

# The National Association of Broadcasters

NATIONAL PRESS BUILDING \* \* \* \* \* WASHINGTON, D. C.  
JAMES W. BALDWIN, Managing Director

## NAB REPORTS

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### NOTICE TO MEMBERS

The Sixteenth Annual Convention of the National Association of Broadcasters will be held at the Willard Hotel, Washington, D. C., February 14, 15 and 16, 1938.

Decision on this matter was made this week by a majority vote of the members of the Board of Directors.

Information concerning Hotel accommodations, and arrangements for speakers will be forwarded to the members at an early date.

JAMES W. BALDWIN,  
*Managing Director.*

### SPENCE NAMED CONVENTION CHAIRMAN

President Elmer today announced the appointment of Edwin Spence of WBAL, Baltimore, as Chairman of the Convention Committee.

### DOLPH HEADS LOCAL CONVENTION COMMITTEE

President Elmer today announced the appointment of the following persons to serve on the Local Convention Committee for the Sixteenth Annual Convention of the NAB to be held at the Willard Hotel in Washington, D. C., on February 14, 15 and 16, 1938:

William B. Dolph, WOL, Washington, D. C., Chairman  
Harry C. Butcher, WJSV, Washington, D. C.  
Frank M. Russell, WRC, Washington, D. C.,

### FCC CONSIDERING CHASE AND SANBORN SKIT

Chairman Frank R. McNinch has announced that the Federal Communications Commission has received in response to its request a letter from Lenox R. Lohr, President of the National Broadcasting Company, Inc., transmitting an exact copy of the transcript of the Adam and Eve feature; the electrical transcription of the skit, a copy of the contract between Chase and Sanborn (sponsors of the program) and the National Broadcasting Company covering this broadcast, and a list of the stations over which this feature was broadcast.

The Commission will give further consideration to this matter after considering the script and the electrical transcription.

### FCC HELD ARBITRARY AND CAPRICIOUS IN HEITMEYER CASE

The United States Court of Appeals for the District of Columbia this week reversed the decision of the Federal Communications Commission on the application of Paul R. Heitmeyer for a new station at Cheyenne, Wyoming, on the ground that the action of the Commission denying the application was arbitrary and capricious. It is believed that this marks the first time since the enactment of the Federal Communications Act of 1934 that a decision of the Commission has been overruled on the ground that its action was arbitrary and capricious. The text of the opinion follows:

### UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

No. 6762

PAUL R. HEITMEYER, APPELLANT

v.

FEDERAL COMMUNICATIONS COMMISSION

Appeal from the Federal Communications Commission

Decided December 27, 1937

*James W. Gum and Clarence C. Dill*, both of Washington, D. C., for appellant.

*Hampson Gary, George B. Porter, Fanney Neyman, and Ralph L. Walker*, all of Washington, D. C., for appellee.

Before ROBB, GRONER and MILLER, JJ., and WHEAT, District Judge.

MILLER, J.: This is an appeal under Section 402(b) (1) of the Communications Act of 1934<sup>1</sup> from a decision of the Federal Communications Commission denying the appellant's application for a permit to construct a new radio broadcasting station at Cheyenne, Wyoming.

<sup>1</sup> Act of June 19, 1934, c. 652, 48 Stat. 1064, 1093; 47 U. S. C. A., § 402(b)(1).

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(Reprint from last issue)

#### NOTICE TO ALL MEMBERS:

The National Association of Broadcasters is now prepared to make electrical transcriptions of speeches by Senators and Congressmen for its members.

This service is available only to members of the Association and recordings will be made only upon the request of a member station and at the member's expense. Members will be billed as follows:

For each 16 inch disc—\$2.70 plus postage.

For each 10 inch disc—\$1.60 plus postage.

(The above prices apply whether the discs are recorded either on one side or both sides, and are subject to change without notice.)

Recordings will be made at the Association's offices, 960 National Press Building, between the hours of 9 a. m. and 6 p. m., and by appointment. If a member desires his Senator or Congressman to make a recording for him, that fact should be communicated to this office and the Senator or Congressman should be advised to make an appointment either through the Managing Director or Leonard D. Callahan or Everett E. Revercomb of the staff, by calling National 8470.

It is requested you acknowledge the receipt of this notice and advise us of the name of the officer of your station who is authorized to order recordings to be made.

JAMES W. BALDWIN,  
Managing Director.

The record shows that the Examiner who heard the case made findings of fact and arrived at conclusions therefrom to the effect that:

The applicant is legally, technically, financially and otherwise qualified to construct and operate the proposed station. A need for additional service such as proposed by the applicant does exist in the area proposed to be served, and this application may be granted within the purview of Section 307 of the Communications Act of 1934 and the Regulations of the Commission with regard to quota, particularly Rule 6(f).

The record is silent as to any possible interference with other applications that may be pending from the same state or zone.

The site at which the applicant proposes to construct and operate the station will conform to the Rules and Regulations of the Commission.

The granting of this application would serve public interest, convenience and necessity.

The Examiner, therefore, recommended that the application of Heitmeyer, the appellant herein, be granted. At the same time he recommended denial of the application of the Wyoming Radio Educational Association, which he had theretofore consolidated for hearing with the appellant's application.

Approximately four months later, on May 1, 1936, the Commission entered its final order denying the application; making no findings and assigning no reasons there-

for, but stating that it would "issue and publish at a subsequent date an opinion setting forth a statement of the facts appearing of record and the grounds for the decision [t]herein reached." On June 12, 1936, the Commission's decision was entered denying the applications of appellant Heitmeyer and that of the Wyoming Radio Educational Association. The latter applicant has not appealed from the decision of the Commission and is not concerned herein.

Section 402(c) of the Communications Act provides that within thirty days after the filing of an appeal "the Commission shall file with the court the originals or certified copies of all papers and evidence presented to it upon the application involved, and also a like copy of its decision thereon, and shall *within thirty days thereafter file a full statement in writing of the facts and grounds for its decision as found and given by it, . . .*" [Italics supplied].

The language of the section quoted is ambiguous. The phrase, "within thirty days thereafter", indicates the intention of Congress that in case of appeal the Commission shall have additional time, totaling sixty days from the filing of the appeal, within which to prepare and file "a full statement in writing of the facts and grounds for its decision. . . ." The language immediately following, "as found and given by it", is susceptible of the interpretation that findings of fact should have been prepared prior to, or simultaneously with the entry of its decision. Such an interpretation, however, would defeat the very purpose of Congress in allowing the additional thirty days—unless we are prepared to hold that the "full statement in writing of the facts" means something more than findings of fact. Such a holding would be without meaning because on appeal this court will have before it the full record of the evidence. A statement greater in detail than findings, and less in detail than the record itself, would serve no useful purpose. In order to reconcile the two quoted phrases, therefore, and to secure harmony and consistency in the requirements of the statute, it is necessary to interpret the language, "found and given by it", as requiring the Commission to publish something less than findings of fact previous to or coincident with the entry of the decision. This can be accomplished by requiring it to file with its decision the grounds therefor and "a brief factual statement of the reasons" relied upon. As we said in *Missouri Broadcasting Corporation v. Federal Communications Commission*, (No. 6869, decided December 6, 1937) — F. (2d) —, — App. D. C. —:

The exact language is—file a full statement in writing of the facts and grounds for its decision *as found and given by it*. The six words we have emphasized imply, we think, that the grounds of decision and a brief factual statement of the reasons



therefor have been previously given, that is, previously to the filing of the full statement, *i. e.*, findings of fact, in this court.

The reasoning brings us to the further definite conclusion that Congress intended the "full statement in writing of the facts . . . found . . . by it," which the Commission is required to file within sixty days after the filing of the appeal, to be of the same general form and character as findings of fact well known to trial courts. The words are properly susceptible of no other meaning. Moreover, there is no reason to suppose that Congress intended to establish a different rule of procedure, in this respect, for the Communications Commission than for other similar governmental boards and commissions which are engaged in quasi-judicial determinations. *Beaumont, S. L. & W. Ry. v. United States*, 282 U. S. 74, 86; see also, *Virginian Ry. v. United States*, 272 U. S. 658, 674. This conclusion is borne out also by the language of Section 402(e), which limits review of decisions of the Commission to questions of law and then provides that "*findings of fact* by the Commission, if supported by substantial evidence, shall be conclusive unless it shall clearly appear that the findings are arbitrary or capricious." [Italics supplied]

The questions which we must decide then, are: (1) Did the Commission make findings of fact? (2) If so, were they supported by substantial evidence? (3) Were they arbitrary or capricious? (4) Do they support the conclusions of law reached by the Commission in its decision?

We find nothing in the record, or its index, which bears the title "Findings of Fact." We do find a "Statement of Facts and Grounds for Decision." For convenience this "Statement" is set out—in so far as it is pertinent to this appeal—as follows:

#### *Statement of Facts and Grounds for Decision*

\* \* \* \*

This proceeding arose upon the applications of Paul R. Heitmeyer for a construction permit to erect a new broadcast station at Cheyenne, Wyoming, to operate on the frequency of 1210 kc, with power of 100 watts, 250 watts local sunset, unlimited hours of operation; and of Wyoming Radio Educational Association for a construction permit to erect a new broadcast station at Cheyenne, Wyoming, to operate on the frequency of 630 kc, with power of 500 watts, 1 kw local sunset, unlimited hours of operation.

The Commission was unable to determine from an examination of the applications that the granting thereof would serve public interest, convenience and necessity, and designated the same for public hearing, pursuant to Section 309(a) of the Com-

munications Act of 1934, before an examiner appointed by the Commission. Notice of time and place of hearing was given the applicant and other interested parties. Pursuant to said notice, the application was heard before an examiner on October 30, 1935. . . .

Cheyenne, Wyoming, is the capital of the State, and is situated near the southeast corner thereof. The population is 17,361 (census of 1930), and Fort Warren, an Army post situated just outside the city, has an estimated population of 4,000. There are approximately 275 retail stores in the city, which did an estimated total volume of business of approximately seven million dollars in 1933. A number of jobbing establishments are located in the city, and railroad shops employ a considerable number of men. The surrounding territory is devoted principally to stock raising, and in some sections farming is engaged in.

#### *With Respect to the Application of Paul R. Heitmeyer*

Paul R. Heitmeyer, applicant herein, testified that he is an American citizen by birth, and is therefore legally qualified to be a licensee. It appears that he has been actively engaged in various capacities in radio broadcasting for about fifteen years, and he is at present employed as Manager for Broadcast Station KLO at Ogden, Utah. The Commission is of the opinion that the applicant is technically qualified.

*With respect to the financial qualifications of the applicant, he testified in the hearing on October 29, 1935, in the matter of his application for the Salt Lake City, Utah, station, the record of which was by stipulation incorporated into this record, that he estimated his financial worth to be \$2500.00. However, on July 15, 1935, he filed a sworn statement, as a part of this application, showing assets of \$7,271, with liabilities of \$474. Mr. Heitmeyer testified that a deposit had been placed to his credit by Mr. A. L. Glasman, who, it appears, is publisher of the Ogden Standard Examiner, and who also owned the controlling interest in Interstate Broadcasting Corporation, licensee of Station KLO at Ogden, Utah. The deposit was made by Mr. Glasman as a loan to Mr. Heitmeyer for the construction and operation of two broadcast stations, namely, the proposed station applied for herein, and another station at Salt Lake City, Utah. (Docket 2980.)*

*The record discloses further that the applicant intends, in the event this application, and the one for a construction permit for the station at Salt Lake City, Utah, are granted, to form a corporation for each station and request the consent of the Commis-*



sion to assign the licenses of said stations to the corporations. Under the terms of the agreement between Mr. Glasman and Mr. Heitmeyer by which the loan was made, Mr. Heitmeyer agreed to pay 6% interest on the principal, and to repay the loan within five years. However, in the event the loan is not paid under those terms, Mr. Heitmeyer is obligated to assign to Mr. Glasman 48% of the stock of the proposed licensee corporations. It also appears that the estimated cost of constructing the proposed station is \$8,890, and the estimated monthly operating expenses are \$1,525. The record is silent as to the estimated monthly revenue expected from the proposed station. Mr. Heitmeyer testified that he intends to reside in Salt Lake City, Utah, and leave the management of the requested station in Cheyenne to an employee and that he will visit the station ten or twelve days per month. He further testified that he had interviewed various residents of Cheyenne and found the sentiment favorable to having a radio station in that city, except that the publishers of the two newspapers very definitely objected to the proposed station.

Upon the record before us, it is clear that the applicant personally is not financially able to construct and operate the proposed station, and that he intends to construct and operate the same, if permitted so to do, entirely on money which he has borrowed, without security, unless it be considered that the requirements for the formation of a new corporation, to whom assignment will be requested, and distribution of 49% of the stock to Mr. Glasman, is security for the loan. If it be so considered, then it is clear that the applicant has failed to show that he is financially qualified to construct and maintain a station of the kind and class applied for, since the loan is conditioned upon approval by the Commission of two applications when filed for assignment of license, which would in effect be a prejudging of those applications, which are not now before the Commission. Manifestly, the Commission is without power under the Communications Act of 1934 to act upon applications not presently before them, nor is it within the spirit of the Act to grant an application when it is apparent that the financial structure is dependent, not upon the applicant, but upon some future unpredictable happening. If it be considered that this stock is not security for the loan, then it is apparent that the applicant has made no sufficient showing of financial responsibility, since the physical equipment of this station may become subject to lien, foreclosure, and seizure by the lender, as a matter of law, in the event the loan is not repaid within the five year period. On the record before us, the applicant must pay back \$20,000, with interest

at 6%, in five years, or something over \$4,000 per year. The Commission is of the opinion, and so found, that the applicant has not made such a showing of his financial responsibility as would justify the Commission in granting the application applied for.

\* \* \* \*

The applicants, Paul R. Heitmeyer and Wyoming Radio Educational Association, both introduced considerable testimony relative to the need for a broadcast station in Cheyenne; the talent available there; and other matters, all of which has been carefully considered by the Commission, but as the showing made by both applicants precludes a grant of either application in any event, it is deemed unnecessary to discuss in detail such showing herein.

After careful consideration of the applications, the evidence adduced at the hearings, the Examiner's Report and the exceptions thereto, and the oral argument, the Commission was of the opinion, and so found, that the public interest, convenience and necessity would not be served by granting the applications. Accordingly, on May 1, 1936, the Commission entered its final order denying the applications of Paul R. Heitmeyer and Wyoming Radio Educational Association, effective at 3 A. M., E. S. T., September 29, 1936. The effective date of this order was later advanced to June 12, 1936. [Italics supplied]

When we analyze this "Statement" we find, first, a history of the case; then a finding concerning Cheyenne, Wyoming, and surrounding territory; then a narrative recital of testimony given by appellant Heitmeyer, and his conclusion that he is legally qualified; then a tentative finding—"it appears that"—concerning Heitmeyer's past and present experience, followed by the Commission's conclusion that he is technically qualified; then three paragraphs concerning Heitmeyer's financial qualifications; then a paragraph in which the Commission states that it is unnecessary to discuss in detail the testimony relative to the need for a broadcasting station in Cheyenne and the talent available there, because "the showing made by both applicants precludes a grant of either application in any event." Finally, there is a paragraph in which the Commission sets out its conclusion that the public interest, convenience and necessity would not be served by granting the applications.

It is to be noted, at this point, that the Commission has narrowed the case down to one question, *i. e.*, Was the applicant financially qualified? Our inquiries, therefore, are similarly narrowed to a consideration of the three italicized paragraphs of the "Statement". Upon them the Commission's decision must stand or fall. Do they contain findings of fact, and, if so, are such findings sup-



ported by substantial evidence? Generally speaking the three paragraphs consist of a more or less indiscriminate commingling of arguments, speculations, statements of fact, narrative recitals of testimony and conclusions of law. Taken as a whole, they cannot be said to constitute findings of fact such as are contemplated by the statute. Necessarily, therefore, they provide a highly unsatisfactory basis for appeal and thus defeat the purpose of the statute; which is to inform the parties and this court of the reasons for the Commission's action, with that high degree of certainty which may properly be expected from a group of administrative experts such as constitute the Communications Commission. *Boss, et al. v. Hardee*, (No. 6849, decided September 20, 1937) — F. (2d) —, — App. D. C. —, 65 W. L. R. 1031.

It is possible to segregate some sentences in these three italicized paragraphs which, standing alone, and perhaps taken out of context, may be regarded as findings. It is possible, also, to spell out tentative or qualified findings from other sentences. Thus, the first sentence of the first italicized paragraph relates that Heitmeyer estimated his financial worth to be \$2500. The next sentence states that, *however*, he filed a sworn statement showing assets of \$7271, with liabilities of \$474. The implication seems to be that there is a conflict in his testimony. Such a result cannot fairly be reached from the record. *San Diego Land & Town Co. v. Jasper*, 189 U. S. 439, 442. The \$2500 about which Heitmeyer testified consisted of money in bank, an automobile, home furnishings and personal effects. In addition he owned \$4000 worth of shares—fully paid for—in the corporation which operated Station KLO in Ogden, Utah. Moreover, the evidence at the hearing disclosed that the liabilities of \$474 had been fully paid at that time. There was no conflict on this point and, if the two sentences referred to constitute a finding, the only part of it which is supported by the evidence is that Heitmeyer showed assets of \$7271. The last two sentences in the first italicized paragraph are supported by the evidence and the testimony there referred to could properly have been formulated into a finding.

The first three sentences in the second italicized paragraph, standing alone, constitute a finding which is supported by substantial evidence. The next sentence, relating to the cost of constructing and operating the proposed station, is supported by the evidence. A careful reading of the record shows that the next sentence, "The record is silent as to the estimated monthly revenue expected from the proposed station", is wholly unsupported by the record. Indeed, the Commission, in its brief, in reviewing the testimony of the witness Haller, quoted therefrom as follows: "A number of the Cheyenne merchants agreed to use time on the proposed station." The brief then states that "on the basis of such a survey the witness estimated that the merchants with whom he talked 'would probably spend within the neighborhood

of \$2,100 a monthth.' " In view of the fact that the Examiner made a correct finding upon the point—among other well prepared findings—the Commission's finding cannot be regarded as other than arbitrary and capricious. While the Commission is not bound by the findings of the Examiner, it is itself charged with the responsibility of making findings. *Radio Commission v. Nelson Bros. Co.*, 289 U. S. 266, 285; *St. Joseph Stock Yards Co. v. United States*, 298 U. S. 38, 53. In this case it would have profited from a more careful consideration of those which the Examiner prepared.

The last two sentences in the second italicized paragraph are supported by substantial evidence so far as they go, and could properly have been formulated into a finding of fact. The vice of the first sentence, however, is its incompleteness, which gives a shading of meaning not supported by the evidence. The evidence upon this point showed—and a finding might properly have been made accordingly—that Heitmeyer is the supervising director and manager of Station KLO at Ogden, Utah. His salary therefor is \$300 per month and will continue, even though he secures the Cheyenne station and devotes approximately ten to twelve days a month to that station, as he expects to do. He has a contract with Mr. Glasman, the controlling stockholder in KLO, so providing and permitting him to engage in any other radio activities, provided he continues to keep KLO financially successful. If and when the permit and license are granted for the Cheyenne station he will have a resident manager for that station working under his direction.

The third of the three italicized paragraphs contains one sentence which, standing alone, constitutes a finding, as follows: "On the record before us, the applicant must pay back \$20,000, with interest at 6%, in five years, or something over \$4,000 per year." This statement, except for the last six words, is supported by the evidence and is covered in part in the preceding paragraph. The last six words constitute a conclusion which is supported by no evidence whatever. There is nothing in the record to prove that Heitmeyer was *required* to pay anything, principal or interest, before the expiration of five years.

Otherwise, the third paragraph is devoid of anything resembling findings except (1) the first sentence, which is so involved with, and dependent upon, a question of law as to be in substance and effect a decision of the latter (*Kansas City So. Ry. v. Albers Comm. Co.*, 223 U. S. 573, 591); and (2) the last sentence, which states the bald conclusion: "The Commission is of the opinion, and so found, that the applicant has not made such a showing of this financial responsibility as would justify the Commission in granting the application applied for." General statements of this kind, following the language of the statute, are not sufficient to constitute findings of fact such as are contemplated by the statute. *Florida v. United States*, 282 U. S. 194, 213. The language used indicates



that this was intended to be the "brief factual statement of the reasons" for the decision contemplated by the statute, given previously to the filing of the findings of fact. See *Missouri Broadcasting Corporation v. Federal Communications Commission*, *supra*. It serves that purpose very well, but does not constitute a finding of fact.

Assuming, for the purposes of this case only, that the three italicized paragraphs constitute findings, we conclude, in answer to our second and third questions, that some of them are supported by substantial evidence, some are not, and some are arbitrary and capricious. Our final question, then, is whether those findings which are supported by substantial evidence, themselves support the conclusions of law and the decision of the Commission. Otherwise stated, the final question is whether those findings support the conclusion that the applicant was not financially qualified to construct and operate the proposed station.

The argument set forth in the third italicized paragraph shows that the Commission decided the case upon the finding contained in the first three sentences of the second italicized paragraph. This is the only valid finding which could support the decision. It is first contended by the Commission that the appellant "intends to construct and operate the same [station] . . . *entirely on money* which he has borrowed. . . ." The finding does not support that contention. It shows instead that appellant had some assets in addition to the borrowed money. Moreover, there is nothing in any of the valid findings which negatives the intent of the applicant to apply revenue from the station toward cost of operation. However, it does clearly appear that he had *insufficient* money to construct the station without that which he borrowed.

It is next contended by the Commission, as one of two alternative propositions, that appellant has failed to show his financial qualification, because (1) the loan is intended to be secured by the distribution to Glasman of 49% of the stock of a proposed corporation; (2) the value of the corporate stock depends on the granting of permission for transfer of the station license to the corporation; (3) this involves in effect the prejudging by the Commission of two applications not yet before it; (4) hence the security for the loan is conditioned on a judgment of the Commission which it is powerless to make. If this contention means that the policy of the Commission is to refuse an application—in all other respects satisfactory—merely because an applicant honestly contemplates the formation of a corporation—in the event his application is granted—to which he will transfer the permit and license, with the consent of the Commission, it would seem to verge closely upon arbitrary and capricious action. It would seem to be a rather idle and expensive gesture to require the formation of a corporation for such a purpose before the securing of a construction permit, when a refusal to grant the permit would auto-

matically abort the whole occasion and purpose of the corporation. It would seem on its face to be a rather severe restriction upon business enterprise and an unnecessary limitation upon the availability of radio service in a particular community. Moreover, it would seem to be a particularly arbitrary and futile procedure in a case such as this, where the applicant fully and fairly revealed his plans. Ordinarily, there would be nothing to prevent an applicant from securing a construction permit and a station license; thereafter forming a corporation; and then requesting permission to make the assignment. Should a penalty be placed upon one who has the foresight to plan his project in advance and reveal its full details? If the applicant is confident that he can make such a showing as to secure the Commission's approval of a subsequent transfer, should the Commission object? In fact, should not the Commission invite just such a revelation of plans so that it can have that contingency in mind when passing on the application for a construction permit, rather than drive the applicant to conceal his plans until after the construction permit has been granted? However, we are not required to decide this question because the first alternative contention of the Commission is not supported by the findings. So far as relevant to this point they read as follows:

. . . Mr. Heitmeyer agreed to pay 6% interest on the principal, and to repay the loan within five years. *However, in the event the loan is not paid under those terms*, Mr. Heitmeyer is obligated to assign to Mr. Glasman 49% of the stock of the proposed licensee corporation(s). [Italics supplied]

It is obvious from the language used in the finding that the assignment of corporate stock by way of security was not contemplated unless and until Heitmeyer had made default in his obligation to repay the loan *within five years*. Heitmeyer insisted throughout his testimony that such was the intention of Glasman and himself, and the Commission found accordingly.

It is apparent that the Commission recognized the invalidity of the above contention because it went on to state a second alternative as follows: The appellant intends to use such borrowed money without giving security therefor; hence he has failed to show sufficient financial responsibility "since the physical equipment of this station may become subject to lien, foreclosure, and seizure by the lender, as a matter of law, in the event the loan is not repaid within the five year period." Assuming that the loan should not be repaid at the end of five years it may well be that foreclosure and seizure might result. Does this possibility support the contention that appellant has thus failed to show his financial qualification? The question, otherwise stated, is whether an application such as Heitmeyer's may be properly denied because the applicant proposes to use borrowed money for the pur-



pose of construction and operation, unless the money borrowed is covered by sufficient collateral or other security to insure the station against lien, foreclosure, and seizure for a longer period than five years. Can such a standard be upheld?

In answering this question we look first for some measure of financial qualification to guide us. We are referred to no rule or regulation of the Commission suggesting such a rigid standard. On such an important question we think the public is entitled to have the statute implemented by a regulation setting out clearly and concisely just what the Commission regards as a minimum standard of financial ability. Evidently Congress had the same intent because the statute provides that all "applications shall set forth such facts as the Commission *by regulation may prescribe* as to . . . *financial, technical, and other qualifications*" of the applicant. [§ 308(b)] [*Italics supplied*]

In the absence of such a guide, the appellant suggests that we look to the practice of the Commission in previous cases as set forth in his brief, although not revealed in the record. We are asked to do this on the theory that the Commission "has not refused to grant construction permits for new stations to those who are qualified and experienced in the operation and management of radio stations simply because they did not have abundant personal finances without borrowing to construct and carry on the operation of the proposed stations." Whether or not the Commission has in the past granted licenses under similar circumstances is immaterial. It is fully authorized to increase, by regulation, the requirements previously imposed if the public interest requires. [§ 303(f)] However, in the absence of a regulation, a common sense view of prevalent business methods would seem to justify the use of such borrowed funds for the purpose, unless some circumstance, special to the radio broadcasting industry, distinguishes it from others.

It is true, as suggested in argument, that Congress has imposed heavy obligations upon the Commission to discover and prevent any alien, criminal, or other improper control of radio broadcasting stations, and to guarantee so far as possible an independent, wholesome policy in management and operation. See Sections 303, 308(b), 310(a), 311, 313. To the same general end the Act gives to the Commission control of assignments and transfers of construction permits [§ 319(b)]; station licenses [309(b)(2)]; and of all rights thereunder, whether such assignments or transfers be voluntary or involuntary, direct or indirect [§ 310(b)].

It is well known that one of the most powerful and effective methods of control of any business, organization, or institution, and one of the most potent causes of involuntary assignment of its interests, is the control of its finances. By establishing a high enough standard of financial qualification, the Commission can eliminate

many of the hazards of such control, direct or indirect in character. It is in the public interest that it should not be impeded in a reasonable exercise of its discretion. The public interest in this respect far outweighs the private interest of any individual applicant. *Reading Broadcasting Co. v. Federal Radio Commission*, 48 F. (2d) 458, 60 App. D. C. 89. Perhaps under some circumstances the Commission might be justified in insisting upon the complete financial independence of an applicant.

In any event, the burden is and should be upon the applicant to satisfy the Commission, not only that he has financial ability to construct and operate a station, but financial ability to construct and operate it free of control, direct or indirect, by any person within the classes proscribed by the statute. *Beebe v. Federal Radio Commission*, 61 F. (2d) 914, 61 App. D. C. 273. See *Campbell v. Galeno Chemical Co.*, 281 U. S. 599, 609.

If, then, it appears from the application, or upon the hearing, that the applicant's financial condition is such that there is a probability that he may lose control of the station or that there may be either a voluntary or an involuntary transfer of his rights in relation thereto, a situation may arise in which the Commission will be called upon to enforce the provisions of the sections to which reference has just been made. *Sproul v. Federal Radio Commission*, 54 F. (2d) 444, 60 App. D. C. 333. Under such circumstances it may be wiser from an administrative point of view to avoid such a contingency by insisting upon the removal of the probability before a permit is granted. If so, it is not our place to question the wisdom of the provisions, or to determine whether the Commission's administrative determination was the wisest under the circumstances. *Radio Commission v. Nelson Bros. Co.*, 289 U. S. 266, 277.

In support of the position taken by the Commission in this case, it can be argued that neither in his original application nor in his financial statement did Heitmeyer reveal his relationship to Glasman. Moreover, it was disclosed at the hearing that Heitmeyer was an employee of Glasman and that he expected to maintain that relationship if and when he should operate the proposed station at Cheyenne. This all lends color to the suggestion made on cross-examination that Heitmeyer was the personal representative of Glasman, or that Glasman was an undisclosed partner and that, in his application and his financial statement, Heitmeyer deliberately avoided revealing Glasman's possible interest in the proposed station.

However, the Commission made no such findings, nor any findings which would support such conclusions. Moreover, the rejection of the application is not placed on any such ground. Again, even if these facts had been found they would not have shown lack of financial qualification *per se*, but merely possible danger of im-



proper control, if the lender happened to be within one of the classes proscribed by Congress.

No matter how good that reason may be generally for excessive caution on the part of the Commission, it loses its force in this case because the lender of the money was himself the owner of a controlling interest in a licensee corporation, and had presumably satisfied all of the exacting requirements of the Commission. If he was acceptable as a licensee, how could it be argued that the applicant who borrowed from him would, as a result thereof, be directly or indirectly controlled by anyone—person, government, or corporation—within the proscription? If such reasoning weighed in the rejection of the application, then the Commission based its decision upon facts and circumstances which do not appear in its findings, and which should not have been considered. *Interstate Commerce Commission v. Northern Pacific Ry.*, 216 U. S. 538, 544-45.

Therefore, in the absence of a showing that the applicant failed to comply with any regulation setting minimum standards of financial qualification; in view of the fact that the source of the applicant's money and his relationship to the lender were fully revealed at the hearing; and in view of the fact that the lender was himself a licensee of the Commission, the argument which we have assumed in support of the Commission's decision falls of its own weight. If the loan was *bona fide*, and there is no finding and no evidence to the contrary, it would seem to stand in the same position as any other legitimate plan of financing.

The question then is whether the regulation imposed—by implication at least—in this case was a reasonable one. The Commission argues that the money which the applicant had in bank was unsecured by collateral and hence the lender might satisfy the obligation by taking over the station. What then would be considered safe? Collateral securing a loan might fail, as much of it did during the recent depression; money in bank, belonging entirely to an applicant might be lost by reason of a bank failure; cash in hand or in a safety deposit box might be stolen. We cannot require the impossible in attempting to guarantee safety. The people of the State of Wyoming and of its capital, Cheyenne, are entitled to radio facilities if there be an applicant available and ready to supply them who can satisfy usual and ordinary standards of business safety. In this period of economic uncertainty financing reasonably assured five years in advance would seem to constitute much more than the average of business security. If the standard of financial responsibility required by the Commission in this case were imposed upon the country generally, business would cease. Under the circumstances, can it be said that the action of the Commission was anything but arbitrary, if not capricious? We think not; especially as its own findings were insufficient to support its

conclusions of law and the decision based thereon. *Florida v. United States*, 282 U. S. 194, 212-15.

The discretion which the Commission is directed to exercise is not absolute. The purpose of the statute is to secure to the people of the several states and communities a fair, efficient and equitable distribution of radio service. The Commission is directed by the statute to apply this standard in considering applications for licenses "when and insofar as there is demand for the same" [§ 307(b)]; and, "if public convenience, interest, or necessity will be served thereby, subject to the limitations of this Act, shall grant to any applicant therefor a station license . . ." [§ 307(a)].

Proper administration of the law by governmental agencies such as the Communications Commission requires careful observance of the procedures established by Congress. For the protection of the people generally, to say nothing of the agencies themselves, convenience of administration cannot be permitted to justify non-compliance with the law, or the substitution of fiat for adjudication. *Interstate Commerce Commission v. Northern Pacific Ry.*, *supra*; *American Sumatra Tobacco Co. v. Securities and Exchange Commission*, (No. 6776, decided September 30, 1937) — F. (2d) —, — App. D. C. —.

The decision, therefore, will be reversed and the case remanded to the Commission with instructions to proceed with the application in conformity with this opinion. This does not mean that it is directed to issue a permit to the appellant. It is not the function of this court "to revise the action of the Commission from an administrative standpoint and to make an administrative judgment . . . the Commission in its further action is to respect and follow the . . . determination of the questions of law" by this court. *Radio Commission v. Nelson Bros.*, 289 U. S. 266, 276, 278.

*Reversed and remanded.*

## FEDERAL TRADE COMMISSION ACTION

### Complaints

The Federal Trade Commission has alleged unfair methods of 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.

**No. 3285.** Alleging unfair competition through the use of misleading representations concerning their business, a complaint has been issued against **Albert L. and Leonard Hilkemeyer**, operating the **Dixie Hatcheries** at 2401 Second Ave., **North Birmingham, Ala.**, also trading under the name **Jefferson Farms**.

Although Leonard Hilkemeyer formerly conducted under the name Jefferson Farms a baby chick hatchery at Jefferson Farms near Birmingham, he ceased all operation of such business about June, 1936, according to the complaint. Since that time, it is alleged, the respondents have continued to use the name Jefferson Farms in certain advertisements relating to the business of Dixie Hatcheries. The result allegedly has been to create the impression among buyers that Dixie Hatcheries and Jefferson Farms were



separate and competing businesses, when in fact there was only one business involved, namely, that conducted under the name Dixie Hatcheries.

**No. 3286.** A complaint alleging unfair competition in the sale of hosiery has been issued against **Alfred Boehm**, 5-7 White St., New York, trading as **Lynx Knitting Company**.

Although purchasing his stock from various manufacturers, Boehm, through the use of the word "Knitting" in his trade name, allegedly advertises his business as that of a manufacturer, when in fact, according to the complaint, he does not own or control factories in which the hosiery he sells is made.

Selling his products chiefly through house-to-house canvassers, the respondent, as an inducement to persons to become his distributors, is alleged to have advertised in "Agents Wanted" columns of magazines to the effect that the hosiery he sells is proof against spots, splashes, and snagging; that it is composed entirely of silk, and that he furnishes his distributors with free sample outfits. The complaint alleges that Boehm hosiery products are not spot, splash or snag-proof; are composed in part of materials other than silk, and that he does not furnish free sample outfits to canvassers, but that they are paid for by the canvassers in cash and by services rendered.

**No. 3287.** Misleading use of the words "satin" and "Pure Dye" in the advertisement of fabrics sold to garment manufacturers is alleged in a complaint issued against **Excello Fabrics, Inc.**, 118 Madison Ave., New York.

Advertising matter inserted in newspapers and trade publications and used on labels and placards furnished by the respondent company allegedly contained representations of the respondent company's "Crysglo" fabrics as "Pure Dye", "Satin", and "Pure Dye Satin." Such designations are alleged to have served as representations that the fabrics and the garments made therefrom were silk. According to the complaint, these assertions were misleading because the products referred to were not composed of silk but of materials other than silk.

### Stipulations

The Commission has entered into the following stipulations:

**No. 01972.** **Dayton Laboratories, Inc.**, trading as **Surete Laboratories**, 1442 Springfield St., Dayton, Ohio, will cease advertising that its product designated Surete is an effective contraceptive and will stop using the word "laboratories" as part of its trade name until it owns and operates a laboratory wherein research and scientific tests are conducted by a competent scientist.

**No. 01973.** **Comet Welder Co.**, Halifax St., Cincinnati, distributor of Comet Welder, a soldering tool, stipulates that it will discontinue advertising that its product embodies a new scientific principle of welding; that it is a genuine electric arc welder, or an arc welder of any kind; that it produces a white-hot flame, or 7,000 degrees of instant intense heat, and is capable of fusing broken parts permanently stronger than ever. In its stipulation, the respondent company admits that its article is a soldering and brazing tool and will not weld metals.

**No. 01974.** **Etta Campbell and Frances M. Heinzelmenn**, trading as **Heinzelmenn Company**, 313 East 12th St., Kansas City, Mo., agree to discontinue representing that Dr. Heinzelmenn's Remedy, also known as Blood Disease Formula, can be used by the sufferer at home with beneficial results regardless of the cause of the ailment or the length of time it has existed. The respondents, who admitted that there is no blood disease for which their preparation could be considered a satisfactory remedy, will cease using the words "Blood Disease Formula" to designate the product.

**No. 01975.** **The Kellogg Company**, Battle Creek, Mich., will stop advertising that its cereal food designated Kellogg's All-Bran regulates, cleanses or has any other direct effect upon the system; that it is a competent treatment for pimples and wrinkles or for any symptom or condition unless such assertion has been justified by competent scientific evidence, and that it ends constipation. The company also will discontinue representing that any article is given free to a purchaser when, in fact, the price thereof is included in that of another article which must be purchased before one is qualified to receive the gift.

**No. 01976.** **James F. Jordan**, trading as **Jordan Laboratories**, R. R. 3, Ithaca, N. Y., will stop advertising that Dr. Jordan's Blood Alternative provides a competent remedy or treatment for high blood pressure, causes pain and suffering to disappear, and is especially prepared to aid in gradually changing the blood pressure to normal so that no violent reaction of the heart

or other organs may occur. The respondent agrees to stop using the word "laboratory" in his trade name until he actually maintains such a place, and will cease using the word "doctor" or the abbreviation "Dr." in connection with his name in advertising his preparation.

**No. 01977.** **Harry Seligman**, trading as **Harry Treats Company**, 1242 South St., Philadelphia, will discontinue representing that his product Rx 1739 is a competent treatment for diseases of the kidneys or bladder and that his Special "D" Herbal Tonic is an effective remedy for sores, eczema, or nervous excitement. He also will desist from advertising that he conducts a medical clinic.

**No. 01978.** **Carnation Company**, 118 Olive St., St. Louis, is engaged in selling a cleaning preparation, medicinal products and cosmetics. Among the representations it will discontinue in advertising its preparations are that Klenjoy Tablets will remove all stains and lengthen the life of clothes; that Carnation Cough Syrup is a competent treatment for colds, irritations of the throat or coughs, unless limited to coughs due to colds; that Bick's Salve is competent in the treatment of colds, bronchitis, tonsillitis, rheumatic and neuralgia pains, or burns; that either Carnaco Vegetable Oil Soap or Sanisalva Salve is an effective remedy for skin irritations; that Cutivel Cold Cream banishes blackheads or wrinkles or brings about a complete transformation of the skin; that Dixlax Tablets will prevent constipation; that Lanabalm relieves gout, rheumatism, neuralgia or lumbago; that in all cases Bick's Aspirin will not upset the stomach or that its use will leave no harmful effects; that Carnation Dental Cream will keep the gums healthy and prevent acid mouth, and that Carnation Hair Vigor will stimulate hair growth and prevent dandruff.

**No. 01979.** **D. Rogers Stewart**, trading as **Stewart School**, 3555 Aberdeen Ave., Alton, Ill., selling a correspondence course in sign painting and lettering, has entered into a stipulation to discontinue representing that any article is given free to a purchaser of his course unless such article is furnished without the payment of money or the rendering of any service.

The respondent also will cease making unmodified representations of earnings in excess of the average earnings achieved under normal business conditions by purchasers of his course.

**No. 01980.** **Estate Stove Co.**, Hamilton, Ohio, in the sale of a heating stove called Estate Heatrola, agrees to abandon certain advertising representations comparing its products to those of competitors unless there is clearly explained the type of appliance with which comparison is made and unless such claims have been justified by competent, reliable tests. Among such allegations are that Estate Heatrola will cut fuel costs by any stated amount or percentage and will not consume half as much coal as other heaters. The respondent company will also cease asserting that unless a stove is an Estate Heatrola it will be "half-heating, fuel-eating," and that this product is the one home heater that pays for itself.

**No. 01981.** **Laco Products, Inc.**, 4201 Philadelphia Ave., Baltimore, will desist from representing that either Laco Olive Oil or Laco Shampoo feeds the scalp; that Laco restores life to hair or overcomes dry and lifeless hair; that it is made from pure olive oil, and that Laco Shampoo contains only olive oil, soda and water.

**No. 01982.** **L. A. Cocklin**, 117 Union St., Griswold, Iowa, trading as **Laco Oil Burner Co.**, in the sale of his oil burners, agrees to stop asserting that they get every atom of heat from the oil used and will produce any definite amount of heat, unless this is limited in reference to actual results proven by scientific tests. The respondent will also discontinue the representation that he makes the only really big stoves or the biggest stove on the market, unless such allegation is qualified as to the type for which this allegation would be a fact.

**No. 01983.** **The H-A Relief, Inc.**, 12 Sherman Ave., Mansfield, Ohio, will discontinue representing that H-A Relief Tablets constitute a competent treatment for asthma or common head cold, and an effective remedy for hay fever or rose cold unless specifically limited to a mild palliative effect.

**No. 01984.** **Otto F. Hempel**, 720 White Building, Buffalo, N. Y., trading as **The Perno Co.** and as **The Bee-Cell Co.**, in the sale of the Bee Cell Supporter, advertised for use in treating certain diseases of women, stipulates that he will cease advertising that the product is effective in treating womb trouble, unless this assertion is limited to refer only to uncomplicated prolapsus.

**Nos. 01985-01986.** **Consolidated Drug Trade Products, Inc.**, 544 South Wells St., Chicago, selling Calocide, agrees to stop asserting that it is a competent treatment or effective remedy for burning, aching or sore feet and similar ailments, unless the representation is limited to the relief of cases caused or aggravated by conditions for which a mild astringent would constitute an



effective treatment. This company also entered into a stipulation to the effect that it will cease representing McCoy's Cod Liver Oil Extract Tablets as being capable of helping one who is run down, lacks resistance, or is constantly subject to colds, or that it will enable one to gain in weight and strength, except when such representations are properly qualified. According to the stipulation, the claims are to be specifically limited to cases in which the conditions are due to or aggravated by a vitamin deficiency which would be supplied by the administration of the tablets in accordance with directions.

**No. 2107. Perey Manufacturing Co., Inc., 101 Park Ave., New York,** under the trade name Perey Turnstile Co., manufactures fare and admission collection equipment, such as turnstiles, electric fare boxes and roto-gates. It agrees to cease the use in advertisements of tabulations of alleged initial cost comparisons of its "Superstiles" with the electric fare box equipment of competitors when such tabulations contain representations the effect of which is to mislead purchasers into believing the initial cost of such competitive equipment is much in excess of or other than what is actually the fact. The respondent company also stipulates that it will cease employing advertising matter which conveys the impression that the equipment of modern buses, when employing electric fare box apparatus, is such as to necessitate the installation, with its attendant cost, of oversize batteries, special wiring and special generators. The respondent corporation will also discontinue using advertising representations the effect of which is to imply that the use of electric fare boxes sold by competitors will entail expenditure of \$200 to cover the cost of battery replacement over two years, the recharging of batteries and replacement of parts; or that insurance is decreased or savings effected on insurance by use of the Superstile rather than the electric fare box equipment of competitors, when such are not the facts.

**No. 2108. Whitewater Brewing Company, Whitewater, Wis., and Alex Weingart,** in the sale of Badger beer, agrees to cease using on labels or in advertising matter the words "The Pride of Wisconsin" or the word "Wisconsin", alone or in connection with the picture of a map of that State so as to imply that the beer so advertised is brewed in Wisconsin, when such is not a fact. According to the stipulation, Whitewater Brewing Company, which maintains a branch office in Chicago, purchased the beer designated Badger from a Chicago brewer and resold it.

**No. 2109. Joseph Love, Inc., 1333 Broadway, New York,** in advertising its Princess Elizabeth dresses, agrees to cease using in connection with the name "Princess Elizabeth", representations, pictorial or otherwise, and insignia identifying the name with the present British Heir Apparent, the effect of which may tend to lead purchasers to believe that the dresses are of English make or origin or have received the endorsement of a member of the British Royal Family, when such is not a fact. On tags attached to the dresses, according to the stipulation, appeared the words "Authentic Princess Elizabeth Dresses Created by Love" together with pictures of English scenes and insignia and of a girl seated upon a throne, although the dresses so advertised were neither made in England nor endorsed by a member of the British Royal Family.

**No. 2114. Rossman-Weaver Company, Elizabethtown, Pa., trading as Blair Shirt Company,** will stop the use on labels attached to shirts it sells of the word "Non-Wilt" so as to imply that the collars are of fused construction or that, because of such implied non-wilt or fused construction, they will retain soft collar comfort and starched neatness and will not curl or wrinkle, when such are not the facts. The company, which has a sales office at 1180 Broadway, New York, will discontinue employing the words "Full Shrunken" or words of similar meaning to describe shirts which have not been pre-shrunk as that term is generally understood by the trade and purchasing public.

### Cease and Desist Orders

The Commission has issued the following cease and desist orders:

**No. 2573. Pennsylvania Whiskey Distributing Corporation, 135 Johnson St., Brooklyn, N. Y.,** has been ordered to cease and desist from representing that it is a distiller of whiskey, gin and other spirituous beverages, when such is not a fact.

Under the order, the respondent corporation is prohibited from representing, through use of the abbreviation "Dist." in its corporate name, on labels, or otherwise, that it is a distiller of spirituous beverages, that it manufactures such products through the process of distillation, or that it owns or operates a distillery, unless it actually does own or operate such a place.

**No. 3103. Prohibiting certain unfair methods of competition in the sale of maps,** an order to cease and desist has been issued against **Lawton V. and Henry F. Crocker, of Chester, Vt.,** trading as **The National Survey Co., and The National Survey.**

The order directs these respondents to stop representing through use of the word "Official", alone or in connection with the words "National" or "National Survey" printed on their maps, or in any other manner, that such maps are "Official" publications of or are authorized by Federal or State authorities, unless such maps are in fact official publications of and have been authorized by such authorities.

**No. 3236. Prohibiting certain unfair methods of competition in the sale of furs,** an order to cease and desist has been issued against **Fox-Weis Company, 1130 Chestnut St., Philadelphia,** a distributor of furs and fur coats.

In the sale of garments made from dyed muskrat or dyed coney (rabbit) fur, the respondent company, under the order, is directed to cease describing such articles in any other way than by the use of the correct name of the fur as the last word of the description thereof. Findings are that coney and muskrat furs resembling seal were in certain instances advertised as seals without qualification of any kind. In other advertisements, the phrases "dyed coney" or "dyed muskrat" appeared in small type and separated from the seal designations.

## FEDERAL COMMUNICATIONS COMMISSION ACTION

### Hearing Calendar

The following hearings in broadcast cases are scheduled before the Commission for the week beginning Monday, January 3.

Thursday, January 6

### ORAL ARGUMENT BEFORE THE COMMISSION

#### Examiner's Report No. I-490:

NEW—Warren B. Worcester, San Diego, Calif.—C. P., 1400 kc., 250 watts, 1 KW LS, unlimited time. *Other participants:* WIRE, Indianapolis, Ind.; KTUL, Tulsa, Okla.; KDON, Monterey, Calif.; KECA, Los Angeles, Calif.; KGB, San Diego, Calif.; Smith, Keller & Cole, San Diego, Calif.; Radiotel Corp., San Diego, Calif.

#### Examiner's Report No. I-493:

NEW—Philadelphia Radio Broadcasting Co., Philadelphia, Pa.—C. P., 1570 kc., 1 KW, unlimited time.  
NEW—Abraham Plotkin, Chicago, Ill.—C. P., 1570 kc., 1 KW, unlimited time. *Other participants:* WFIL, Philadelphia, Pa.; WDAS, Philadelphia, Pa.; WIBG, Glenside, Pa.; WIP, Philadelphia, Pa.; The Journal Co. (Milwaukee Journal), Milwaukee, Wis.; Mid-Atlantic Corp., Washington, D. C.; Trenton Times, Trenton, N. J.

Friday, January 7

### ORAL ARGUMENT BEFORE THE COMMISSION

#### Examiner's Report No. I-399 (Re-argument):

KSFO—The Associated Broadcasters, Inc., San Francisco, Calif.—Voluntary assignment of license to Columbia Broadcasting System of California; 560 kc., 1 KW, unlimited time. *Other participants:* None.

### HEARING BEFORE AN EXAMINER (Broadcast)

WFIL—WFIL Broadcasting Co., Philadelphia, Pa.—C. P., 560 kc., 1 KW, 5 KW LS, unlimited time. Present assignment: 560 kc., 500 watts, 1 KW LS, unlimited time (C. P., 1 KW, 1 KW LS, and S.A. 1 KW night). *Other participants:* WMCA, New York, N. Y.; WGR, Buffalo, N. Y.; WIND, Gary, Ind.; WSyr-WSYU, Syracuse, N. Y.; WBZA, Boston, Mass.; WQAM, Miami, Fla.; Pottsville News & Radio Corp., Pottsville, Pa.

NEW—Tri-City Broadcasting Co., Inc., Schenectady, N. Y.—C. P., 950 kc., 1 KW, 1 KW LS, unlimited time. *Other participants:* WABY, Albany, N. Y. (Intervenor); WOKO,



Albany, N. Y. (Intervenor); WRC, Washington, D. C.; WELI, New Haven, Conn.; KMBC, Kansas City, Mo.; WBZ, Boston, Mass.; WBZA, Boston, Mass.; WCSH, Portland, Maine; WAAT, Jersey City, N. J.; WHAL, Saginaw, Mich.; Lawrence K. Miller, Pittsfield, Mass.; Troy Broadcasting Co., Inc., Troy, N. Y.; Citizens Broadcasting Corp., Schenectady, N. Y. (Intervenor).

WLBL—State of Wisconsin, Department of Agriculture and Markets, Stevens Point, Wis.—Modification of license, 900 kc., 1 KW, 5 KW LS, specified hours 6 a. m. to 10 p. m., CST. Present assignment: 900 kc., 5 KW, daytime. *Other participants:* WSJS, Winston-Salem, N. C.; WBEN, Buffalo, N. Y.; WTAD, Quincy, Ill.; WJAX, Jacksonville, Fla.; WKY, Oklahoma City, Okla.

WILL—University of Illinois, Urbana, Ill.—C. P., 580 kc., 5 KW, daytime. Present assignment: 580 kc., 1 KW, daytime. *Other participants:* WDBO, Orlando, Fla.; WIND, Gary, Ind.; WTAG, Worcester, Mass.; WCHS, Charleston, W. Va.; Wm. F. Huffman, Wisconsin Rapids, Wis.

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

#### January 14

### ORAL ARGUMENT BEFORE THE COMMISSION

#### Examiner's Report No. I-526:

Earl J. Smith and William Mace, d/b as Smith & Mace, Saranac, New York.—Voluntary assignment of license to Upstate Broadcasting Corp.; 1290 kc., 100 watts, daytime.

#### January 24

### ORAL ARGUMENT BEFORE THE COMMISSION

#### Examiner's Report No. I-395 (Re-argument):

NEW—The Journal Co. (The Milwaukee Journal), Milwaukee, Wis.—C. P., 1570 kc., 1 KW, unlimited time.

NEW—Mid-Atlantic Corporation, Washington, D. C.—C. P., 1570 kc., 1 KW, unlimited time.

NEW—The Trenton Times, Trenton, N. J.—C. P., 1570 kc., 250 watts, unlimited time.

NEW—The Trenton Times, Trenton, N. J.—C. P., 1570 kc., 250 watts, unlimited time.

NEW—The Trenton Times, Trenton, N. J.—C. P., 1570 kc., 250 watts, unlimited time.

#### Examiner's Report No. I-412 (Re-argument):

NEW—Pacific Acceptance Corp., San Diego, Calif.—C. P., 1200 kc., 100 watts, daytime.

#### Examiner's Report No. I-327 (Re-argument):

NEW—Smith, Keller & Cole, San Diego, Calif.—C. P., 1200 kc., 100 watts, daytime.

#### Examiner's Report No. I-505:

NEW—The Colonial Network, Inc., Providence, R. I.—C. P., 720 kc., 1 KW, limited time.

#### Examiner's Report No. I-388:

NEW—Cumberland Broadcasting Co., Inc., Portland, Maine.—C. P., 1210 kc., 100 watts, unlimited time.

NEW—Twin City Broadcasting Co., Inc., Lewiston, Maine.—C. P., 1210 kc., 100 watts, unlimited time.

NEW—Philip J. Wiseman, Lewiston, Maine.—C. P., 1210 kc., 100 watts, unlimited time.

NEW—Harriett M. Alleman and Helen W. MacLellan, d/b as Cape Cod Broadcasting Co., Barnstable Township, Mass.—C. P., 1210 kc., 100 watts, 250 watts LS, unlimited time.

NEW—George M. Haskins, Hyannis, Mass.—C. P., 1210 kc., 100 watts, 250 watts LS, unlimited time.

NEW—Arthur E. Seagrave, Lewiston, Maine.—C. P., 1420 kc., 100 watts, 250 watts LS, unlimited time.

#### February 3

### ORAL ARGUMENT BEFORE THE COMMISSION

#### Examiner's Report No. I-397 (Re-argument):

NEW—The Metropolis Company, Jacksonville, Fla.—C. P., 1290 kc., 250 watts, unlimited time.

#### Examiner's Report No. I-461:

NEW—Ann Arbor Broadcasting Co., Inc., Ann Arbor, Mich.—C. P., 1550 kc., 1 KW, unlimited time.

#### Examiner's Report No. I-417 (Re-argument):

WSOC—WSOC, Inc., Charlotte, N. C.—C. P., 600 kc., 250 watts, 1 KW LS, unlimited time. Present assignment: 1210 kc., 100 watts, 250 watts LS, unlimited time.

#### Examiner's Report No. I-127 (Re-argument):

NEW—Bellingham Publishing Co., Bellingham, Wash.—C. P., 1420 kc., 100 watts, unlimited time.

#### Examiner's Report No. I-431:

NEW—Curtis Radiocasting Corp., Indianapolis, Ind.—C. P., 1500 kc., 100 watts, 250 watts LS, specified hours.

WKBV—Knox Radio Corporation, Richmond, Ind.—Modification of license, 1500 kc., 100 watts, unlimited time. Present assignment: 1500 kc., 100 watts, specified hours.

#### February 4

### HEARING BEFORE AN EXAMINER (Broadcast)

WCLS—R. W. Hoffman, Transferor, and L. W. Wood, Transferee, Joliet, Ill.—Transfer of control of corporation; 1310 kc., 100 watts, specified hours.

KRQA—J. Laurance Martin, Assignor, and I. E. Lambert, Assignee, Santa Fe, N. Mex.—Voluntary assignment of license; 1310 kc., 100 watts, unlimited time.

WRTD—The Times Dispatch Pub. Co., Inc., Assignor, and Times Dispatch Radio Corp., Assignee, Richmond, Va.—Voluntary assignment of license; 1500 kc., 100 watts, unlimited.

#### February 11

### ORAL ARGUMENT BEFORE THE COMMISSION

#### Examiner's Report No. I-439:

NEW—Chase S. Osborn, Jr., Fresno, Calif.—C. P., 1440 kc., 500 watts, unlimited time.

#### Examiner's Report No. I-507:

KRE—Central California Broadcasters, Inc., Berkeley, Calif.—C. P., 1440 kc., 500 watts, 1 KW LS, unlimited time. Present assignment: 1370 kc., 100 watts, 250 watts LS, unlimited time.

#### February 17

### ORAL ARGUMENT BEFORE THE COMMISSION

#### Examiner's Report No. I-509:

NEW—The Louisville Times Co., Louisville, Ky.—C. P., 1210 kc., 100 watts, unlimited time.

NEW—S. O. Ward and P. C. Ward, d/b as Louisville Broadcasting Co., Louisville, Ky.—C. P., 1210 kc., 250 watts, daytime.

#### Examiner's Report No. I-510:

NEW—Southwest Broadcasting Co., Prescott, Ariz.—C. P., 1500 kc., 100 watts, 250 watts LS, unlimited time.

NEW—W. P. Stuart, Prescott, Ariz.—C. P., 1500 kc., 100 watts, unlimited time.

#### Examiner's Report No. I-512:

NEW—Harry Schwartz, Tulsa, Okla.—C. P., 1310 kc., 250 watts, daytime.

#### Examiner's Report No. I-513:

NEW—Clark Standiford, L. S. Coburn and A. C. Sidner, Fremont, Nebr.—C. P., 1370 kc., 100 watts, unlimited time.

#### February 18

### ORAL ARGUMENT BEFORE THE COMMISSION

#### Examiner's Report No. I-517:

NEW—Standard Life Insurance Company of the South, Jackson, Miss.—C. P., 1420 kc., 100 watts, 250 watts LS, unlimited time.

#### Examiner's Report No. I-518:

NEW—Arthur Lucas, Savannah, Ga.—C. P., 1310 kc., 100 watts, unlimited time.



February 24

## ORAL ARGUMENT BEFORE THE COMMISSION

### Examiner's Report No. I-521:

NEW—The Birmingham News Company, Birmingham, Ala.—C. P., 590 kc., 1 KW, unlimited time.

### Examiner's Report No. I-522:

NEW—Radio Station WFNC, C. Frank Walker and Waldo W. Primm, Fayetteville, N. C.—C. P., 1210 kc., 250 watts, daytime.

NEW—Capitol Broadcasting Co., Inc., Raleigh, N. C.—C. P., 1210 kc., 100 watts, 250 watts LS, unlimited time.

### Examiner's Report No. I-524:

KQV—KQV Broadcasting Company, Pittsburgh, Pa.—C. P., 1380 kc., 1 KW, unlimited time. Present assignment: 1380 kc., 500 watts, simultaneous day WSMK, shares hours at night.

WSMK—WSMK, Inc., Dayton, Ohio.—C. P., 1380 kc., 250 watts, 500 watts LS, unlimited time. Present assignment: 1380 kc., 200 watts, simultaneous day KQV, specified hours night.

February 25

## ORAL ARGUMENT BEFORE THE COMMISSION

### Examiner's Report No. I-435:

NEW—West Texas Broadcasting Co., Wichita Falls, Tex.—C. P., 1380 kc., 1 KW, unlimited time.

NEW—Wichita Broadcasting Co., Wichita Falls, Tex.—C. P., 620 kc., 250 watts, 1 KW LS, unlimited time.

NEW—Faith Broadcastng Co., Inc., Wichita Falls, Tex.—C. P., 1380 kc., 1 KW, 5 KW LS, unlimited time.

KFPL—C. C. Baxter, Dublin, Tex.—Voluntary assignment of license to WFTX, Inc.; 1310 kc., 100 watts, 250 watts LS, unlimited time. Present assignment: 1310 kc., 100 watts (C. P., 250 watts LS), unlimited time.

KFPL—WFTX, Inc., Wichita Falls, Tex.—C. P., 1500 kc., 100 watts, 250 watts LS, unlimited time. Present assignment: 1310 kc., 100 watts (C. P., 250 watts LS), unlimited time.

The Commission has taken the following action:

WCBA—B. Bryan Musselman, Allentown, Pa.—Granted motion to continue hearing date on application for renewal of license application (Docket No. 4568) from January 5, 1938, to approximately six weeks from present hearing date.

WSAN—WSAN, Inc., Allentown, Pa.—Granted motion to continue hearing date on application for renewal of license application (Docket No. 4569) from January 5, 1938, to approximately six weeks from present hearing date.

NEW—Colonial Broadcasting Corp., Norfolk, Va.—Granted petition authorizing taking of depositions at Room 1015 Bank of Commerce Building, Norfolk, Virginia, beginning 10:00 o'clock a. m., January 3, 1938, in re application for new station at Norfolk, Virginia, 1370 kc., 100 watts, 250 watts LS, unlimited time (Docket No. 4903).

KSFO—The Associated Broadcasters, Inc., San Francisco, Calif.—Granted petition of The Associated Broadcasters, Inc. (KSFO) assignor, and Western Broadcast Company (now Columbia Broadcasting System of California), assignee, (consent to voluntary assignment of license (Docket No. 4208) for enlargement of time for oral argument from thirty minutes to one hour (January 7, 1938).

NEW—Joe L. Smith, Beckley, W. Va.—Granted request of applicant to take depositions at the office of the president of the Beckley National Exchange Bank, 40 Main Street, Beckley, West Virginia, beginning at 9 a. m. on January 10, 1938, in re application for a new station at Beckley, West Virginia, 1210 kc., 100 watts, 250 watts LS, unlimited time (Docket No. 4905).

WRDO—WRDO, Inc., Augusta, Maine.—Designated for hearing application for renewal of license and granted temporary license pending hearing and decision.

W8XNR—West Virginia University, Morgantown, W. Va.—Granted temporary authority to operate for research purposes only, pending submission and consideration of formal application for the period December 27, 1937, to January 29, 1938.

WCAU Broadcasting Co., Philadelphia, Pa.—Granted special temporary authorization to operate a relay broadcast transmitter aboard the aircraft NC-18433, on the frequency 2790 kc., for test transmission on December 24, 1937, relay

broadcast program consisting of arrival of Santa Claus and reindeer in Philadelphia and being towed over city by airplane and to be rebroadcast by Station WCAU.

KADA—C. C. Morris, Ada, Okla.—Granted special temporary authorization to operate from local sunset (December sunset, 5:15 p. m.), December 31, 1937, to 2:30 a. m., CST, January 1, 1938, in order to broadcast special New Year's Eve program on Mutual Broadcasting System and Okla. network; also operate from local sunset (January sunset, 5:45 p. m.) to 10:30 p. m., CST, January 2, 9, 16, 23, 30, 1938, in order to broadcast Old Fashioned Revival.

WPG—City of Atlantic City, Atlantic City, N. J.—Granted special temporary authorization to operate from 11 p. m., December 31, 1937 to 12:30 a. m., EST, January 1, 1938, in order to broadcast special dance music, featuring suitable New Year's greetings (provided station WBIL remains silent).

The Commission (by Sykes, Commissioner) also took the following action:

WRAX—WRAX Broadcasting Co., Philadelphia, Pa.—Granted extension of special temporary authorization to increase power to 1000 watts night in order to counteract interference caused by station CMX, Havana, Cuba, WWJ, Detroit, Michigan, KPRC, Houston, Texas, for the period beginning December 30, 1937, and ending in no event later than January 29, 1938.

WAPI—Alabama Polytechnic Institute, University of Alabama and Alabama College (Board of Control of Radio Broadcasting Station WAPI), Birmingham, Ala.—Granted special temporary authorization to operate simultaneously with station KVOO with reduced power of 1 KW, from 5:30 p. m. to conclusion of Rose Bowl football game (approximately 7 p. m., CST), January 1, 1938.

KVOO—Southwestern Sales Corp., Tulsa, Okla.—Granted special temporary authorization to operate simultaneously with Station WAPI with reduced power of 1 KW, from 5:30 p. m. to conclusion of Rose Bowl football game (approximately 7 p. m., CST), January 1, 1938.

WFIL—WFIL Broadcasting Company, Philadelphia, Pa.—Granted special temporary authorization to operate on 560 kc., with power of 1 KW night for the period beginning January 1, 1938, and ending in no event later than January 31, 1938, inclusive, pending filing of and action on license application to cover construction permit for this authority.

WHDF—Upper Michigan Broadcasting Co., Calumet, Mich.—Granted special temporary authorization to operate from 8 a. m. to 10:30 a. m. and from 12:30 p. m. to 3:30 p. m., CST, January 1, 1938, in order to broadcast special New Year's Day program.

KPAC—Port Arthur College, Port Arthur, Texas.—Granted special temporary authority to operate from 5:15 p. m. to 12 midnight, CST, December 29, 1937, in order to broadcast the Port Arthur High School football game by remote control from the stadium in Phoenix, Arizona.

WCOA—Pensacola Broadcasting Co., Pensacola, Fla.—Granted special temporary authority to operate with reduced power of 100 watts for the period beginning December 26, 1937, and ending in no event later than December 31, 1937, in order to give radio audience continuous service while moving equipment to new site.

WMAZ—The Southeastern Broadcasting Co., Macon, Ga.—Granted petition of WMAZ to take depositions in opposition to the application of radio Station WKEU to move from Griffin to Macon, Georgia, and change from 1500 kc., 100 watts, daytime to 1310 kc., 100 watts, 250 watts LS, unlimited time, Docket No. 4894, in the offices of Miller & Lowrey, 515 Georgia Casualty Building, Macon, Georgia, beginning at 10:00 a. m., January 6, 1938.

WPEN—Wm. Penn Broadcasting Co., Philadelphia, Pa.—Granted extension of special temporary authorization to increase power to 1000 watts night in order to counteract interference caused by station CMX, Havana, Cuba, WWJ, Detroit, Mich., KPRC, Houston, Texas, for the period beginning December 30, 1937, and ending in no event later than January 29, 1938.

KGU—Marion A. Mulrony & Advertiser Pub. Company, Honolulu, Hawaii.—Granted special temporary authority to operate for a period of forty-five minutes between 11 p. m. and 12 midnight, LST, December 31, 1937, in order to broadcast Happy New Year's special program.

WJBO—Baton Rouge Broadcasting Company, Inc., Baton Rouge, La.—Granted request to take depositions at the Court of



Appeals Room, State Capitol Building, Baton Rouge, Louisiana, beginning at 10 a. m., January 6, 1938, in re Docket No. 4908.

**KMLB**—Liner's Broadcasting Station, Inc., Monroe, La.—Denied petition asking authority to include in the record "the improved and expanded" program service of station in re application for C. P. to use 620 kc., 500 watts, unlimited time. This station now operates on 1200 kc., 100 watts night, 250 watts day, unlimited time.

**WKEU**—Radio Station WKEU, Macon, Ga.—Granted motion for 60-day continuance of hearing now scheduled for January 18, 1938, in re application for C. P. to use 1310 kc., 100 watts night, 250 watts day, unlimited time, Docket No. 4894. This station now operates on 1500 kc., 100 watts, daytime only.

**Pinellas Broadcasting Co.**, St. Petersburg, Fla.—Granted authority to take depositions of certain witnesses at St. Petersburg, Florida, on January 7, 1938, in re application for new station at St. Petersburg to use 1370 kc., 100 watts night, 250 watts day, unlimited time, Docket No. 4902. Hearing on application now scheduled for January 17, 1938.

**Geo. H. Payne**, San Jose, Calif.—Denied motion to vacate order issued December 16, 1937, granted Floyd A. Parton authority to take depositions in re Parton's application for C. P. to establish a new broadcast station at San Jose to use 1170 kc., 250 watts, daytime, Docket No. 4560.

**WIBA**—Badger Broadcasting Co., Inc., Madison, Wisc.—Granted petition to intervene at hearing of application of Madison Broadcasting Company for C. P. for new broadcasting station at Madison, Wisconsin, to use 1450 kc., 250 watts, unlimited time. Docket No. 4906.

**E. Devore Andrews and Mrs. Annie L. Andrews**, d/b as Greater Greenwood Broadcasting Station, Greenwood, S. C.—Granted authority to take depositions at Greenwood, S. C., beginning at 10:00 a. m., January 10, 1938, in re application for new broadcast station to use 1420 kc., 100 watts night, 200 watts day, unlimited time, Docket No. 4907. Hearing on application scheduled for January 17, 1938.

**Constitution Publishing Co.**, Atlanta, Ga.—Granted motion for continuance of hearing scheduled for January 19, 1938, to an indefinite date, in re application for a new broadcast station at Atlanta to use 1240 kc., 1 KW night, 5 KW day, unlimited time, Docket No. 4912.

**KWLK**—Twin City Broadcasting Corp., Longview, Wash.—Granted extension of time within which to file request for approval of transmitter site and antenna system from December 19, 1937, to January 18, 1938.

**WMBQ**—Joseph Husid, receiver for Metropolitan Broadcasting Corp., Brooklyn, N. Y.—Granted special temporary authorization to operate radio station WMBQ for the period beginning December 30, 1937, and ending in no event later than January 28, 1938, pending action upon any applications affecting station WMBQ.

**WQDM**—E. J. Regan and F. Arthur Bostwick, d/b as Regan and Bostwick, St. Albans, Vt.—Granted special temporary authorization to operate from 9:45 p. m., December 31, 1937, to 2 a. m., EST, January 1, 1938, using power of 500 watts,

in order to broadcast principal features of program of the Forty and Eight organization, which is a branch of the American Legion and the American Legion Auxiliary.

**KGGC**—The Golden Gate Broadcasting Co. (Robt. J. Craig), San Francisco, Calif.—Granted special temporary authorization to operate from 11 p. m., December 31, 1937, to 6 a. m., PST, January 1, 1938, in order to broadcast special program on New Year's Eve, in cooperation with the Traffic Bureau of the San Francisco Police Department.

## APPLICATIONS RECEIVED

### First Zone

**WLAW**—Hildreth & Rogers Co., Lawrence, Mass.—License to 680 cover construction permit (B1-P-1058) as modified, for a new station.

**WESG**—Cornell University, Elmira, N. Y.—Extension of special 850 experimental authorization to operate on 850 kc., daylight to sunset at New Orleans, Louisiana for period 2-1-38 to 8-1-38.

**NEW**—Community Broadcasting Service, Inc., Area of Bangor, Maine.—Construction permit for a new experimental relay broadcast station to be operated on 31100, 34600, 37600, 40600 kc., 12 watts.

### Second Zone

**WBCM**—Bay Broadcasting Co., Inc., Bay City, Mich.—Construction permit to install a new transmitter.

**WCBA**—B. Bryan Musselman, Allentown, Pa.—Modification of 1440 license to change power from 500 watts to 1 KW.

**W8XWJ**—The Evening News Assn., Detroit, Mich.—Construction permit to install a new transmitter and increase power from 100 watts to 500 watts.

**NEW**—The Evening News Assn., Mobile (throughout U. S.)—Construction permit for a new relay broadcast station to be operated on 38900, 39100, 39300, 39500 kc., 1.5 watts.

**NEW**—The Evening News Assn., Mobile (throughout U. S.)—Construction permit for a new relay broadcast station on 1606, 2022, 2102, 2758 kc., 100 watts.

### Third Zone

**WBBZ**—Adelaide Lillian Carrell, Rep. of Estate of Charles Lewis 1200 Carrell, Ponca City, Okla.—Involuntary assignment of license from C. L. Carrell to Adelaide Lillian Carrell, Executrix of Estate of Charles Lewis Carrell, Deceased.

**NEW**—P. W. Spencer, Rock Hill, S. C.—Construction permit for 1500 a new station to be operated on 1500 kc., 100 watts, daytime.

### Fourth Zone

No Applications.

### Fifth Zone

No Applications.