miller urged the FCC to simplify its new FM application Form 319 with the industry's cooperation. (p. 4473.)

Representative Dingell (D-Mich.) introduced a resolution to make August 26 "National Radio Day." (p. 4474.)

Five hundred fifty-seven stations join in the search for man power for the National Defense Program. (p. 4474.)

The FCC announced that briefs in connection with its network investigation must be filed before September 15. (p. 4476.)

## NAB Wins Phonograph Record Decision

The NAB won an outstanding victory for the broadcasting industry this week when the U. S. Circuit Court of Appeals in New York decided that broadcasters have the right to play phonograph records without a license.

Retaining special counsel for this test case, the NAB went to bat for Station WNEW, New York City, and the industry in a suit brought by the RCA Manufacturing Company, Inc., and Paul Whiteman.

Judge Learned Hand handed down the decision July 25. It was a notable victory for the entire industry as well as WNEW.

The text of the decision:

### UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 357—October Term, 1939

(Argued June 17, 1940; Decided July 25, 1940)

RCA MANUFACTURING COMPANY, INC., *Plaintiff*,  
against

PAUL WHITEMAN, W.B.O. BROADCASTING CORPORATION, AND  
ELIN, INC., *Defendants*.

On appeals by the RCA Manufacturing Company, Inc., W.B.O. Broadcasting Corporation, and Paul Whiteman from a judgment of the District Court for the Southern District of New York, in an action for an injunction forbidding the broadcasting of phonographic records.

Before:

L. HAND, CLARK and PATTERSON, Circuit Judges.

"Crawford & Sprague, of New York City (White & Case, Joseph M. Hartfield and Stuart Sprague, all of New York City, of counsel), for W.B.O. Broadcasting Corporation;

"David Mackay, of New York City (David Mackay, Lawrence B. Morris and Jerome H. Adler, all of New York City, of counsel), for RCA Manufacturing Company, Inc.;

"Maurice J. Speiser, of New York City (Herbert R. Speiser and Nathan Bass, both of New York City, of counsel), for Paul Whiteman."

L. HAND, C.J.:

This case comes up upon appeals by the plaintiff, RCA Manufacturing Company, Inc., and the defendants, Paul Whiteman and

(Continued on page 4466)

## YOU CAN'T AFFORD TO MISS THE NAB CONVENTION!

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The NATIONAL ASSOCIATION OF BROADCASTERS

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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

## NAB WINS PHONOGRAPH RECORD DECISION

(Continued from page 4465)

W.B.O. Broadcasting Corporation. Before the action was brought Whiteman had filed a complaint against W.B.O. Broadcasting Corporation and Elin, Inc., to restrain the broadcasting of phonograph records of musical performances by Whiteman's orchestra. By leave of court RCA Manufacturing Company, Inc., then filed the complaint at bar, as ancillary to Whiteman's action, asking the same relief against W.B.O. Broadcasting Corporation and Elin, Inc., as Whiteman had asked in his action, and in addition asking that Whiteman be adjudged to have no interest in the records of his performances, because of contracts between him and itself. Whiteman thereupon discontinued his action, leaving only the ancillary action in which the judgment on appeal was entered. The dispute is as to whether W.B.O. Broadcasting Corporation, as the purchaser of phonograph records prepared by RCA Manufacturing Company, Inc., of Whiteman's orchestral performances, may broadcast them by radio. Whiteman's performances took place in studios of RCA Manufacturing Company, Inc., which arranged for their reproduction upon ordinary phonographic disc records, and which, with the consent of Whiteman, sold the records to the public at large. Of the nine records here in question five were sold between November, 1932, and August 15, 1937, during which period every record bore the legend: "Not Licensed for Radio Broadcast". (Apparently the four earlier records did not advise the purchaser of any such limitation.) After August 15, 1937, this notice was changed to read as follows: "Licensed by Mfr. under U. S. Pats. 1625705, 1637544, RE. 16588 (& other Pats. Pending) Only For Non-Commercial Use on Phonographs in Homes. Mfr. & Original Purchaser Have Agreed This Record Shall Not Be Resold Or Used For Any Other Purpose. See Detailed Notice on Envelope." These later records were inclosed in envelopes which even more clearly gave notice of the same limitations. W.B.O. Broadcasting Corporation every week bought from a New York company, Bruno-New York, Inc., such records as it needed; it used them thereafter to broadcast over its radio system. Bruno-New York, Inc., had bought the records in question under a contract with RCA Manufacturing Company, Inc., in which they agreed after its date (August 9, 1937) to resell "only for non-commercial use on phonographs in homes as per the notice appearing on the record labels and envelopes." It may be assumed that W.B.O. Broadcasting Corporation is charged with notice of the legends on the records, and with the contract of Bruno-New York, Inc., and that it broadcasts them on its radio system in disregard of both.

The questions raised below were whether Whiteman and/or RCA Manufacturing Company, Inc., had any musical property at common-law in the records which radio broadcasting invaded; whether Whiteman had passed any rights which he may have had to RCA Manufacturing Company, Inc., under certain agreements, not necessary to be set out; and whether, if either Whiteman or RCA Manufacturing Company, Inc., had any such common-law property, the legends and notice enabled them, or either of them, to limit the uses which the buyer might make of the records. The judge held that all of Whiteman's rights had passed to RCA Manufacturing Company, Inc., which for that reason was entitled to enjoin the broadcasting of these records; and that Whiteman was also entitled to an injunction against W.B.O. Broadcasting

Corporation because it was unfair competition to broadcast his performances without his consent. All parties appealed except Elin, Inc. The RCA Manufacturing Company, Inc., appealed because the judge did not recognize its common-law artistic property, arising out of the skill and art necessary to obtain good recording, and also because of the affirmative relief granted to Whiteman. Whiteman appealed because of the holding that he had lost all his rights to RCA Manufacturing Company, Inc., under its contracts with him. W.B.O. Broadcasting Corporation appealed because any relief was granted against it.

It is only in comparatively recent times that a virtuoso, conductor, actor, lecturer, or preacher could have any interest in the reproduction of his performance. Until the phonographic record made possible the preservation and reproduction of sound, all audible renditions were of necessity fugitive and transitory; once uttered they died; the nearest approach to their reproduction was mimicry. Of late, however, the power to reproduce the exact quality and sequence of sounds has become possible, and the right to do so, exceedingly valuable; people easily distinguish, or think they distinguish, the rendition of the same score or the same text by their favorites, and they will pay large sums to hear them. Hence this action. It was settled at least a century ago that the monopoly of the right to reproduce the compositions of any author—his "common-law property" in them—was not limited to words; pictures were included. *Turner v. Robinson*, 10 Ir. Ch. 121; S. C. 10 Ir. Ch. 522; *Prince Albert v. Strange*, 1 McN. & G. 25. This right has at times been stated as though it extended to all productions demanding "intellectual" effort; and for the purposes of this case we shall assume that it covers the performances of an orchestra conductor, and—what is far more doubtful—the skill and art by which a phonographic record maker makes possible the proper recording of those performances upon a disc. It would follow from this that, if a conductor played over the radio, and if his performance was not an abandonment of his rights, it would be unlawful without his consent to record it as it was received from a receiving set and to use the record. *Arguendo*, we shall also assume that such a performance would not be an abandonment, just as performance of a play, or the delivery of a lecture is not; that is, that it does not "publish" the work and dedicate it to the public. *Ferris v. Frohman*, 223 U. S. 424, 435; *Nutt v. National Institute*, 31 Fed. (2d) 236 (C.C.A. 2); *McCarthy v. White*, 259 Fed. Rep. 364; *Uproar Co. v. National Broadcasting Co.*, 8 Fed. Suppl. 358. Nevertheless, even if Whiteman's "common-law property" in his performances survived the sale of the records on which they were inscribed, it would be very difficult to see how he, or *a fortiori* the maker of the records, could impose valid restrictions upon their resale. Concededly that could not be done (regardless of the present statutory prohibition) if the restriction went to the resale price. *Bobbs-Merrill Co. v. Straus*, 210 U. S. 339. It would also have been impossible if the restriction forbade the buyer to use the article except with other articles bought of the record maker. *Motion Picture Patents Co. v. Universal Film Co.*, 243 U. S. 502. We do not, however, have that question to decide, for we think that the "common-law property" in these performances ended with the sale of the records and that the restriction did not save it; and that if it did, the records themselves could not be clogged with a servitude.

Copyright in any form, whether statutory or at common-law, is a monopoly; it consists only in the power to prevent others from reproducing the copyrighted work. W.B.O. Broadcasting Corporation has never invaded any such right of Whiteman; they have never copied his performances at all; they have merely used those copies which he and the RCA Manufacturing Company, Inc., made and distributed. The putatively protected performances were themselves intended for that purpose and for that alone; the situation was precisely the same as though Whiteman and RCA Manufacturing Company, Inc., had combined to produce an original musical score and inscribe it upon records. The records at bar embodied Whiteman's "common-law property"—his contribution as a conductor—in precisely the same way that the record of such a score would embody his composition. Hence the question is no different from whether he might disseminate a musical score to the public at large, but impose a limitation upon it that buyers



should not use it to broadcast for profit. Whatever might be said of that—if the sale were not a “publication”—it will hardly be argued that if it was a “publication” in the sense that that destroys the “common-law property”, the restriction upon the use of the record would be valid notwithstanding. Restrictions upon the uses of chattels once absolutely sold are at least *prima facie* invalid; they must be justified for some exceptional reason, normally they are “repugnant” to the transfer of title. If “the common-law property” in the rendition be gone, then anyone may copy it who chancas to hear it, and may use it as he pleases. It would be the height of “unreasonableness” to forbid any uses to the owner of the record which were open to anyone who might choose to copy the rendition from the record. To revert to the illustration of a musical score, it would be absurd to forbid the broadcast for profit of its record, if any hearer might copy it and broadcast the copy. Thus, even if Whiteman and RCA Manufacturing Company, Inc., have a “common-law property” which performance does not end, it is immaterial, unless the right to copy the rendition from the records was preserved through the notice of the restriction.

As applied to books, where the problem is precisely the same, there is not very much law as to whether such restrictions prevent complete dedication, but the judges who have passed upon the question have declared, at times with much certainty, that they are nugatory. In 1898 the Court of Appeals of New York flatly so decided in *Jewellers Mercantile Agency v. Jewellers Publishing Co.*, 155 N. Y. 241, and that is the leading case. Judge Putnam had held the same in 1896 (*Ladd v. Oxnard*, 75 Fed. Rep. 703, 730) and he was followed by Judge Townsend (*Larrowe-Loisette v. O'Loughlin*, 88 Fed. Rep. 896), Judge Lacombe (*Wagner v. Conried*, 125 Fed. Rep. 798) and Judge Ward (*Savage v. Hoffman*, 159 Fed. Rep. 584). In his dissenting opinion in *International News Service v. Associated Press*, 248 U. S. 215, 256, Mr. Justice Brandeis spoke of the law as “well-settled” to that effect. (See also the reasoning of the court in *Chamber of Commerce v. Wells*, 100 Minn. 205.) It is quite true that if “publication” were merely a question of intent, these decisions are wrong, for the intent is obvious not to dedicate the whole right. The problem is not so simple; in dealing with a monopoly the law imposes its own limits. Certainly when the “common-law property” is in a work which the Copyright Act covers, there can be no doubt; Congress has created the monopoly in exchange for a dedication, and when the monopoly expires the dedication must be complete. If the records were registrable under the act, the restriction would therefore certainly not limit the dedication. The fact that they are not within the act should make no difference. It is indeed argued that by virtue of *Donaldson v. Decket*, 4 Burr. 2408, there is a perpetual common-law copyright in works not copyrightable under the act; we have answered that argument in *Fashion Originators Guild v. Federal Trade Commission*, 112 Fed. (2) —, and need not repeat what we said. That being true, we see no reason why the same acts that unconditionally dedicate the common-law copyright in works copyrightable under the act, should not do the same in the case of works not copyrightable. Otherwise it would be possible, at least *pro tanto*, to have the advantage of dissemination of the work at large, and to retain a perpetual though partial, monopoly in it. That is contrary to the whole policy of the Copyright Act and of the Constitution. Any relief which justice demands must be found in extending statutory copyright to such works, not in recognizing perpetual monopolies, however limited their scope.

It is true that the law is otherwise in Pennsylvania, whose Supreme Court in 1937 decided that such a legend as the records at bar bore, fixed a servitude upon the discs in the hands of any buyer. *Waring v. WDAS Broadcasting Company*, 327 Pa. St. 433. We have of course given the most respectful consideration to the conclusions of that great court, but with much regret we find ourselves unconvinced for the reasons we have tried to state. However, since that is the law of Pennsylvania and since the broadcasting will reach receiving sets in that state, it will constitute a tort committed there; and if an injunction could be confined to those sets alone, it would be proper. It cannot; for even if it be mechanically possible to prevent any broadcasting through the angle which the state of Pennsylvania subtends at the transmission

station, that would shut out points both in front of, and beyond, Pennsylvania. We must therefore choose between denying any injunction whatever—since in our judgment the act is unlawful only in Pennsylvania—or enjoining W.B.O. Broadcasting Corporation from broadcasting throughout the Union and in Canada in order to prevent a tort in Pennsylvania alone. This would be an obvious misuse of the writ which goes only in aid of justice.

Whiteman and the plaintiff also rest their case upon the theory of unfair competition, depending for that upon *International News Service v. Associated Press*, *supra* (248 U. S. 215). That much discussed decision really held no more than that a western newspaper might not take advantage of the fact that it was published some hours later than papers in the east, to copy the news which the plaintiff had collected at its own expense. In spite of some general language it must be confined to that situation (*Cheney Bros. v. Doris Silk Corp.*, 35 Fed. (2) 281); certainly it cannot be used as a cover to prevent competitors from ever appropriating the results of the industry, skill, and expense of others. “Property” is a historical concept; one may bestow much labor and ingenuity which inures only to the public benefit; “ideas”, for instance, though upon them all civilization is built, may never be “owned”. The law does not protect them at all, but only their expression; and how far that protection shall go is a question of more or less; an author has no “natural right” even so far, and is not free to make his own terms with the public. In the case at bar if Whiteman and RCA Manufacturing Company, Inc., cannot bring themselves within the law of common-law copyright, there is nothing to justify *a priori* any continuance of their control over the activities of the public to which they have seen fit to dedicate the larger part of their contribution. We are adjured that courts must adjust themselves to new conditions, and that in the case at bar justice clearly points the way to some relief. We cannot agree; no doubt we should be jealous to execute all reasonable implications of established doctrines; but we should be equally jealous not to undertake the composition of substantial conflicts of interests, between which neither the common-law, nor the statute, has given any clue to its preference. We cannot know how Congress would solve this issue; we can guess—and our guess is that it would refuse relief as we are refusing it—but if our guess were the opposite, we should have no right to enforce it. If the talents of conductors of orchestras are denied that compensation which is necessary to evoke their efforts because they get too little for phonographic records, we have no means of knowing it, or any right to assume it; and it is idle to invoke the *deus ex machina* of a “progress” which is probably spurious, and would not be for us to realize, if it were genuine.

Finally, appeal is made to the doctrine that W.B.O. Broadcasting Corporation is guilty of a tort—or at least that it is a factor in determining its “unfair” competition—because it induces Bruno-New York, Inc., to violate its contract with RCA Manufacturing Company, Inc. Whatever remedies RCA Manufacturing Company, Inc., may have under that contract, they are not before us. As between Bruno-New York, Inc., and W.B.O. Broadcasting Corporation, the contract is a nullity; RCA Manufacturing Company, Inc., had no power to impose the pretended servitude upon the records; and W.B.O. Broadcasting Corporation is free to buy and use them in entire disregard of any attempt to do so. It scarcely seems necessary to discuss the strange assertion that to broadcast the records in some way invades somebody’s “right of privacy”, presumably Whiteman’s: *Sidis v. F-R Publishing Corp.*, 112 Fed. (2) — (C.C.A. 2). Nor need we say that insofar as radio announcers declare, directly or indirectly, that the broadcast of a Whiteman record is the broadcast of a Whiteman performance, that conduct is a tort which Whiteman could enjoin. That would indeed be “unfair competition”.

It follows that the complaint must be dismissed, and for reasons which make it unnecessary to determine how far Whiteman’s contracts with RCA Manufacturing Company, Inc., preserved any common-law copyrights he might have had, if they had survived the sale of the records.

Judgment reversed; complaint dismissed; costs to W.B.O. Broadcasting Corporation.

## CBS, NBC Urge Agencies to Join Music Battle

Both the Columbia Broadcasting System and the National Broadcasting Company have urged advertising agencies and band leaders to start using music that the networks will be able to broadcast after next December 31.

Both networks likewise have told their affiliates that they intend to make no deal with ASCAP that would work to the disadvantage of affiliates. Broadcasters are urged to read every word of the following six letters which clearly state the networks' position.

### NBC to Agencies

NATIONAL BROADCASTING COMPANY, INC.

RCA Building, Radio City  
New York, N. Y.

July 23, 1940.

I am sure you are familiar with the situation which has recently arisen between the National Broadcasting Company and ASCAP (The American Society of Composers, Authors and Publishers). There are, however, some important facts regarding the matter which I am anxious for you to get first hand.

NBC's license agreement with ASCAP covering the use of its music for broadcasting purposes expires on December 31, 1940. ASCAP has offered to renew our licenses, but only on terms which we considered to be exorbitant. Such a move would add materially and unfairly in our opinion to the cost of broadcast advertising and broadcasting operation. After serious consideration we have definitely decided we cannot accept these terms. Therefore, without an ASCAP license NBC will be unable to broadcast their music after December 31, 1940.

There will be available for use by all NBC advertisers on programs broadcast over NBC networks or M&O stations, the catalogues of Broadcast Music, Inc., Associated Music Publishers, G. Ricordi & Co., Milan, Society of European Stage Authors and Composers (SESAC), A. P. Schmidt Co., E. C. Schirmer Music Company, Society of Jewish Composers, Publishers and Song Writers and other concerns and individuals. Likewise, there is music available in the public domain which can be arranged from the original sources.

It is obviously important, therefore, for all of us to lay our plans now covering the operating conditions which will exist after the end of this year.

In order to avoid possible copyright infringements we recommend that advertising agencies and their clients make an immediate study of their program music problems. Particular care should be taken to check signatures and theme music presently used on your programs to make sure that such music can be broadcast by NBC after the end of the year. We feel that there is much that can be done immediately to accustom yourselves to the new situation which will be in effect on January 1st, 1941. For example, you may want to instruct your orchestra leaders to commence using in the body of your NBC programs music which NBC will be licensed to broadcast.

This problem will involve not only the NBC network shows but also the local programs, whether live or electrically transcribed, which are broadcast over NBC managed and operated stations. We suggest that if you now have any such programs, or contem-

plate them in the future, that you check carefully material incorporated in them. Many advertisers who already have on hand electrical transcriptions or who make them before the first of the year may contemplate their use on NBC M&O stations after January 1st. Obviously, such records should be carefully checked to be sure that all musical material will be licensed for broadcast.

It is, of course, impossible to cover in this letter all of the many questions which will arise regarding the new operation and specific problems which may come up. A complete understanding of the changes involved is essential so that we will all be prepared to successfully continue our operations after December 31, 1940.

This is a common problem and it is important that everyone affected give every consideration to its solution.

Cordially yours,

(Signed) NILES TRAMMELL.

### NBC to Affiliates

NATIONAL BROADCASTING COMPANY, INC.

RCA Building, Radio City  
New York, N. Y.

July 17, 1940.

The current licenses held by NBC for the performance of ASCAP music will expire on December 31, 1940. ASCAP has refused to renew such licenses except upon terms which are so onerous that we have concluded that we cannot accept them.

As you have doubtless noted from the plan of licensing which ASCAP proposes to impose upon broadcasters, NBC would be required to pay ASCAP 7½% of the gross amount paid for the use of the broadcasting facilities of the stations over which a network program is broadcast. While the license fees payable by NBC on network business under this plan would vary from year to year, it is sufficient to point out that had the plan applied to 1939 income, NBC would have had to pay to ASCAP fees 5 or 6 times greater than those which it is now paying. This is so exorbitant as to be completely unacceptable.

In rejecting ASCAP's demand, we have given careful consideration to the interests of our affiliates as well as the network. Although the new ASCAP plan of licensing would result in decreased payments by many stations so far as their personal licenses covering only local and national spot programs are concerned, it would require vastly increased payments for NBC network programs. NBC obviously cannot itself bear an increase of 500% or 600% in its payments to ASCAP. The increased cost would, therefore, have to be passed on and the additional burden would seriously affect NBC affiliates. We are not going to make any deals which put an unfair financial burden on NBC affiliates, having in mind the additional expenses which are necessarily being incurred at the present time as the result of the position now taken by ASCAP. We have, of course, no intention of making any arrangement which would benefit NBC at the expense of its affiliates.

Without an ASCAP license, it will be necessary for NBC to discontinue playing ASCAP music as of December 31, 1940. We are actively supporting the efforts of Broadcast Music, Inc., to enlarge its catalog of music. In addition, NBC is working to make available for use, after the expiration of our current licenses, as much music as we possibly can. Having in mind the difficulties attendant upon an abrupt elimination of ASCAP music, we are taking steps at this time to increase the use on NBC programs of music which we will be licensed to perform beyond December 31, 1940, in order to effect a gradual transition.

Despite the difficulties which are inevitable, broadcasting will continue as usual.

Sincerely,

(Signed) NILES TRAMMELL.



## NBC to Band Leaders

NATIONAL BROADCASTING COMPANY, INC.

RCA Building—Radio City

New York, N. Y.

July 17, 1940.

On December 31, 1940, the license agreements between NBC and ASCAP expire. ASCAP has refused to renew them except on terms which are so onerous that we have concluded that we cannot accept them. Without a license it will be necessary for NBC to discontinue playing ASCAP music commencing with the first of next year.

That means that a large part of the popular music which NBC has been using in the past will be unavailable for its use after December 31st, and it is obvious that we must now begin to accustom ourselves and NBC artists to the use of such music as will be available to us after that date.

With this in mind we are taking steps to increase the use on NBC studio sustaining programs of music which we are licensed to perform beyond December 31, 1940. Among the catalogues which are available for use on NBC programs subsequent to that time are those of Broadcast Music, Inc., Associated Music Publishers, G. Ricordi & Co., Milan, Society of European Stage Authors and Composers (SESAC), A. P. Schmidt Co., E. C. Schirmer Music Company, Society of Jewish Composers, Publishers and Song Writers and other concerns and individuals. Likewise, there is music available in the public domain which can be arranged from the original sources.

It is now essential that we increase the use of such music on all NBC programs including our remote control sustaining shows, and commencing July 31, 1940, the policy of NBC will be that all orchestras broadcasting on NBC sustaining programs shall schedule at least one such composition during each of their NBC broadcast periods. The use of such music will necessarily have to be increased as December 31st approaches.

We also suggest, however, that leaders of orchestras broadcasting over NBC make a study of their signatures, having in mind that after December 31, 1940, they will be unable to broadcast over NBC the ones they are currently using if they are in the ASCAP repertoire. It would appear advisable for orchestras which expect to broadcast over NBC subsequent to that time to consider changing their signatures now to numbers which they will unquestionably be able to use next year.

You will note that among the catalogues we will continue to be licensed to use is Broadcast Music, Inc. NBC proposes to popularize the music of BMI by using it wherever it can and we particularly ask your cooperation in this endeavor.

We cannot overemphasize the importance of being prepared in advance to meet the situation which will exist after December 31, 1940. In addition to the problem, NBC has of maintaining proper balance in musical programs, the purely clerical task of checking the availability of music which you may wish to play after the first of the new year will require the training of personnel to handle the additional burden. A gradual start in that direction will be service not only to us but to orchestras and advertisers as well. If our Music Department can be of assistance to you in solving the problems caused by this situation, please do not hesitate to call upon us.

Sincerely,

(Signed) NILES TRAMMELL.

## CBS to Agencies

COLUMBIA BROADCASTING SYSTEM, INC.

485 Madison Avenue, New York

Wickersham 2-2000

Executive Offices

Paul W. Kesten

Vice-President

During the past six months the broadcasting industry has been fighting a \$4,400,000 fight against "ASCAP"—a fight to protect radio advertisers and broadcasters alike from a \$4,400,000 hold-up, over and above an unjustified \$4,300,000 toll paid in 1939 for the privilege of broadcasting music which ASCAP controls.

The fight is going well.

During the next six months, the Columbia network asks that its clients, acting in their own behalf as radio advertisers, take one step which only they can take—to break the strangle-hold which ASCAP has hitherto had upon radio broadcasting, and to win not only this fight against a \$4,400,000 increase in broadcasting costs, but to free radio permanently from the certainty of future intolerable demands.

If this seems to be a strong statement of the basic issue involved, you will find that the facts more than justify it. Some of these facts follow:

\* \* \* \*

Between 1923 and 1931 the bill which broadcasters had to pay to ASCAP (American Society of Composers, Authors & Publishers) for the privilege of broadcasting music controlled by that society increased from \$10,000 to nearly \$1,000,000 per year. But that was only the beginning!

Since 1931 the tribute demanded by ASCAP, and paid by the broadcasters, has more than quadrupled from that million dollar figure. In 1939 ASCAP wrung \$4,300,000 out of the broadcasters. Was this for more music played on more broadcasts? Just the contrary. That increase was accompanied by an actual *drop of over 40%* in the number of musical programs on the air.

The result is that radio paid ASCAP in 1939 *40 times* as much per dollar of revenue as did any other user of music, such as the motion picture industry, the night clubs, dance halls, etc.

Now ASCAP, which has controlled the major portion of music which has been used on commercial and sustaining radio programs, has made further demands upon the radio industry which would increase its present toll on the industry by over 100%, and which would *increase the charge against network programs by over 300%*. These charges would apply to all programs whether or not they used ASCAP music.

These demands by ASCAP are, obviously, impossible of acceptance if radio broadcasting and network broadcasting is to continue to serve the public and the needs of national advertisers on its present economic base. While broadcasters have always been willing to pay a fair amount on a reasonable basis for the privilege of broadcasting music, we are convinced that it is utterly impossible to find any ground for negotiation with an organization which has promulgated these demands as a final ultimatum.

Columbia has therefore decided, for its network and for its owned and operated stations, that it will not and cannot submit to these demands.

The gun ASCAP is pointing at our heads will be fired January 1, 1941, after which no ASCAP music will be available for CBS programs. But by that time, with the work that has been done and which can be done by our advertisers and ourselves between now and then, there should be nothing but a blank cartridge in the breach.

This much has been accomplished:

1. *Organization and operation of "BMI".*

Determining to defend the interests of the listening public and of advertisers, as well as their own interests, the broadcasters took

steps last fall to implement their supply of non-ASCAP music through the organization of Broadcast Music, Inc. *Over 300 stations*, representing approximately  $\frac{3}{4}$  of the entire business done by the industry, have together with the networks, *contributed over \$1,250,000 to BMI*. The primary purpose of this organization is the promotion of the writing of new music and lyrics by giving opportunities to new composers and authors. Broadcast Music, Inc. has now achieved the stature of an outstanding music publishing organization and has attracted talented composers and writers heretofore excluded from the ASCAP inner circle.

BMI is now turning out popular tunes with "hit" potentialities and at the present rate will have *300 popular numbers* by the end of the year.

*Four of these recently climbed up into the 20 most popular hits as listed by "Variety."* BMI is also releasing non-ASCAP arrangements of the most popular public domain music and should have over 1,000 of these available for use by December 31st.

## 2. Drastic drop in ASCAP music on sustaining programs.

Since April, the use of ASCAP music on Columbia sustaining programs (over 200 quarter-hours per week) *has been reduced by 33 1/3%*. This has meant the substitution of hundreds of non-ASCAP numbers in our musical selections. This has been effected without the slightest deterioration of any program and without loss of any audience appeal.

## 3. No special "ASCAP-credits."

Beginning in May on all remote pick-ups of dance bands, CBS eliminated all restricted ASCAP numbers which required special credits.

## 4. Non-ASCAP numbers on name-band pick-ups.

Effective August 5th, all remote dance bands will be required to include at least one non-ASCAP number. From this start the proportion of non-ASCAP numbers will be steadily increased.

## 5. Music on its own merit.

Perhaps still more significant to those who know the "high-pressure side" of the music business—Columbia has closed its doors to the professional song pluggers who know that the success of a new number is often in direct proportion to the amount of money appropriated by the Publisher for plugging it on the networks.

We are, you will see, in full stride on making the transition from ASCAP music to non-ASCAP music. Nor are we dependant only on BMI for rich sources of material. The fact is that the potential reservoir of non-ASCAP music is, of course, much larger than the reservoir of ASCAP music. In addition to the music made available through BMI, Columbia has the following supplies of non-ASCAP music:

Music controlled by the Society of European Stage Authors and Composers (SESAC), including the library of A. P. Schmidt Co.

Music controlled by Associated Music Publishers.

Music controlled by G. Ricordi & Co. (Milan).

Music controlled by the Society of Jewish Composers, Publishers and Song Writers.

Music of E. C. Schirmer Music Company.

Special library arrangements of public domain music, as well as music available under special licenses from individual music publishers not members of ASCAP.

Even a superficial study of the question indicates that ASCAP has been able to throttle broadcasters and advertisers largely because of the unintended cooperation of program builders and the activities of ASCAP song pluggers.

*Reduced to its plainest terms, only one thing is needed between now and January 1st to free radio broadcasting from ASCAP's \$4,400,000 squeeze-play. This thing is the determination of radio advertisers that they will popularize only the music which will continue to be available to them after December 31, 1940. And that can be accomplished very simply—just by playing this music on the air on commercial programs. If the transition to non-ASCAP music is begun at once, virtually every hit tune in America should lie outside of ASCAP's clutch before January 1.*

There have been important issues in radio broadcasting before now in which the interests of radio advertisers and of radio broadcasters were identical. We think it will be evident that there has never been an issue which compares in importance with this one, nor on which the self-interest of our clients and ourselves was so clearly the same.

Members of the CBS sales and service staffs will be at the disposal of each CBS client to facilitate the handling of individual programs during this transition period.

Sincerely,

THE COLUMBIA BROADCASTING SYSTEM.

# CBS to Affiliates

COLUMBIA BROADCASTING SYSTEM, INC.

485 Madison Avenue, New York

Wickersham 2-2000

Office of the Executive Vice President

Edward Klauber

July 18, 1940.

The form of the ASCAP contract which has now been submitted to broadcasters is more burdensome than expected, even when viewed in the light of the "demands" made by ASCAP last March. The NAB has made an analysis of the "single station" proposal which was published in the *NAB Reports* and we have analyzed the "network" proposal. Neither proposal gives the broadcaster any assurance of substantial availability of music as heretofore. Furthermore, the base on which payments are to be computed is substantially broadened, thus tending to dissipate the widely heralded savings to individual stations.

When the ASCAP demands were delivered to the broadcasters last March, we wrote you that Columbia had no intention of acceding to such demands, and advised you that there was then no present possibility that ASCAP music would be heard on the Columbia network after December 31st.

Nothing has happened in the meantime to induce us to change our decision. On the contrary, the wisdom of our decision has been further proved by two developments—first, the intolerably onerous and inequitable provisions in the proposed ASCAP contracts, and second, the definite promise of an increasingly adequate alternate supply of music through BMI.

You realize that any development which adds substantially to the expenses or burdens of network broadcasting operates to the ultimate detriment of both network and affiliate, whether imposed in the first instance on the one or the other. As pointed out in our letter of April 2, without network plugging of ASCAP tunes, the value of an ASCAP license to any station will be greatly diminished. Accordingly, it must be apparent to anyone who has studied the music problems facing our industry that the ASCAP tactics cannot succeed as long as the networks do not play ASCAP music.

We want to repeat that we are in this fight to the finish, not only in the interests of ourselves but in the interests of affiliates and advertisers and that, as a network and for our owned and operated stations, we will go along with any plan, to be worked out through the BMI set-up, for the continuance of its operations and the enlargement of the music available to broadcasters. Further, in order to answer any questions by affiliates as to a possible deal with ASCAP in the unlikely event that ASCAP modifies its present intolerable proposals, our position is that we have no intention of accepting such modifications unless the deal is economically feasible for both networks and affiliates and also is acceptable to representatives of affiliates. We feel that our own best interests, as well as the best interests of our affiliates, can best be served by adhering to this position.

Sincerely yours,

THE COLUMBIA BROADCASTING SYSTEM.



## CBS to Band Leaders

COLUMBIA BROADCASTING SYSTEM, INC.

485 Madison Avenue, New York  
Wickersham 2-2000

Office of the Vice President in Charge of Operations  
Lawrence W. Lowman

July 23, 1940.

On account of the present situation existing with respect to performing rights in musical compositions controlled by ASCAP, with which band leaders and members are familiar, Columbia is proceeding with its plans for the gradual and complete elimination of ASCAP controlled music from its network. As you know, our license with ASCAP expires December 31, 1940, and, because of the impossible demands which ASCAP has made upon us, we do not expect that any ASCAP controlled music will be broadcast over our network after the end of this year.

We have already taken steps achieving a substantial reduction in performances of ASCAP music on our studio sustaining programs. It is now necessary that we reduce ASCAP controlled music in other fields, including remote pick-up dance programs.

Accordingly, effective August 5, 1940, each remote pick-up dance band broadcast by Columbia will be required to schedule and play one non-ASCAP number for each one half hour of broadcasting time. In case of dance bands with programs of fifteen minutes, this means that a non-ASCAP number must be scheduled and played on every other program.

This is the minimum requirement for the time being, and naturally many bands will see that it is to their best interests to exceed this minimum as quickly as possible. Within a short time and from time to time, we expect to increase the requirements for the performance of non-ASCAP numbers so that substantially in advance of the end of the year remote pick-up dance bands will be broadcasting no ASCAP controlled music. We will try to effect this switch-over as gradually and with as little inconvenience as possible. In this connection, bands should take steps at this time to adopt signature numbers not under ASCAP control so that there will be no question as to the use of signatures by bands after the end of the year.

Several sources of non-ASCAP music are at present available and these include special arrangements of public domain music and selections from catalogs of copyrighted music not controlled by ASCAP. Among the latter, Broadcast Music, Inc., has now available in excess of fifty new popular tunes which are available in standard orchestrations.

Our music librarian will be happy to cooperate with band leaders in making available to them titles and copies of numbers which are not controlled by ASCAP. Mr. Roy Passman of our Program Department will be glad to give you such additional information as you may desire.

Sincerely yours,  
THE COLUMBIA BROADCASTING SYSTEM.

## BMI Developments

The first BMI song to appear on a phonograph record for general retail sale will be available in the record shops on August 2. It is Ray Herbeck's recording of *What Good's the Moon* for Okeh Records—Okeh 5659.

Other records of BMI numbers from Okeh, Columbia, and Victor are scheduled for the near future.

## BMI FEATURE TUNES

August 5-12

1. THE SAME OLD STORY
2. PRACTICE MAKES PERFECT
3. MADAME WILL DROP HER SHAWL
4. SWINGIN' AT THE SEANCE

BMI has appointed Jimmy Cairns as Professional and Sales representative in the mid-west with headquarters in Chicago and Harry Hume in the same capacity on the Pacific Coast with offices in Los Angeles. Additions have also been made to the professional staff in the New York offices.

An open market for music—so that broadcaster and advertiser will have an opportunity to choose what music they wish to play rather than be forced by economic necessity to pay for and popularize the music of a single group of publishers—the ASCAP group—is the ultimate aim of the broadcasters' battle to free the air of monopoly, Sydney M. Kaye, vice president and general counsel of Broadcast Music, Inc., told a group of representatives of advertising agencies at a luncheon held July 31st by BMI at the Hotel Waldorf Astoria. The luncheon was attended by radio program directors, account executives, and officers from virtually all of the leading agencies. After his talk Mr. Kaye answered questions relative to the use of the music which will be available for broadcasting after the first of the year when the current ASCAP contracts expire.

"Under the proposed ASCAP contracts," said the speaker, "the radio industry is being asked to pay eighty times as large a percentage of its revenue for music as ASCAP is now receiving from another industry. We are confronted with a demand for approximately \$45,000,000 or \$9,000,000 a year for the next five years, and for this we have no guarantee whatsoever as to what music will be available. It is manifestly impossible for the industry to absorb such exorbitant demands which are equal to a 100 per cent increase for the industry and, for example if applied to the networks would absorb their combined profits. It is obviously in the interest of the advertiser and advertising agency to protect themselves from an exorbitant increase in costs; to protect their programs from sudden change by substituting now the music which radio will be licensed to play after January 1, 1941, and in opening the door to creative talent struggling for an opportunity to be heard over the air. We urge them to call on the services of Broadcast Music, radio's own music enterprise, to solve their musical problems.

"The entire future of radio and radio advertising is

threatened," said the BMI executive, "unless the advertiser can obtain competitive market for music just the same as he had for everything else that enters into the advertising business. If radio advertisers are willing to go through a short period of readjustment of the musical content of their programs there is no doubt in my mind but that they can obtain an open market for music at reasonable cost. The United States is the only country in the world where such a music situation exists and I am sure it will not exist for long here when the people are acquainted with the facts. There is no objection to a performing rights society in principle but it ought to be a democratic organization open to all who can create music and where payment is made in precise ratio to the utilization of the creator's work and not offer a contract which produces monopoly. Such a society needs only a staff of accountants to properly allocate the proceeds from users of music.

"The radio industry does most emphatically not want music for nothing. It is currently paying at the rate of \$5,000,000 a year and we want to see this money go to those who deserve it after the American public has had an opportunity to hear the music from all talented composers and is not required to select its favorites from just a few."

Mr. Kaye pointed out that the task was not as difficult as it seemed, as a breakdown of radio performance indicated that 388 popular tunes accounted for 47 per cent of the music time on the air and 2500 tunes for 83 per cent. ASCAP music on sustaining programs has been materially reduced to date, without any apparent diminution in interest, he added.

Broadcast Music, Inc., he said in answer to a question, will grant full indemnity to any advertising agent, advertiser or performer who uses numbers from its catalogue. This differs, he explained, from the ASCAP contract which grants a limited indemnity to broadcaster and none at all to advertiser or agency.

In concluding he asked the agencies to select coordinators to work with music specialists at Broadcast Music and at the radio stations in solving the difficulties incidental to the change of theme songs, background music, music of secondary appeal and music of primary appeal.

## ASCAP Asks Place On Convention Program

ASCAP's request to send a speaker to the NAB convention followed repeated refusals to talk to the NAB about a new contract.

Neville Miller pointed this out to John G. Paine, ASCAP's general manager, in a recent letter in response

to Mr. Paine's request for a place on the convention program.

Every broadcaster will read with great interest the following exchange of correspondence:

### AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS

Thirty Rockefeller Plaza  
New York City

Mr. Neville Miller, President  
National Association of Broadcasters  
Normandy Building  
1626 K Street, N. W.  
Washington, D. C.

MY DEAR MR. MILLER:

The interest shown by your members in the new ASCAP contract, is keenly appreciated by this Society. It indicates to us that the entertainment, cultural, and educational values of music, and its contribution to the progress of radio, is at long last being realized.

In view of this awakened appreciation of music, I believe it will interest the members of your organization who are going to attend your forthcoming Convention, to get some first-hand facts about the plans, purposes and policies of ASCAP, and its desire to contribute to the advancement of radio, particularly as they affect the Public Interest.

We therefore would be pleased to send a representative to San Francisco, at our expense, to address your Convention.

I would greatly appreciate hearing from you at your earliest convenience, so that our speaker can be fully prepared to present a paper worthy of the importance of the occasion.

With all good wishes for the success of your Convention, please believe me to be,

Cordially yours,

AMERICAN SOCIETY OF COMPOSERS,  
AUTHORS AND PUBLISHERS,

JOHN G. PAINE.

JGP:LN

### NATIONAL ASSOCIATION OF BROADCASTERS

Normandy Building, 1626 K St. N. W.  
Washington, D. C.

July 17, 1940.

Mr. John G. Paine, General Manager  
American Society of Composers, Authors and Publishers  
30 Rockefeller Plaza  
New York City

DEAR MR. PAINE:

I have your letter requesting time on the NAB Convention Program. We appreciate your interest in our Convention, and willingness to send an ASCAP representative at your expense to San Francisco, all of which confirms our opinion that the NAB Convention is a most important meeting for broadcasters and will be attended by representative broadcasters from all parts of the country.

I regret that the interest of your Society in the NAB, and your recognition of the fact that it represents the radio industry, comes at such a late date. When I assumed the Presidency of the NAB, I called upon you and the other Officers of your Society, and did all in my power to effect a working arrangement between our two groups, so that the terms of renewal of the present contracts could be discussed by representatives of our groups on a business basis, which would have been mutually advantageous to all concerned. You will recall that I appointed a committee of broadcasters who came to your office a number of times, but our efforts were



thwarted by the refusal of your President to appoint a committee to meet with the broadcasters, even though your Board of Directors had authorized the appointment of such a committee.

Your present contract was drawn up behind closed doors; the broadcasters, from whom you receive approximately two-thirds of your entire revenue, were not consulted regarding its terms; and, you will recall, that when the contract was made public, the NAB was intentionally ignored, and not invited to your meeting.

However, in spite of this attitude on the part of ASCAP, the broadcasters have always been glad to extend every courtesy to your Society, and, as you know, your Mr. Claude Mills has addressed a number of our District meetings. Unfortunately, our program for this coming Convention has been completed for some weeks, and due to recent developments in the radio field, our schedule is very crowded and it is impossible now to include any additional speakers.

In your letter you state that NAB members have shown an interest in the new ASCAP contract. Such interest is natural, but I am positive has been misinterpreted by ASCAP. Broadcasters have long been keenly aware of the value of music and its importance, not only to radio, but in the cultural life of our country. Broadcasters would like to be able to stimulate the creative musical interests of this country, but ASCAP's new contract is merely an attempt to perpetuate the ASCAP monopoly, and to extract for its relatively few members the money which should be divided among all writers, according to their talents and the use of their music.

ASCAP's policy has done more to retard music progress in this country than any other factor, and broadcasters are bitterly opposed to the continuation of this policy.

Broadcasters are interested further in your contract because of the splendid music written by the members of your Society, and would like to continue to use this music, but they are unwilling to contribute all the funds available for the purchase of music to the comparatively few members of your Society and close the door upon the meritorious music of the many young writers who previously have been prevented by the ASCAP contract from finding an audience for their works.

Our industry at this moment pays forty times as much for each dollar of its gross revenue as any other industry which does business with your Society, and not being content with that, you now demand we pay eighty times as much and increase our payments from approximately \$4,500,000 to almost \$9,000,000.

The interest of broadcasters in your contract is accompanied by the strongest condemnation of its terms, and resentment of the injustice which your Society is trying to impose upon the industry by virtue of your present monopolistic power. That interest has not caused any broadcaster to sign your contract, but rather has caused representative broadcasters, who pay over two-thirds of the money your Society receives from all broadcasters, to establish Broadcast Music, Inc., as a means to introduce to the American public the meritorious music of many young writers and to give broadcasters the right to purchase music in a free competitive market the same as they purchase other requirements.

The basic principles in which broadcasters are interested were known to you at the time your new contract was drawn. I believe recognition of these principles and a more cooperative approach would have made any explanation of the contract unnecessary.

Cordially yours,

NEVILLE MILLER,  
*President.*

NM/mm

## Miller Urges Commission to Simplify Form 319

Neville Miller urged the FCC last week to simplify its new FM application form (319) with the industry's

cooperation. As the form now stands, Mr. Miller said in a letter to the Commission, it not only imposed an "excessive burden" on applicants but also, in some respects, contained ambiguities which made intelligent answers impossible.

Mr. Miller's letter:

July 26, 1940.

Federal Communications Commission  
Washington, D. C.

GENTLEMEN:

We recognize that the Commission has both the right and the obligation under the Communications Act to elicit information regarding an applicant's legal, technical and financial qualifications to operate a broadcast station in the public interest, and in this connection we offer the NAB's fullest cooperation in the development of methods whereby this information may be secured most efficiently.

However, our study of recent revisions of the FCC license application forms and particularly the new form No. 319 for frequency modulation stations indicates that an excessive burden is imposed on applicants by these forms.

Without attempting an exhaustive analysis of any of the Commission's forms, may we direct your attention to such questions as 12 (d), (e) and (f) on Form 319. We assume the purpose of these questions is to cast some light upon the applicant's character and reputation. As phrased, however, they require the submission of certified copies of judgments and decrees arising out of such proceedings as traffic violations, probate matters, divorce actions, and probably even proceedings before the FCC not merely for the applicant but for officers, directors and stockholders of corporate applicants. The task of preparing responses to questions of this sort on behalf of corporate applicants appears to us to necessitate a volume of work not commensurate with the value of the information to the Commission.

Under Question 16 (c) the applicant is required to submit the names and addresses of any "relatives", present or former "associates" of applicant, or, if applicant is other than an individual, of any stockholder, station manager, officer, member of the governing board, director or principal stockholder who have any interest in the application or in any other radio broadcasting station. Is the word "relative" intended to include those related by affinity as well as by consanguinity, and in any event, to what degree of relationship? What is meant by associates? The word "former" in the phrase "former associates", as well as the phrase "has had" appearing in Question 16 (a), are likewise burdensome in the case of corporations having officers, directors and stockholders with extensive business interests extending over many decades since they imply no limitation as to time.

In view of ambiguities of this sort appearing in these application forms, applicants are unable to supply intelligent answers regardless of the amount of effort they devote to the preparation of these forms.

We respectfully suggest that the Commission designate appropriate personnel from its staff to confer with representatives of the NAB in an effort to simplify these forms while retaining their efficacy. Informal conferences on similar matters in the past have produced results that were mutually satisfactory and of definite benefit to the broadcasting industry. It is our belief that such procedure would be equally advantageous in respect of these forms.

Sincerely yours,

NEVILLE MILLER.

NM/hml

## Promotion

### NATIONAL RADIO DAY

Representative Dingell (D-Mich.) has introduced a resolution to make August 26 "National Radio Day." The resolution:

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States is authorized and directed to issue a proclamation designating August 26 of each year as National Radio Day, calling upon officials of the Government to display the flag of the United States on all Government buildings on that day, and inviting the people of the United States to observe the day with appropriate ceremonies.*

### LISTEN BEFORE YOU VOTE

In spite of heat, NAB convention, war and national defense, the LISTEN BEFORE YOU VOTE campaign is doing all right for itself. Yes sir!

Broadcasters in many states are saying it with orders for the red, white and blue posters while they complete their own plans for exploitation. Quick on the trigger in reporting satisfaction with the plan was Warner C. Tidemann, commercial manager, KATE, Albert Lea at Austin, Minn.:

"I read with growing interest last night the material you mailed us on the new radio promotion, 'Listen Before You Vote.' I think you are to be congratulated, this strikes me as one of the greatest promotions that radio has ever had a chance to make."

And out in Kansas Chester L. Gowen wrote from Salina: "KSAL is happy to announce that it is in complete accord with the NAB suggestion to LISTEN BEFORE YOU VOTE and is enthusiastically completing plans to launch it in this territory."

Major Edney Ridge, director, WBIG, Greensboro, always a keen judge of effective promotions, has expressed approval by nonchalantly forwarding his sizable order.

Iowans, too, are going to see the posters and find out what LISTEN BEFORE YOU VOTE is all about. Orders from F. C. Eighmey, general manager, KGLO, Mason City, and from W. B. Quanton, general manager, WMT, Cedar Rapids, insure that.

The astute Mr. Bissell of WMFF, Plattsburg, N. Y., and hard hitting Mr. Thad Holt, WAPI, Birmingham, will put the posters to work for radio in their respective communities. WROK will take care of the situation in Rockford.

The presses will roll in August. Send orders for posters as soon as you have determined the maximum showing possible.

On the basis of orders received, 8 out of 10 stations say that a minimum of a thousand posters are needed to take full advantage of the opportunity. Whatever your needs, don't delay. Get aboard this "natural" promotion. Four more years before another chance like this!

### MEET MR. JOSLYN

Meet Mr. Joslyn of Rockford, manager of the Broadway Laundry.

He is a patriotic American, willing to spend good money to convince his fellow Americans that the American way of life is best, that foreign "isms" are a snare and delusion.

According to Bill Traum, promotion manager of WROK, Mr. Joslyn came to WROK and said that Rockford people ought to have such a program and that he was going to pay the freight.

Today, WROK broadcasts a weekly 15 minute patriotic program, "The American Way." And believe it or not, there is no commercial on the show, merely an opening and closing credit to Mr. Joslyn.

The program calls attention to the opportunities that exist for men and women in the United States. It features interviews with prominent local citizens who formerly lived in foreign countries who contrast advantages and opportunities in this country with those in their home lands.

## National Defense

### 557 STATIONS JOIN SEARCH FOR DEFENSE MAN POWER

Five hundred fifty-seven (557) broadcasting stations, up to Thursday noon, August 1, had joined together, through NAB in radio's recently announced National Defense program, which seeks to locate man power for the United States Civil Service Commission.

A minimum of 100,000 skilled workers represents the present requirements of the Army, Navy, Civil Aeronautics Authority and other defense agencies for which the Commission procures workers.

The figure of 557 is an increase of 184 over those listed in NAB REPORTS of July 26. Other stations are expected to be heard from this week.

The most recent stations to signify their intentions of cooperating in the National Defense man power search are listed below:



**DISTRICT 1**

CONNECTICUT  
WELI—New Haven  
MASSACHUSETTS  
WBZ—Boston  
WBZA—Springfield  
VERMONT  
WQDM—St. Albans  
WNBX—Springfield

**DISTRICT 2**

NEW YORK  
WABY—Albany  
WOKO “  
WBBC—Brooklyn  
WCNW “  
WENY—Elmira  
WEAF—New York City  
WINS “ “ “  
WJZ “ “ “  
WLTH “ “ “  
WHLA—Niagara Falls  
WSLB—Ogdensburg  
WNBZ—Saranac Lake  
WOLF—Syracuse

**DISTRICT 3**

DELAWARE  
WDEL—Wilmington  
NEW JERSEY  
WTNJ—Trenton  
PENNSYLVANIA  
WKBO—Harrisburg  
WGAL—Lancaster  
KYW—Philadelphia  
KDKA—Pittsburgh  
WJAS “  
WWSW “

**DISTRICT 4**

MARYLAND  
WFBZ—Baltimore  
NORTH CAROLINA  
WDNC—Durham  
SOUTH CAROLINA  
WIS—Columbia  
WFBC—Greenville  
VIRGINIA  
WRVA—Richmond  
WEST VIRGINIA  
WMMN—Fairmont

**DISTRICT 5**

FLORIDA  
WFTM—Fort Myers  
WJHP—Jacksonville  
WLAK—Lakeland  
WDLP—Panama City  
PUERTO RICO  
\*WPAB—Ponce  
WKAQ—San Juan

**DISTRICT 6**

ARKANSAS  
KTHS—Hot Springs  
KLRA—Little Rock  
KELD—El Dorado

LOUISIANA  
WJBO—Baton Rouge  
WJBW—New Orleans  
WWL “ “

TENNESSEE  
WREC—Memphis

**DISTRICT 7**

KENTUCKY  
WINN—Louisville  
OHIO  
WGAR—Cleveland  
WTAM “  
WHIO—Dayton  
WLOK—Lima

**DISTRICT 8**

INDIANA  
WEOA—Evansville  
WGBF “

WHIP—Hammond  
WIBC—Indianapolis  
WLBC—Muncie  
MICHIGAN  
WWJ—Detroit  
WHDF—Houghton  
WSAM—Saginaw

**DISTRICT 9**

ILLINOIS  
WENR—Chicago  
WMAQ “  
WHFC—Cicero  
WSOY—Decatur  
WISCONSIN  
WKBH—La Crosse  
WIBA—Madison  
WMAM—Marinette  
WDSM—Superior

**DISTRICT 10**

IOWA  
WMT—Cedar Rapids  
WFJB—Marshalltown  
MISSOURI  
WMBH—Joplin  
WDAF—Kansas City  
KFUO—St. Louis

NEBRASKA  
KOIL—Omaha

**DISTRICT 11**

MINNESOTA  
KDAL—Duluth  
WTCN—Minneapolis  
NORTH DAKOTA  
KFYR—Bismarck  
KDLR—Devils Lake  
WDAY—Fargo  
KFJM—Grand Forks

**DISTRICT 12**

KANSAS  
KCKN—Kansas City  
KFH—Wichita

**DISTRICT 13**

TEXAS  
KFDA—Amarillo  
KTBC—Austin  
KGFI—Brownsville  
WTAU—College Station  
KROD—El Paso  
KTSM “ “  
KLUF—Galveston  
KTRH—Houston  
KOCB—Kilgore  
KIUN—Pecos  
KONO—San Antonio  
KTSA “ “  
KXOX—Sweetwater  
KGKB—Tyler  
KRGV—Weslaco  
KWFT—Wichita Falls

**DISTRICT 14**

COLORADO  
KVOR—Colorado Springs  
KFEL—Denver  
KVOD “  
KIUP—Durango  
KFXJ—Grand Junction  
KFKA—Greeley

IDAHO  
KID—Idaho Falls  
KRRL—Lewiston  
KFXD—Nampa  
KSEI—Pocatello  
KTFI—Twin Falls  
KWAL—Wallace

MONTANA  
KFBB—Great Falls  
KGVO—Missoula

UTAH  
KVNU—Logan  
KLO—Ogden

KOVO—Provo  
KDYL—Salt Lake City  
KSL “ “ “

**DISTRICT 15**

CALIFORNIA  
KRE—Berkeley  
KHSL—Chico  
KIEM—Eureka  
KYOS—Merced  
KTRB—Modesto  
KDON—Monterey  
KLS—Oakland  
KLX “  
KVCV—Redding  
KROY—Sacramento  
KGO—San Francisco  
KJBS “  
KPO “ “  
KSAN “ “  
KSFO “ “  
KQW—San Jose  
KSRO—Santa Rosa  
KWG—Stockton  
KHUB—Watsonville

NEVADA  
KOH—Reno

**DISTRICT 16**

ARIZONA  
KWJB—Globe  
KCRJ—Jerome  
KSUN—Lowell  
KOY—Phoenix  
KGLU—Safford  
KVOA—Tucson  
KYUM—Yuma  
NEW MEXICO  
KICA—Clovis  
KWEW—Hobbs  
CALIFORNIA  
KERN—Bakersfield  
KPMC “  
KMPC—Beverly Hills  
KFOX—Long Beach  
KFAC—Los Angeles  
KFWB “ “  
KGFJ “ “  
KRKD “ “  
KVEC—San Luis Obispo  
KVOE—Santa Ana  
KTMS—Santa Barbara

**DISTRICT 17**

OREGON  
KAST—Astoria  
KBKR—Baker  
KOAC—Corvallis  
KORE—Eugene  
KUIN—Grants Pass  
KFJI—Klamath Falls  
KLBK—La Grande  
KOOS—Marshfield  
KMED—Medford  
KWJJ—Portland  
KXL “  
KRNK—Roseburg

WASHINGTON  
KXRO—Aberdeen  
KELA—Centralia  
KWLK—Longview  
KGY—Olympia  
KIRO—Seattle  
KOL “  
KRSC “  
KXA “  
KFIO—Spokane  
KFPY “  
KGA “  
KHQ “  
KMO—Tacoma  
KVAN—Vancouver  
KUI—Walla Walla  
KPQ—Wenatchee  
KIT—Yakima

## FLY BROADCAST MONDAY

The talk by James Lawrence Fly, FCC chairman, at the NAB convention will be broadcast by CBS and MBS at 5.30-6.00 p. m., Eastern Daylight Saving Time, Monday, August 5.

### The Commission

#### COMMISSION WILL RECEIVE BRIEFS ON CHAIN BROADCASTING REPORT

The FCC announced this week that in connection with its investigation of chain broadcasting it would receive briefs filed by interested parties on or before September 15, 1940.

A committee of the Commission composed of Commissioners Brown, Walker and Thompson, submitted their report to the Commission on June 12, 1940, and recommended the promulgation of regulations to eliminate certain practices in chain broadcasting. Copies of the Committee's report, with its Memorandum of Submittal containing the recommendations of the Committee, are being sent to the licensees of all broadcast stations. The Commission invites the submission of their views on the issues raised by the report. Copies will also be supplied upon request to any other interested party desiring to consider submission of a brief or statement.

It was also announced that the Mutual Broadcasting System, Inc., has recently filed a motion with the Commission requesting the adoption of temporary regulation directed toward maintaining the status quo in chain broadcasting pending the promulgation of permanent regulations by the Commission.

Briefs should be directed solely to the accuracy of factual statements contained in the report of the Committee, to the recommendations contained in the Committee's Memorandum of Submittal, and to the advisability of the adoption of the temporary regulation requested by the Mutual Broadcasting System, Inc.

#### ASSISTANT GENERAL COUNSEL RESIGNS

Assistant General Counsel George B. Porter is resigning from the FCC to enter private law practice.

Mr. Porter has been in charge of the legal matters affecting broadcasting since the Commission was created in 1934. Before that time he was Acting General Counsel of the Federal Radio Commission, which he joined in 1931, and was for two years an attorney with the Interstate Commerce Commission.

Born at Centerville, Iowa, October 17, 1900, Mr. Porter was graduated from the University of Iowa, A.B., in 1923, and received his LL.B. degree from George Washington University Law School in 1926. After being admitted to

the Iowa bar in 1927, he spent two years in law practice as junior member of the firm of Porter and Porter at Des Moines.

Mr. Porter intends to engage in local law practice with A. G. Haley under the firm name of Porter and Haley.

"The Commission reluctantly relinquishes to private practice a man ideally qualified by experience and training for the important work which he has so satisfactorily performed," comments Chairman James Lawrence Fly. To which Acting General Counsel Telford Taylor adds: "Mr. Porter's long experience and expertness in the field of radio law has been highly important and invaluable in the performance of the Law Department's duties. I deeply regret that my association with him has been so brief, and extend to him every good wish in his new activities."

#### FCC AMENDS ORDER

On its own motion, the Commission, by a board consisting of Commissioners Fly, Chairman, Walker and Thompson, pursuant to Administrative Order No. 3, reconsidered its action of July 16 in granting the application of the Riverside Broadcasting Co. to construct a new station at Riverside, Calif., to operate on 1420 kilocycles, 250 watts power, unlimited time, and set the application down for simultaneous hearing with three conflicting applications—Broadcasting Corporation of America and Mollin Investment Co., to construct new stations at Riverside to operate on 1390 kilocycles, 1 kilowatt power, unlimited time, and 1390 kilocycles, 500 watts power, daytime only, respectively; and Merced Broadcasting Co., to change frequency and increase power of its existing station at Merced, Calif., to 1390 kilocycles, 1 kilowatt power day, 500 watts power night, unlimited time. These three applications were designated for hearing at the July 16 meeting.

#### FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C.

*Administrative Order No. 3*

(As amended July 24, 1940)

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 25th day of June, 1940,

IT IS ORDERED, That, whenever the Chairman or Acting Chairman of the Commission shall determine a quorum of the Commission is not present, he is authorized to place the following provisions in effect for the period during which a quorum of the Commission is not present:

(1) There is hereby assigned and referred to a Board consisting of all members of the Commission present and able to act, all work, business, or functions of the Federal Communications Commission arising under the Communications Act of 1934, as amended, except that portion of the work, business, or functions of the Federal Communications Commission assigned and referred to the respective Boards and individual Commissioners as provided in Administrative Order No. 2, as amended; *Provided, however*, that this authority shall not extend to investigations instituted upon the Commission's own motion or, without consent of the parties thereto, to contested proceedings involving the taking of testimony at public hearings, or to investigations specifically required by the Communications Act of 1934, as amended.



(2) The Board created by sub-paragraph (1) acting by a majority thereof, shall have power and authority to hear and determine, order, certify, report, or otherwise act as to any of said work, business, or functions so assigned or referred to it, and in respect thereof shall have all the jurisdiction and powers conferred by law upon the Commission, and be subject to the same duties and obligations. Any order, decision, or report made or other action taken by said Board in respect of any matters so assigned or referred shall have the same force and effect, and may be made, evidenced and enforced in the same manner as if made, or taken by the Commission.

(3) Any party affected by any order, decision or report of said Board may file a petition for rehearing by the Commission, as provided by Section 1.271 of the Commission's Rules of Practice and Procedure, and every such petition shall be passed upon by the Commission.

This Order shall become effective on the 1st day of July, 1940.

FEDERAL COMMUNICATIONS COMMISSION

T. J. SLOWIE,

*Secretary.*

## TWO PLEAD GUILTY TO UNLICENSED RADIO OPERATION

The FCC announced that recent investigation of unlicensed radio operation in San Francisco, resulted in the indictment of Ralph Wildt and Louis F. Books for violation of Sections 301 and 318 of the Communications Act of 1934, as amended. Both defendants pleaded guilty and will be sentenced by the United States District Court on August 9.

Peter Ruggeri, a minor, also charged with operating an unlicensed radio station will be prosecuted under the Juvenile Delinquency Act. His case is set for trial August 5.

## INCOME SHOWS INCREASE FOR 1939

The total revenue of 705 standard broadcast stations reporting to the FCC for the calendar year 1939 amounted to \$89,990,646, as compared with \$79,128,760 for the 660 stations reporting in 1938. This is revealed in figures on broadcast income of stations by class and network announced today by the Accounting, Statistical, and Tariff Department of the Commission.

The tabulation shows that there were 397 stations in major networks compared with 350 in 1938. The 397 stations received \$22,500,941 from the three major networks, compared with \$19,645,447 for the 350 stations in 1938.

There were 519 stations in 1939 each of which had total net time sales in excess of \$25,000 compared with 485 for 1938.

The 519 stations had net time sales of \$80,306,134 for 1939, compared with \$71,082,465 for the 485 stations in 1938.

## FCC FUNCTIONS FOR AUGUST

FCC has announced that the work, business and functions of the Commission for the month of August have been assigned as follows:

Commissioner Walker:

Designated to determine, order, report or otherwise act upon all applications or requests for special temporary standard broadcast authorizations.

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

## FEDERAL COMMUNICATIONS COMMISSION DOCKET

No hearings or oral arguments are scheduled in broadcast cases before the Commission during the week beginning Monday, August 5.

### FUTURE HEARINGS

During the past week the Commission has announced the following future broadcast hearings and oral arguments. They are subject to change.

September 4

NEW—Hobart Stephenson, Milton Edge, Edgar J. Korsmeyer, d/b as Stephenson, Edge & Korsmeyer, Jacksonville, Ill.—C. P., 1150 kc., 250 watts, daytime.

NEW—Helen J. Walton and Walter Bellatti, Jacksonville, Ill.—C. P., 1150 kc., 250 watts, daytime.

September 12

Oral Argument Before the Commission

Report No. B-108:

KSAM—Sam Houston Broadcasting Assn., H. G. Webster, President, Huntsville, Tex.—In re: Revocation of Station License of KSAM.

## FEDERAL COMMUNICATIONS COMMISSION ACTION

Owing to the absence of a quorum this week there was no regular meeting of the Commission.

## MISCELLANEOUS

- WNBM—National Broadcasting Co., Inc., New York, N. Y.—Granted special temporary authority to operate aboard steamship *America* on shakedown cruise from Newport News, Va., to New York Harbor and to operate on additional frequencies **4797.5, 6425, 9135, and 12862.5 ke.**, and to use secondarily as sound channel in conjunction with Television Station W2XBU on assigned frequencies and aforementioned experimental frequencies, for the period July 27, 1940, to not later than July 30, 1940 (provided no interference is caused any other radio service).
- KFBI—The Farmers & Bankers Broadcasting Corp., Wichita, Kans.—Granted special temporary authority to operate from 9 p. m., CST, to 10:30 p. m., CST, on July 28, 1940, in order to broadcast the final game in the Kansas State Semi-Pro Baseball Tournament only.
- WPIC—Sharon Herald Broadcasting Co., Sharon, Pa.—Granted special temporary authority to operate from 9:45 p. m., local time, to the conclusion of the prize fight between Soose and Overlin on July 24, 1940, in order to broadcast said fight only.
- Roanoke Broadcasting Corp., Roanoke, Va.—Granted construction permit for new broadcast station to operate on the frequency **1500 ke.**, with 250 watts power, unlimited time; exact transmitter site and antenna system to be determined subject to Commission's approval (B2-P-2879).
- WDAK—L. J. Duncan, Leila A. Duncan, Josephine A. Keith, Effie H. Allen, Aubrey Gay, d/b as Valley Broadcasting Co., West Point, Ga.—Granted modification of construction permit which authorized construction of new broadcast station, for approval of transmitter and studio sites at General Tyler Hotel, West Point, Ga., approval of antenna, and install new transmitter; frequency **1310 ke.**, power 250 watts, unlimited time (B3-MP-992).
- KCMO—KCMO Broadcasting Co., Kansas City, Mo.—Granted construction permit to install new automatic frequency control equipment and make changes in transmitting equipment; frequency **1450 ke.**, 1 KW night, 5 KW LS, unlimited time, directional antenna night (B4-P-2922).
- WTIC—The Travelers Broadcasting Service Corp., Hartford, Conn.—Granted authority to determine operating power by direct measurement of antenna input (B1-Z-439).
- Helen Townsley, Portable-Mobile (area of Great Bend, Kans.).—Granted construction permit for new relay broadcast station, frequencies **1622, 2058, 2150, 2790 ke.**, power 75 watts (B4-PRY-224).
- KAQY—The Farmers and Bankers Broadcasting Corp., Portable-Mobile (area of Wichita, Kans.).—Granted license to cover construction permit for new relay broadcast station, frequencies **1606, 2022, 2102, 2758 ke.**, power 40 watts (B4-LRY-193).
- WMSL—Tennessee Valley Broadcasting Co., Inc., Decatur, Ala.—Granted license to cover construction permit (B3-P-2355) for increase in power from 100 to 250 watts, change in hours of operation to unlimited, change in transmitting equipment and antenna, and move transmitter and studio locally; **1370 ke.** (B3-L-1099). Also granted authority to install automatic frequency control equipment, and to determine operating power by direct measurement of antenna power (B3-F-149; B3-F-421).
- WCLS—WCLS, Inc., Joliet, Ill.—Granted special temporary authority to operate from 8:30 p. m., CST, to 11:30 p. m., CDST, July 31, in order to broadcast a special softball game only.
- WINS—Hearst Radio, Inc., New York City.—Granted special temporary authority to operate from 9 p. m., EST, August 14, to 1 a. m., EST, August 15, in order to broadcast the Free Milk Fund Show from the New York World's Fair on August 14.
- KHUB—John P. Scripps, near Watsonville, Calif.—Granted special temporary authority to rebroadcast field day activities July 27 and camp dedication July 28 of the Coast Artillery, California National Guard, encamped at Camp McQuade, to originate through RH 7; **720 ke.** (B5-S-916).
- WOWO—Westinghouse Radio Stations, Inc., Fort Wayne, Ind.—Denied special temporary authority to operate simultaneously with Station WWVA from 8:45 p. m. to 9 p. m., EDST, on August 3, 1940, in order to participate in the Three Network Program on "Broadcasting".
- KOAC—Oregon State Agricultural College, Corvallis, Ohio.—Granted extension of special temporary authority to operate from 9 a. m. to 1 p. m., and from 6 to 10 p. m., PST, for the period July 31 to August 29 (instead of unlimited time as licensed), in order to observe the regular vacation period.
- WJMC—Walter H. McGenty, Rice Lake, Wis.—Granted special temporary authority to operate from 7:15 to 10 p. m., CST, on August 3, in order to broadcast "Special World's Fair Radio Tribute" program.
- WINS—Hearst Radio, Inc., New York City.—Granted special temporary authority to operate from 10 to 10:30 p. m., EDST, on August 5, 12, 19 and 26, in order to broadcast special Army programs.
- WLOF—Hazelwood, Inc., Orlando, Fla.—Granted modification of construction permit (B3-P-2394, as modified, which authorized construction of a new broadcast station) to install a new transmitter, **1200 ke.**, 250 watts, unlimited time. This authority is granted upon condition that it shall not be construed as a finding by the Commission upon the application of Radio Corp. of Orlando requesting the same facilities, nor upon application of WLOF for license when construction has been completed, nor upon any of the issues involved therein, nor that the Commission has found that operation of the station is or will be in the public interest beyond the express terms hereof (B3-MP-1020).
- WKPT—Kingsport Broadcasting Co., Kingsport, Tenn.—Granted license to cover construction permit (B3-P-2616) as modified authorizing a new station to operate on **1370 ke.**, 250 watts, unlimited time (B3-L-1197). Also granted authority to determine operating power by direct measurement of antenna input (B3-Z-446).
- KFRO—Voice of Longview, Longview, Tex.—Granted license to cover construction permit (B3-P-2117) as modified, authorizing move of transmitter, installation of directional antenna for night use, installation of new transmitter, change of frequency to **1340 ke.**, increase power to 1 KW, and change hours of operation to unlimited (B3-L-1202). Also granted authority to determine operating power by direct measurement of antenna input power (B3-Z-448).
- KSAM—Sam Houston Broadcasting Assn., Huntsville, Tex.—Granted special temporary authority to discontinue the operation of Station KSAM for the period August 1, 1940, and ending in no event later than September 1, 1940, pending a decision on the revocation proceedings of the license.
- WBOW—Banks of Wabash, Inc., Terre Haute, Ind.—Granted license to cover construction permit (B4-P-2785) authorizing changes in equipment; **1200 ke.**, 250 watts, unlimited time (B4-L-1199).
- KPQ—Wescoast Broadcasting Co., Wenatchee, Wash.—Granted authority to determine operating power by direct measurement of antenna input power (B5-Z-447).
- WGCM—WGCM, Inc., Gulfport, Miss.—Granted license to cover construction permit (B3-P-2618) which authorized installation of new antenna, move of transmitter, and increase in power to 250 watts; **1210 ke.** (B3-L-1198).
- National Broadcasting Co., Inc., New York City.—Granted special temporary authority to rebroadcast program material received from U. S. Coastguard cutters *Spencer* and *Northland* out of New York, the cutter *Taney* out of San Francisco, and a Coastguard plane of the New York Division over the NBC Network on August 4, in connection with the U. S. Coastguard Show.
- WEAF—National Broadcasting Co., Inc., New York, N. Y.—Granted modification of construction permit as modified for installation of directional antenna for day and night use, and move of transmitter, for changes in equipment; frequency **660 ke.**, 50 KW power, unlimited time. (B1-MP-1009).
- WMRC—Textile Broadcasting Co., Greenville, S. C.—Granted modification of construction permit for new station, for approval of transmitter and studio location, approval of vertical antenna and change in type of transmitter (B3-MP-1025).
- WPID—Petersburg Newspaper Corp., Petersburg, Va.—Granted license to cover construction permit as modified for new broadcast station; **1210 ke.**, 250 watts, unlimited time, except when WBBL operates S. H. on Sunday (B2-L-1167). Also granted authority to determine operating power by direct measurement of antenna input (B2-Z-413).
- WHBU—Anderson Broadcasting Corp., Anderson, Ind.—Granted authority to determine operating power by direct measurement of antenna input (B4-Z-450).
- WSAU—Northern Broadcasting Co., Inc., Wausau, Wisc.—Granted authority to determine operating power by direct measurement of antenna input (B4-Z-443).



WARD—United States Broadcasting Corp., Brooklyn, N. Y.—Granted authority to determine operating power by direct measurement of antenna input (B1-Z-449).

The Brockway Co., Watertown, N. Y.—Granted construction permit for new broadcast station to operate on **1270 kc.**, 500 watts, daytime only; exact transmitter site and antenna to be determined subject to Commission approval (B1-P-937).

Watertown Broadcasting Corp., Watertown, N. Y.—Granted construction permit for new broadcasting station to operate on **1210 kc.**, 250 watts, unlimited time; tower to be marked in accordance with Section 3.45(d) (B1-P-809).

WCAR—Pontiac Broadcasting Co., Pontiac, Mich.—Granted special temporary authority to operate from 7:30 p. m. to 8:00 p. m., EST, August 3, 1940, in order to broadcast the World's Fair Tribute to Radio.

W2XOR—Bamburger Broadcasting Service, Inc., New York, N. Y.—Granted special temporary authority to operate high frequency experimental transmitter at 444 Madison Avenue, New York, N. Y., for a period not to exceed 30 days, pending action on formal application (File No. B1-PHB-281) for such authority.

WSUN—City of St. Petersburg, Fla.—Granted special temporary authority to rebroadcast program material received from Coast Guard Plane V176 from 12:30 p. m. to 12:45 p. m., EST, on August 4, 1940, in order to broadcast Coast Guard Program.

KSAM—Sam Houston Broadcasting Assn., Huntsville, Tex.—Continued oral argument originally scheduled for August 1, 1940, until September 12, 1940, in re revocation of license of station KSAM (Docket No. 5838).

KAWM—A. W. Mills, Gallup, N. Mex.—Granted extension of license upon a temporary basis only, pending determination upon the application for renewal of license, in no event longer than October 1, 1940.

## APPLICATIONS FILED AT FCC

### 740 Kilocycles

WSB—Atlanta Journal Co., Atlanta, Ga.—Transfer of control of corporation from Springfield Newspapers, Inc., Miami Daily News, Inc., and The Evening News Publishing Co. to James M. Cox.

### 1110 Kilocycles

WRVA—Larus & Bro Co., Inc., Richmond, Va.—License to cover construction permit (B2-P-2680) to use old Western Electric transmitter as auxiliary transmitter and use directional antenna day and night, with power of 5 KW, emergency use only, move transmitter to site of new transmitter.

### 1120 Kilocycles

NEW—J. M. West, J. Marion West, T. H. Monroe, & P. M. Stevenson, near Austin, Texas.—Construction permit for a new broadcast station to be operated on **1120 kc.**, 1 KW, specified hours. Class III-B station. Requesting facilities of Station KTBC. Amended: To specify transmitter site as near Austin, Texas.

### 1200 Kilocycles

KWSC—State College of Washington, Pullman, Wash.—Construction permit to make changes in equipment and install automatic frequency control equipment.

WAIM—Wilton E. Hall, Anderson, S. C.—Construction permit to install new transmitter, erect a new antenna, and increase power from 100 watts to 250 watts.

### 1210 Kilocycles

NEW—John Memolo, Wilkes-Barre, Pa.—Construction permit for a new broadcast station to be operated on **1210 kc.**, 250 watts, unlimited time, facilities of WBAX, if WBAX license revoked, transmitter to be located at West of Wilkes-Barre, Pa., on south bank of Susquehanna River. Amended: To give transmitter site as at foot of Carey St., Wilkes-Barre, Pa.

### 1310 Kilocycles

WCLS—WCLS, Inc., Joliet, Illinois.—Involuntary transfer of control of corporation from L. W. Wood (deceased), to Robert W. Thomas, Administrator.

### 1330 Kilocycles

KRIS—Gulf Coast Broadcasting Co., Corpus Christi, Texas.—Construction permit to install new transmitter, increase power from 500 watts to 1 KW. Amended: To request move of transmitter from Ocean Drive, Corpus Christi, to East side Water Street, Bluff Beach, between Aubrey and Belden Sts., Corpus Christi, Texas.

### 1340 Kilocycles

KDTH—Telegraph Herald, Dubuque, Iowa.—Modification of construction permit (B4-P-960) as modified for a new station, to increase power from 500 watts to 1 KW, change hours of operation from daytime to unlimited, install directional antenna for night use, give location of studio as 346 Eighth Ave., Dubuque, Iowa, and extend commencement and completion dates from 8-22-40 and 2-22-41 respectively to 60 days after grant and 180 days thereafter. Class III-B.

### 1370 Kilocycles

WHUB—WHUB, Inc., Cookeville, Tenn.—License to cover construction permit (B3-P-2298) as modified for a new station.

WHUB—WHUB, Inc., Cookeville, Tenn.—Authority to determine operating power by direct measurement of antenna power.

NEW—Herald Publishing Co. of Klamath Falls, Ore.—Construction permit for a new station to be operated on **1370 kc.**, 250 watts, unlimited time, Class IV station.

NEW—Ralph L. Lewis, Greensboro, N. C.—Construction permit for a new broadcast station to be operated on **1370 kc.**, 100 watts, unlimited time, Class IV. Amended: Re: antenna.

### 1420 Kilocycles

KRBC—The Reporter Broadcasting Co., Abilene, Tex.—Construction permit to install new transmitter; make changes in antenna; change frequency from **1420 kc.** to **940 kc.**; increase power from 250 watts to 1 KW; and move transmitter from 341 Ambler Ave., Abilene, Tex., to site to be determined, Abilene, Tex. Amended to give transmitter site as 1 mile north of Tye, Tex., and install directional antenna for day and night use.

NEW—Edward E. Reeder, Seattle, Wash.—Construction permit for a new broadcast station to be operated on **1420 kc.**, 250 watts, unlimited time. Class IV. Request **1450 kc.** under Havana Treaty.

NEW—Butler Broadcasting Corp., Hamilton, Ohio.—Construction permit for a new broadcast station to be operated on **1420 kc.**, 250 watts, unlimited time, Class IV.

KWBG—The Nation's Center Broadcasting Co., Inc., Hutchinson, Kans.—Modification of construction permit (B4-P-2521) as modified for increase in power, changes in equipment and antenna system, and move of transmitter, requesting extension of completion date from 8-20-40 to 12-20-40.

KVAK—Carl Latenser, Atchison, Kans.—Voluntary assignment of license from Carl Latenser to W. H. Reitz.

### 1450 Kilocycles

WAGA—Liberty Broadcasting Corp., Atlanta, Ga.—Construction permit to change frequency from **1450** to **590 kc.**; increase power from 500 watts night, 1 KW day, to 1 KW night, 5 KW day; install new equipment and directional antenna for night use; and move transmitter from 399 Clifton St. (between Memorial and Glenwood Drives), Atlanta, Ga., to between Gun Club Rd. and Sweat Drive, N. W., of Atlanta, Ga. Class III-B.

## MISCELLANEOUS

NEW—WBNS, Inc., Columbus, Ohio.—Construction permit for a new high frequency broadcast station on **43100 kc.**, 12,400 square miles coverage, transmitter to be located at 1035 Barnet Road, Columbus, Ohio.

NEW—The Moody Bible Institute of Chicago, Chicago, Ill.—Construction permit for a new high frequency broadcast station on **43900 kc.**, 15,300 square miles coverage, transmitter to be located at R. D. No. 1, Addison, Ill.

NEW—WGN, Inc., Chicago, Ill.—Construction permit for a new high frequency broadcast station on **44300 kc.**, 16,822 square miles coverage, transmitter to be located at Rohlfing Road, 2½ miles southeast of Schaumburg, Ill.

NEW—Zenith Radio Corp., area of Chicago, Ill.—Construction permit for a new relay broadcast station on 133030, 134850, 136810, 138630 kc., 100 watts, special emission for frequency modulation. Amended to change frequencies to 156750, 158400, 159300, 161100 kc.

NEW—The Journal Co. (The Milwaukee Journal), Milwaukee, Wis.—Construction permit for a new high frequency broadcast station on 43900 kc., 15.642 square miles, transmitter to be located at RFD No. 1, Hubertus, Town of Richfield, Wis.

KENO—George Penn Foster, Maxwell Kelch and Calvert Charles Applegate, d/b as Nevada Broadcasting Co., Las Vegas, Nev.—Modification of construction permit (B5-P-2355) which authorized new station for approval of transmitter site at (The Meadows) NE  $\frac{1}{4}$  of Section 1, Township 21 S, Range 61 E, M.D.B. & M., Las Vegas, Nev., approval of vertical antenna, change in type of transmitter, and increase power from 100 watts night, 250 watts day, to 250 watts day and night. Amended to change type of transmitter.

## FEDERAL TRADE COMMISSION ACTION

### COMPLAINTS

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.

**Acme Premium Supply Corp.**, 3139 Olive St., St. Louis, Mo., is charged with selling aluminum ware, enamel ware, smoker sets, cigarette cases, lamps, glassware and fishing tackle by means of lottery schemes. The respondent allegedly uses push card and punch board devices and Bingo sets to enable it to sell merchandise to the consuming public by means of lot or chance. (4198)

**American Drug and Chemical Company**, 420 South Sixth St., Minneapolis, allegedly misrepresents that its drug product, "Ardanol", is a cure or remedy for sterility in both sexes, will restore fertility of the generative organs, and is a reliable preventive of abortion. According to the complaint, the respondent further misrepresents that its drug products, "Chloro-Zol" and "Germ-I-Tabs", constitute competent and effective antiseptics and germicides and are a reliable means of feminine hygiene, when in truth they possess antiseptic properties of a low toxicity and are not effective antiseptics or germicides. Further alleged misleading representations are that "Chloro-Zol" is a competent and effective treatment for bromidrosis, tetter, Cuban itch, itching between the toes, blisters on the feet, skin irritations, acne, boils, halitosis and body odors. (4200)

**American Institute of Business Administration, Inc.**, and Paul Kline, 126 Liberty St., New York, are charged in a complaint with the dissemination of misleading representations in the sale of correspondence courses in accounting, business law and federal taxation. It is alleged in the complaint that the respondent Kline directs and controls the policies and practices of the corporate respondent.

According to the complaint, the corporate respondent by means of the name "American Institute of Business Administration, Inc." misleadingly represents that it is a national organization of business executives, administrators or accountants, or that it is the medium of such an organization through which instruction or training is given as a public service. The corporate respondent, it is alleged, further misleadingly implies that it is the parent head of nationally organized local groups of special representatives of business and comprises an organized "Institute".

It is also charged in the complaint that the corporate respondent represents that it has organized groups of students in all parts

of the United States, and that they are international in scope with students in various foreign countries, when actually, the activities of such school have not been national in extent nor have groups of students been organized in all parts of the United States at any one time, and the number of students in foreign countries have been comparatively few. (4195)

**Associated Sales Agency**—B. T. Clifton, trading as Associated Sales Agency, 108 North 17th St., Birmingham, Ala., allegedly sells clocks, knives, fountain pens, pipes, watches, tie sets, cigarette cases and cigarette lighters by means of a game of chance. According to the complaint, the respondent employs punch boards to enable him to distribute his merchandise to the consuming public wholly by lot or chance. (4201)

**Kongo Chemical Company, Inc.**, 66 East 131st St., New York, allegedly misleadingly represents that "Kongolene," a hair cosmetic, is a pure vegetable product; that its use will straighten the hair, will stop hair from falling out, will promote the growth of hair, and will cure and permanently remove dandruff; that it is the greatest discovery of the age; that its use will benefit the offspring of its users, and that it is safe and harmless, when such are not the true facts. (4193)

**Prinifit Textile Company**, 128-130 West Fourth St., Cincinnati, is charged in a complaint with dissemination of misleading representations in the sale of men's hosiery.

According to the complaint, the respondent misleadingly represents that its "Jerks" hose is the original garterless sock and that it is a manufacturer of hosiery. In truth, the complaint points out, the respondent is a jobber and distributor of the hosiery which it sells and neither owns, operates nor controls any factory, plant or mill for the manufacture of hosiery. (4199)

**Sterling Products**, 170 Varick St., New York, and Vita-Ray Corporation, 176 Middle Ave., Lowell, Mass., allegedly misrepresent that their Vita-Ray cosmetic cream, by means of local application, supplies the need of the skin for Vitamins A and D, and serves to stimulate and nourish the skin. The respondents further misleadingly represent that dryness, lines, wrinkles and coarse pores may be symptoms of vitamin deficiency and that such deficiency may be relieved through the use of their cosmetic cream containing Vitamins A and D. According to the complaint, the respondents' cosmetic cream will have no beneficial or therapeutic effect beyond the soothing, emollient and cleansing effects inherent in any cold cream. The complaint further points out that the skin does not require Vitamins A and D by means of local application. (4197)

**Walker & Woodward**—J. Lawrence Walker and T. Klye Woodward, trading as Walker & Woodward, and Nick A. George, Walker & Woodward, Inc., and John G. Brown, Casper, Wyoming, are charged with misleadingly advertising that their medicinal preparation, "George's Compound," is a cure and effective treatment for numerous ailments, diseases and conditions of the human body, including rheumatism, appendicitis, general run-down condition, neuritis, lumbago, high blood pressure, kidney trouble, streptococcus infection, paralysis, diphtheria, piles, sinus trouble, low blood pressure, pneumonia, black widow spider poisoning, ulcers and ptomaine poisoning. The respondents are further charged with representing that their preparation possesses substantial therapeutic value in the treatment of all ailments of the human body except cancer and diabetes. In truth, the complaint continues, respondents' preparation possesses no therapeutic value in the treatment of any ailment, disease or condition of the human body, in excess of such slight temporary and palliative relief for minor aches and pains as may be afforded by its analgesic properties. (4194).

**D. Wroblewski & Company**—A group of Brooklyn, N. Y., dealers in various medicinal and cosmetic preparations have been charged in a complaint with the dissemination of misleading representations in the sale of their products. The respondents are D. Stefan Wroblewski, Margie Wroblewski and Norman Hartman, trading as D. Wroblewski & Co., as D. S. Wroblewski, Inc., as



Daferu Drug Company, Ltd., as Wroblewski Drug Company, Inc., as Kalwaryjskie Laboratories, Inc., and as D. Wroblewski & Company, Ltd.; D. Wroblewski & Company; D. S. Wroblewski, Inc.; Daferu Drug Company, Ltd.; Wroblewski Drug Company, Inc., Kalwaryjskie Laboratories, Inc., and D. Wroblewski & Company, Ltd., all of 55 Keap St., Brooklyn, N. Y.

According to the complaint, the respondents misleadingly advertise the therapeutic value of their medicinal and cosmetic preparations among which are the following: a so-called medicinal wine designated as "Kalwaryjskie Wino Lecznicze"; "Ampo-Lin," a liniment; "Reginol," a preparation for corns; "Maso Ratunek," a salve; a cough syrup called "Kalwa"; "Wuzi-Wuzi," a purported fever reducer and headache powder; "Krople-Kobiecy" or "Women's Drops," represented as a remedy for ailments peculiar to women; "Sparoton," a tablet represented as a treatment of fever and gripe; "Dunski Wyskok," intended for use as a shampoo and for various scalp diseases; facial creams called "Krem Mlodosci No. 1," "Krem Mlodosci No. 2," and "Vitamin F Krem"; and a face powder called "Puder Ksiazecy."

It is further charged in the complaint that the respondents fail to reveal that use of "Wuzi-Wuzi" under the conditions prescribed in their advertisements or under customary or usual conditions, may cause injury to the health of the user. (4196)

## CEASE AND DESIST ORDERS

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

**Atlantic Commission Company**, a wholly owned subsidiary of The Great Atlantic & Pacific Tea Company of America, 102 Warren St., New York, has been ordered to discontinue accepting brokerage allowances and discounts in lieu of brokerage upon purchases made for its own account, in violation of the Robinson-Patman Act.

Commission findings, based on a stipulation entered into between the Atlantic Commission Company and the Federal Trade Commission, are that the Atlantic Commission Company is engaged in the business of buying, selling and distributing fresh fruits and vegetables on and for its own account and that of The Great Atlantic & Pacific Tea Company (and its subsidiaries) and also as a broker and on consignment as a commission merchant for the accounts of other buyers and sellers of such products.

Further findings are that the Atlantic Commission Company has purchased fresh fruits and vegetables at a net price reflecting a reduction from the prices at which sellers were currently selling commodities to other buyers, of an amount reflecting in whole or in part, the amount of brokerage which was being paid by such sellers to brokers representing them in effecting sales of their commodities to buyers other than the Atlantic Commission Company.

Other findings are that with many who did not sell to the Atlantic Commission Company at a net price or on a net basis, the Atlantic Commission Company, in connection with purchases for its account, negotiated "quantity discount agreements," which provided for the payment to the Atlantic Commission Company of an amount to be computed on the basis of the rate at which the contracting seller was currently paying brokerage to his brokers representing him in effecting sales of commodities to buyers other than the Atlantic Commission Company.

Under the order, the Atlantic Commission Company is to cease making purchases of commodities for its own account at a so-called net price or on a so-called net basis, and at any other price and on any other basis which reflects a deduction from the prices at which sellers are selling commodities to other purchasers, of any amount representing, in whole or in part, brokerage being paid by sellers to their brokers on sales of their commodities.

The order further prohibits the Atlantic Commission Company from accepting from sellers on purchases of commodities made for its own account any so-called quantity discounts and payments of all kinds reflecting in whole or in part, brokerage being paid by sellers to their brokers on sales of their commodities.

It was further ordered that the Atlantic Commission Company cease accepting from sellers directly or indirectly on purchases of commodities made for its own account, any brokerage and any allowances and discounts in lieu of brokerage in any manner whatsoever. (3344)

**Berwick Pen Company**—See Howard Sales Company.

**Howard Sales Company**—William and Benjamin Vorunon, trading as Howard Sales Company and as Berwick Pen Company, 17-19 William St., Newark, N. J., and 726 Lyons Ave., Irvington, N. J., have been ordered to discontinue certain misleading representations in the sale of fountain pens and pencils.

The order prohibits the respondents from falsely representing certain prices as being the usual and customary prices charged for their fountain pens and pencils. The order further forbids representations that the respondents' pens and pencils are of a quality and character superior to those sold by competitors at comparable prices.

Further representations ordered discontinued are that the sum of 25 cents charged purchasers for replacement of broken or unsatisfactory pens covers only the cost of handling, postage and insurance; that their fountain pens hold 200 per cent more ink than any ordinary fountain pen on the market, or that certificates cut from newspaper advertisements of their pens and pencils are worth \$4.41 or any other sum in connection with the purchase of such products.

The respondents were also ordered to cease representing through the use of the symbol "14K," or any other symbol, that the point or nib of their pens is composed of 14-carat gold or gold of the fineness indicated by such symbol, when such is not a fact. (3514)

**Perfect Manufacturing Company**, trading as R. E. Engineers, Madison Road, Cincinnati, has been ordered to discontinue the dissemination of misleading representations in the sale of an electrical and mechanical device for attachment to radio receiving sets.

Under the order, the respondent is directed to cease representing that its device, "Add-A-Tube," when attached to a radio receiving set, gives to it the effect of an additional tube; adds life to the tubes; improves reception from foreign and domestic stations; brings the set up to date, or gives to such set additional sharpness, tone and selectivity.

The order further forbids use by the respondent of the term "Add-A-Tube," or any similar term, when the device does not perform the functions of an additional tube in a radio receiving set. (4163)

## STIPULATIONS

Following stipulations have been entered into by the Commission:

**Cowen Bros.**—David F. Cowen and Raymond Cowen, trading as Cowen Brothers, 36 John St., New York, agree to cease using the word "Sweatproof" to describe their wrist watch straps, or representing in any way that their leather products have been rendered impervious to the penetration of perspiration. The respondents also agree to desist from representing that their merchandise customarily sells for sums in excess of the prices actually charged. (2882)

**Ferguson Company, Inc.**, Liberty Bank Building, Dallas, Tex., in connection with advertisements disseminated on behalf of Morten Laboratories, Inc., Dallas, Texas, agrees to cease representing that "Hay-No," a medicinal preparation, is a competent remedy or effective treatment for hay fever, or that it has any therapeutic value in excess of affording symptomatic relief for hay fever. The respondent further agrees to cease advertising that the results to be achieved by the use of "Hay-No" in the treatment of sinus irritations, head colds, cold-clogged air passages, distress of nose-blowing and sneezing, stuffiness or other symptomatic conditions are amazing, wondrous or quick, or that the preparation is a discovery. (02605)

**O. M. Franklin Blackleg Serum Company**—See O. M. Franklin Serum Co., Inc.

**O. M. Franklin Serum Company, Inc.**, trading as O. M. Franklin Blackleg Serum Company, Denver, Colo., agrees to discontinue claims that "Franklin Concentrated Blackleg Bacterin" gives positive life immunity against blackleg; always brings positive life immunity with one dose; has a fifteen year untarnished record of positive life immunity with one dose, or that it is invariably effective or 100 per cent efficient for the purpose intended. The respondent further agrees to cease representing that its product contains in one dose more than double the immunizing potency of the usual large 5cc dose of whole culture. (2892)

**Barbara Gould, Inc.**, 35 West 34th St., New York, stipulates that it will cease representing that "Firma-Tone," a cosmetic preparation, is a competent treatment for conditions of relaxed facial contours, heaviness of the jaw line, or flabby skin; enables the user to "hold the clean, firm contours of youth" or to have "youthful" contours of face and neck; stimulates, exercises, tones or strengthens the muscles of the face and neck, or gives "lasting results." The respondent further agrees to cease using the designation "Firma-Tone" for its product or to represent that use of such product may be relied upon either to "firm" the facial or neck contour of the user, or to "tone" the skin or muscles. (2888)

**Grecian Chemical Company**, trading as Zala Perfumery Company and as The Olivo Company, 2030 East Willard St., Philadelphia, in connection with its sale of barber and beauty preparations, agrees to cease using the words "scalp food" as descriptive of its products, or the words "Feed the scalp what it needs" so as to imply that its products act as nutriment for the scalp. The respondent also agrees to cease representing that use of any of its products will replace or restore natural oil in the scalp. (2886)

**A. Marshall & Sons**—Adam Marshall, Frank Marshall and Rudolph Marshall, trading as A. Marshall & Sons, 698 Bergen St., Newark, N. J., have entered into a stipulation in which they agree to discontinue certain representations in the sale of arch supporters.

The respondents agree to cease representing that use of their arch supporting devices will permanently end foot troubles; will permanently remove callouses regardless of their nature, or, unqualifiedly, assure instant and permanent relief in cases of weak arches.

It is also stipulated that the respondents will desist from claims that their devices are made to order, that is, fashioned from a positive cast made from a negative impression of the individual customer's foot through the use of some plastic materials; that their devices are or will remain sanitary when used for the purposes for which they are intended, or that shoes with insoles padded, haphazardly, exercises and treatments are only temporary, impractical and expensive substitutes. (2893)

**M. Mintz, Inc.**, 247 West 35th St., New York, agrees to discontinue use of the word "Alpacas" as descriptive of dresses which are not made of fabric composed of the wool of the Alpaca, and to cease representing that his products, which are made of rayon, are not rayon or are something other than rayon. The respondent also stipulates that he will desist from failing to clearly disclose the fact that the material of which his products are made is rayon, such disclosure to appear in all invoices and labeling and in all advertising matter, sales promotional schemes, descriptions or representations. (2890)

**Nash-Kelvinator Corporation**, 14250 Plymouth Road, Detroit, agrees to desist from the use of the statement "Nothing to get out of order" as descriptive of its refrigerator, or the cooling element, which contains moving parts that may, in fact, get out of order. (2884)

**Niagara School, Inc.**, Cleveland, Ohio, entered into a stipulation in which it agrees to discontinue certain representations in the sale of resident and correspondence courses in vocabulary, public speaking, voice and memory.

The respondent agrees to cease misrepresenting the usual and customary price or the nature and quality of its instruction. It is also stipulated by the respondent that it will discontinue representing an offer as "Special" or "Introductory" when it is in fact a regular offer; representing an offer to be limited as to time or otherwise when such is not the fact, or representing any commodity or service as "Free" when in fact such commodity or service is regularly included as part of the course of instruction or service. (2894)

**Nutritional Service**—Janet Warfel, trading as Nutritional Service, 162 North State St., Chicago, entered into a stipulation in which she agrees to discontinue certain representations in the sale of foods designated "Wyd-E-Wake Silicon Tea," and "Vitamin B Food Cons."

The respondent stipulates that she will cease representing that "Wyd-E-Wake Silicon Tea" is a health beverage; an excellent source of calcium, silicon and manganese; an antiseptic, or an invigorating agent of the generative system. The respondent also

agrees to desist from claims that "Wyd-E-Wake Silicon Tea" performs many important functions in the body; has any influence on the body's resistance to disease, or possesses qualities conducive to mental peace, contentment or contemplative pleasure.

Further representations which the respondent agrees to discontinue are that "Vitamin B Food Cons" supply the body with mineral elements; bring one vigor or youthful zestfulness, or are highly potent or readily assimilated into the system.

Janet Warfel also agrees to cease advertising that the human body is deficient in silicon; that mental lethargy or dullness are symptomatic of silicon scarcity; that silicon is helpful in all cases where eyes, hair or nails are in poor condition, or that pimples or boils are cleared up when silicon lacks have been restored to the body. (02603)

**Olivo Company**—See Grecian Chemical Company.

**Poulides Brothers**—Themis Poulides, trading as Poulides Brothers, 80 Washington St., New York, stipulates that he will cease stating in any manner that he has a depot or branch at Cavalla, Macedonia, Greece, or that the cigarettes sold by him are made at and imported from such locality. The respondent also agrees to desist from placing in the hands of his customers for their use any printed matter bearing the name of such customer in conjunction with the words "Manufacturers of," when such cigarettes are not manufactured by the customer; any printed matter bearing the phrase "Blended from our own Direct Importation of Choice Turkish Tobacco," when the customer does not import such tobacco; or printed matter containing the words "Branches at Cavalla, Macedonia," when in fact the customer has no such branch. (2883)

**Shifman Brothers**, Mott St., Newark, N. J., agrees to cease using the word "Doctor" or "Dr." in connection with its products so as to imply that the products so referred to contain special or scientific features resulting from medical determination or services. The respondent further stipulates that it will cease supplying customers for resale mattresses to which are affixed a price purporting to be the retail selling price of such products, when in fact it is in excess of the price at which they are customarily offered for sale in the usual course of business. (2891)

**Smith & Bull Advertising Agency**—V. R. Smith, trading as Smith & Bull Advertising Agency, 553 South Western Ave., Los Angeles, in connection with advertisements disseminated on behalf of Otto Wise, trading as Medical Tea Company of California, Inc., Los Angeles, stipulates that he will desist from representing that "Cento Tea," a medicinal herb tea, is of value in the treatment of gall, liver or kidney ailments; possesses healing or analgesic properties; helps eliminate poisons and foreign matter from the system, or is capable of bringing about a proper distribution of body liquids. The respondent further agrees to cease advertising that every ingredient in "Cento Tea" possesses therapeutic value; that its ingredients are carried to the affected parts; that it is not a laxative or that its hypericum content stimulates the appetite. (02606)

**Zala Perfumery Company**—See Grecian Chemical Company.

**Zenith Products Company**—Earl Ewing, trading as Zenith Products Company, 423 Main St., Wellsville, Ohio, agrees to desist from use of the word "conditioning" as part of the name of his product designated "Best-in-Show Conditioning Capsules," so as to imply that it is efficacious generally as a conditioner of dogs for show purposes or otherwise. The respondent further agrees to discontinue representing that his product is an effective treatment or competent remedy for all diseases or ailments to which dogs are subject, or that its use will prevent sickness and improve the appearance of dogs for show purposes. Further representations which the respondent agrees to discontinue are that "Sulphasol" is a new or revolutionary product; is a skin tonic; will end skin and coat troubles, or imparts any therapeutic effects other than such as may be due to the action of its sulphur content on certain organisms in the skin and hair, as the sarcoptic mite of scabies and certain fungi. The respondent also stipulates that he will discontinue employing the word "guarantee" in his advertising, unless clear disclosure is made of exactly what is offered by way of security. (2887)



This week's issue of the NAB Reports consists of the officers' and committees' reports to the annual convention in San Francisco this week, along with a brief resume of what happened at the convention.

Next week's Reports will include a more complete report of the convention, as well as the FCC and other official material covering a two weeks' period.

#### CONVENTION HIGHLIGHTS

Unanimous approval of the BMI program for licking the ASCAP music monopoly was voted by shouting delegates this week at one of the most enthusiastic sessions in NAB convention history. Theodore Streibert, vice president of the Mutual Broadcasting System, touched off one of the several demonstrations at the session when he announced that none of the principal key stations of that network intended to use ASCAP music after next December 31. Enrollment to use ASCAP music after next December 31, enrollment of the Don Lee originating stations, the H. K. Carpenter and Glen Snyder stations and WOW, Omaha, was also announced. During the convention 51 new stations in all joined BMI, bringing the total membership to 362. A complete list of the new members will be published in next week's REPORTS.

The BMI Board of Directors approved a new form of contract to become effective next April 1. It calls for a sliding scale of payments, depending on the amount of income, ranging from one and one-half per cent on less than \$15,000 to two and one-half per cent on \$100,000 or more. Details will be reported in next week's issue.

The total registration of 661 was one of the largest in the history of NAB conventions. More than 600 at-

tended the banquet on Treasure Island Wednesday night and laughed at "The Greener Pastures," a satirical musical comedy staged by the Dodo Club.

Mark Ethridge, WHAS; Harold Hough, WBAP; George W. Norton, WAVE; Don Searle, KOIL; Harry R. Spence, KXRO; John Elmer, WCBM; Edward Klau-ber, CBS; Fred Weber, MBS, and Frank M. Russell, NBC, were elected to the Board.

As its first act, the newly elected Board took recognition of the services of President Neville Miller. The present contract of Mr. Miller, as President, due to expire next year, was extended for a one year period, being a new two-year contract. As an additional recognition, a substantial increase in his annual salary, effective immediately, was authorized.

The convention received the following telegram from the San Francisco Local of the American Federation of Musicians:

"Inasmuch as the members of the Musicians Union have suffered irreparable harm because of what we regard as excessive license fees collected from employers of music by ASCAP we wish to let you know that the officers and Board of Directors of this Local hereby offer our assistance in whatever form possible to break this stranglehold on employers and musicians alike."

The delegates and their wives and friends danced to BMI music exclusively at the banquet.

From both James Lawrence Fly, FCC Chairman, and Stephen P. Early, secretary to President Roosevelt, the industry received assurance that the Government had no intention of taking over the Broadcasting Industry in event of war. "I see no occasion for any sort of extraordinary measures as far as radio is concerned," said Mr. Early. "Alarmists with absolutely no factual basis to support them have conjured up the bogey man of the Government operating the broadcasting systems or of

the complete curtailment of broadcasting in the event the security of this country were threatened," said Mr. Fly. Next week's REPORTS will contain the texts of these speeches.

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The Executive Committee approved a resolution adopted by the Labor Committee, directing the NAB to take appropriate action to obtain reversal of the Wage and Hour Administration's opinion that broadcasting's outside salesmen were not outside salesmen within the meaning of the Wage and Hour Act.

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Sherwood Brunton, KJBS, won the *Broadcasting* magazine trophy at the Annual NAB Golf Tournament.

The plan for unit measurement of broadcast advertising was approved by both the Board of Directors and the convention.

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The Code of Program Standards was unanimously endorsed after Dr. Frank Kingdon and others had praised its operation during the past year.

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Louis Johnson, former Assistant Secretary of War, urged the industry to join with all the power at its command in the National Defense Program. Next week's REPORTS will include the names of stations newly pledged to support this program. The NAB has received 579 pledges.