

ASCAP SIGNS CONSENT DECREE

Neville Miller, President of the National Association of Broadcasters, made the following statement Wednesday on hearing that ASCAP had signed a consent decree:

"We hope that the Department of Justice is right in saying that the signing of ASCAP's consent decree is an important step toward arriving at an equitable arrangement for radio's use of ASCAP music. The consent decree requires ASCAP to offer its music to broadcasters on a per-program basis. This is the formula on which we have always wanted to buy the right to use ASCAP music on the air, and months ago we made it quite clear to ASCAP's management that our board of directors would be called together promptly to consider any proposal which ASCAP cared to make based on this formula.

"How imminent a settlement between broadcasting and ASCAP may be depends on how soon ASCAP can readjust its whole set-up to conform with the terms of the decree and how soon thereafter it will be in a position to work out a proposal for our consideration."

The Department of Justice announced Wednesday that the American Society of Composers, Authors and Publishers had signed a Civil Decree in the U. S. District Court of the Southern District of New York in which it agreed to cease engaging in activities which the Department alleges constitute violations of the Sherman Act. This decree brings to an end litigation started by the Government against ASCAP in 1935.

In the opinion of the Department the decree paves the way for an immediate settlement of the difficulties between ASCAP and the broadcasters which have resulted in the banning of ASCAP music from the air since January 1, 1941. All objectionable practices have been resolved by the decree. The only matter remaining for adjustment is one of price between ASCAP and the broadcasters.

The decree, which becomes effective 90 days after entry, provides:

1. That ASCAP members will not license the public performance rights of copyrighted musical compositions exclusively to ASCAP but are free to license to anyone except Broadcast Music, Inc.

2. ASCAP agrees not to discriminate either in price or terms among the users of copyrighted music. All ASCAP compositions will be offered for performance to all users of the same class on equal terms and conditions.

3. ASCAP agrees to license on a pay-when-you-play basis—that is, broadcasters will be able to buy ASCAP music on a per-program basis if they desire. Users other than broadcasters will be able to buy music on a per-piece basis if desired.

4. ASCAP agrees not to require a license for more than one

station in connection with any network broadcasts. Licenses will be issued to networks' originating stations.

5. Manufacturers of electrical transcriptions or sponsors or advertisers on whose behalf such transcriptions are made will, if they so desire, be able to obtain licenses for the use of such transcriptions for broadcast purposes.

6. ASCAP agrees not to engage in a all-or-none policy for licensing its music—that is, motion picture exhibitors, restaurants, hotels, radio stations and all commercial users of ASCAP music will be able to obtain the right to perform any ASCAP compositions desired without being compelled to take the entire ASCAP catalogue.

7. ASCAP agrees that it will not attempt to restrict performance rights of its music for the purpose of regulating the price of recording its music on electrical transcriptions made for use in broadcasting.

8. ASCAP agrees to abolish its self-perpetuating Board of Directors and to permit election of directors by the membership.

9. ASCAP agrees to modify its membership requirements so as to make eligible any composer who has copyrighted one tune. Under the existing arrangement publication of five songs is required for eligibility.

10. ASCAP agrees to modify the practice of compensating its members so as to make such compensation on the basis of the popularity of its tunes in any given period. Under the present method of distribution, compensation is determined by an elaborate set of rules, including seniority, type of composition, etc.

Disposition of the civil suit by entry of this decree will not dispose of the criminal suit filed against ASCAP in the Eastern District of Wisconsin on February 5, 1941. That case will be disposed of by separate proceedings.

The case was in charge of Victor O. Waters, Special Assistant to the Attorney General, assisted by Warren P. Cunningham, special attorney.

ASCAP's consent decree:

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF NEW YORK
TERM, 1941

UNITED STATES OF AMERICA, *Plaintiff*,

vs.

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS:
Gene Buck, President; George W. Meyer, Secretary; and Gustave Schirmer, Treasurer, *Defendants*.

CIVIL ACTION—File No. 1395

CIVIL DECREE

This cause came on to be heard on this _____ day of _____ 1941, the plaintiff being represented by Thurman Arnold, Assistant Attorney General, Victor O. Waters, Special Assistant to the Attorney General, and Warren Cunningham, Jr., Special Attorney, and the defendants being represented by

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Neville Miller, *President* C. E. Arney, Jr., *Assistant to President*

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*

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their counsel, and having appeared and filed their answer to the complaint herein.

It appears to the Court that defendants herein have consented in writing to the making and entering of this decree, without any findings of fact, upon condition that neither such consent nor this decree shall be construed as an admission or adjudication that said defendants have violated any law.

It further appears to the Court that this decree will provide suitable relief concerning the matters alleged in the complaint filed herein and that by reason of the aforesaid consent of defendants and its acceptance by plaintiff it is unnecessary to proceed with the trial of the action, or to take testimony therein, or that any adjudication be made of the facts.

NOW, THEREFORE, Upon motion of plaintiff, and in accordance with said consent, it is hereby

ORDERED, ADJUDGED AND DECREED

1. The Court has jurisdiction of the subject-matter set forth in the complaint and of the parties hereto with full power and authority to enter this decree and the complaint states a cause of action against the defendants under the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies" and the Acts amendatory thereof and supplemental thereto.

2. Defendants, Gene Buck, as President of the American Society of Composers, Authors and Publishers; George W. Meyer, Secretary; Gustave Schirmer, Treasurer; and American Society of Composers, Authors, and Publishers, its officers, directors, agents, servants, employees, members, and all persons acting or claiming to act on its behalf are hereby perpetually enjoined and restrained from entering into or carrying out, directly or indirectly, any combination or conspiracy to restrain interstate trade and commerce, as alleged in the complaint, by doing, performing, agreeing upon, entering upon or carrying out any of the acts or things herein-after in this paragraph II prohibited.

(1) Defendant, American Society of Composers, Authors and Publishers, shall not, with respect to any musical composition, acquire or assert any exclusive performing right as agent, trustee or otherwise on behalf of any copyright owner, its members, or other owner of the performing right, or pursuant to any understanding or agreement with such owner, or its members, to pay for such right a share of, or an amount measured by, the receipts or revenues of said defendants. Nothing herein contained shall be construed as preventing defendant, American Society of Composers, Authors and Publishers, from regulating the activities of its members in the following respects: (a) By requiring all moneys derived from the issuance of licenses by the respective members of defendant to be paid by the licensee to defendant and distributed in the same manner as other revenues; (b) by requiring of its members that notice be given the defendant of their intent to

issue licenses before the issuance of same; (c) by prohibiting the members from issuing exclusive licenses to commercial users of music; (d) by requiring, as a condition precedent to the issuance of a license by an individual member of the Society, the approval and consent, to be obtained by the licensor, of the composer (s), author (s) and publisher subject to such reasonable regulations as may be adopted by the composer (s), author (s), and publisher for that purpose; (e) by prohibiting the members from granting or assigning to persons, firms, corporations or enterprises, including Broadcast Music, Inc., the right to license or assign to others the right to perform publicly for profit the respective copyrighted musical compositions of which performance rights are owned or controlled by the respective members of the defendant Society.

(2) Defendant, American Society of Composers, Authors and Publishers, shall not enter into, recognize as valid or perform any performing license agreement which shall result in discriminating in price or terms between licensees similarly situated; provided, however, that differentials based upon applicable business factors which justify different prices or terms shall not be considered discriminations within the meaning of this sub-paragraph; and provided further that nothing contained in this sub-paragraph shall prevent price changes from time to time by reason of changing conditions affecting the market for or marketability of performing rights.

(3) Defendant, American Society of Composers, Authors and Publishers, shall not require, as a condition to any offer to license the public performance for profit of a musical composition or compositions for radio broadcasting, a license fee of which any part shall be (a) in respect of commercial programs, based upon a percentage of the income received by the broadcaster from programs in which no musical composition or compositions licensed by said defendant for performance shall be performed, or (b) in respect of sustaining programs, an amount which does not vary in proportion either to actual performance, during the term of the license, of the musical compositions licensed by said defendant for performance, or to the number of programs on which such compositions or any of them shall be performed; provided, however, that nothing herein contained shall prevent said defendant from licensing a radio broadcaster, on either or both of the foregoing basis, if desired by such broadcaster, or upon any other basis desired by such broadcaster.

With respect to any existing or future performing license agreement with a radio broadcaster, defendant, American Society of Composers, Authors and Publishers, shall not, if required by such broadcaster, refuse to offer a per program basis of compensation on either or both of the following basis which may be specified by the broadcaster:

- (i) in respect of sustaining programs a per program license fee, expressed in terms of dollars, requiring the payment of a stipulated amount for each program in which musical compositions licensed by said defendant shall be performed;
- (ii) in respect of commercial programs, a per program license fee, either expressed in terms of dollars, requiring the payment of a stipulated amount for each program in which the musical compositions licensed by said defendant for performance shall be performed, or, at the option of defendant, the payment of a percentage of the revenue derived by the licensee for the use of its broadcasting facilities in connection with such program.

In the event that defendant shall offer to license the public performance for profit of a musical composition or compositions for radio broadcasting upon either or both of the foregoing per program basis, and shall also offer to license such performance on a basis of compensation which shall not vary in direct proportion

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FOUR WEEKS TO MOVIN' DAY

Barring strikes, floods, fires and other acts over which we have no control, a large envelope containing at least the following will be mailed Saturday:

- 1—Special Movin' Day theme song written by BMI staff.
- 2, 3 & 4—Three Movin' Day scripts.
- 5—Release by Commissioner T. A. M. Craven.
- 6—"Engineering Aspects of the North American Regional Broadcasting Agreement," by E. K. Jett, chief engineer, Federal Communications Commission.
- 7—Announcements, and
- 8—Perhaps other items.

WRITE ART STRINGER

Stations are now well under way with their promotional plans for Radio Movin' Day. Will you tell us what they are? This kind of cooperation helps everybody.

RADIO GUIDE HELPS

Curtis Mitchell, retiring editor of *Movie-Radio Guide*, announces extensive cooperation with the broadcasting industry to publicize Movin' Day and the new frequency locations.

"In our issue coming to the newsstand the week before the big station Movin' Day we tell readers what it is all about and what they may do by way of alleviating any inconvenience," he wrote.

"The following week we recapitulate the first article and present a station log showing all the stations with their new frequencies, listed alphabetically.

"The following week we will publish another station log giving the frequency of every American station listed according to kilocycles. We believe these special features, which will be played up big on our covers, will do a very satisfactory job."

KEN-RAD TUBE & LAMP CORP. OVER WLW

R. W. Metzner, sales manager of Ken-Rad, will include at least a 150-word Movin' Day editorial plug in his company's 11:15 p. m. program over WLW on Mondays. This schedule started February 24 and will continue through April 14.

ORDER MOVIN' DAY LEAFLETS

Three thousand (3,000) or a million are prepared to get the 2-color leaflets to you in time for effective distribution. Over 400,000 imprinted leaflets will be turned over to parcel post or express company for stations on Saturday.

We will appreciate receiving orders at your early convenience. These leaflets are inexpensive and effective.

FIRST MAYORALTY PROCLAMATION

The chief executive of Hattiesburg, Miss., is the first Mayor to issue a Movin' Day proclamation. News was reported by C. J. Wright, manager, WFOR, who made the contract. He said:

"We are transcribing the Mayor's voice and will present it at opportune times between March 10-29. In addition we have also prepared and transcribed some promotional announcements that we will use in this campaign."

MINNESOTA AND THE NORTHWEST

Writes E. H. Gammons, general manager, WCCO:

"Twin City stations are already at work with the various groups of servicemen . . . the Northern States Power Company in Minnesota and other states in which it operates in the Northwest is distributing the change in frequencies in next month's billings."

Minneapolis and St. Paul stations plan to begin their air campaign around the middle of March.

TOLEDO

J. H. Ryan, vice president, The Fort Industry Company, and head of WSPD, says: "We have received good cooperation from the local gas and electric companies."

ROCHESTER

William Fay, general manager, WHAM, says that Rochester stations have already had a meeting with the Electric League of Rochester, local manufacturers, radio dealers and servicemen, station representatives and advertising agencies. About the middle of the month the stations intend to begin a teaser campaign which will continue for approximately one week. Then stations will devote the remainder of the time to definite announcements regarding the change over of frequencies.

DENVER

Several of the Denver stations have had preliminary conversations as to suitable Movin' Day promotion, according to word from Gene O'Fallon, president, KFEL.

ITHACA

Cornell University's station WHCU, Ithaca, N. Y., has arranged with the local power company for 30,000 of the 2-color leaflets on reallocation to be enclosed with next month's statements. Deal was set by Michael R. Hanna, general manager, WHCU.

CHATTANOOGA

The power company which serves Chattanooga will distribute 42,000 2-color Movin' Day leaflets in March bills on behalf of the city's three stations WAPO, WDEF and WDOD. R. G. Patterson, WAPO, was contact.

THE STATE OF GEORGIA

Joe W. Kling, of the Georgia Power Company, which serves 75% of the entire state, is putting 225,000 logs of Georgia broadcast stations in next months' bills, according to a note from Howard Donahoe, program director, WAGA, Atlanta.

The stuffer is printed on red-orange cover stock. On the reverse side of the enclosure appears the following:

"March 29 Is Moving Day for U. S. Radio Stations

"Beginning March 29, your favorite radio station will have a new 'address' on the dial. On the other side of this card is published a list of all Georgia stations with their old and new frequencies in kilocycles. Use this table to locate your station. Or simply set the dial at the old location number and then vary it slightly up or back. You should be able to pick up your station in that way without difficulty.

"If you have a receiving set with push button tuning, a radio service man should make the proper adjustments for changed frequencies.

"The Georgia Power Company does not sell, install or repair radio sets. This card is sent to you only as a matter of information.

"Georgia Power Company"

The enclosures will go into homes and commercial establishments in the 450,000 square miles of territory served.

AMARILLO

Amarillo, Texas' two stations, KFDD and KGNC, will receive Movin' Day assistance from the Southwestern Public Service Company. Five thousand 2-color leaflets will be inserted in the March bills, according to John Ballard, general manager, KGNC.

ENCLOSED WITH THIS ISSUE

Enclosed with this issue of NAB REPORTS is a planographed copy of the official Movin' Day proclamation issued by the Governor of South Carolina. Like the other governors who have so far proclaimed, this chief executive has gone all the way to cooperate.

SAN DIEGO

J. Clark Chamberlain, secretary-manager, Bureau of Radio and Electrical Appliances, San Diego, Cal., is doing a fine job of promoting Movin' Day. On February 24 he wrote:

"We are working up and now have under production a special log for this territory of which we will print at least 50,000 copies for free distribution. Considerable newspaper advertising will be run by the Bureau. Every possible advantage to be gained from this change will be stressed in this copy. Users will be assured that the entire move is solely in the interest of the better reception.

"In addition to meetings of our Board we have had group discussions of service dealers to make sure that they all understand the magnitude of the change over problem."

COLUMBUS, MISS.

The Columbus City Power and Light Department March bills will contain stuffers "telling of the change-over of WCBI," according to Bob McRaney, general manager of the station.

TWELVE PROCLAMATIONS

Up to Thursday noon, February 27, twelve governors had either issued Radio Movin' Day proclamations or had agreed to do so. The nine unreported cooperating governors are:

Culbert L. Olson—California
Ralph L. Carr—Colorado
*Robert A. Hurley—Connecticut
Henry F. Schriker—Indiana
Keen Johnson—Kentucky
Leverett Saltonstall—Massachusetts
Paul B. Johnson—Mississippi
John W. Bricker—Ohio
Burnet R. Maybank—South Carolina

*Connecticut's governor is prohibited by law from making desired proclamation, but he will issue a statement instead.

Governors reported in NAB REPORTS of February 21 were:

Matthew M. Neely—West Virginia
Homer M. Adkins—Arkansas
Payne Ratner—Kansas

Members of the Governors' Movin' Day Proclamation Committee are:

Name	Station	City and State
*Thomas C. McCray	WTIC	Hartford, Conn.
George Kelley	WCSH	Portland, Maine
*John Shepard III	Yankee Network	Boston, Mass.
Earle Clement	WLNH	Laconia, N. H.
John J. Boyle	WJAR	Providence, R. I.
Charles P. Hasbrook	WCAX	Burlington, Vt.
Harold Smith	WOKO	Albany, N. Y.
J. Gorman Walsh	WDEL	Wilmington, Del.
Alfred J. McCosker	WOR	Newark, N. J.
A. D. Willard, Jr.	WJSV	District of Columbia
John Elmer	WCBM	Baltimore, Md.
Edney Ridge	WBIG	Greensboro, N. C.
*G. Richard Shafro	WIS	Columbia, S. C.
C. T. Lucy	WRVA	Richmond, Va.
*Howard L. Chernoff	WCHS	Charleston, W. Va.
Howard E. Pill	WSFA	Montgomery, Ala.
W. Walter Tison	WFLA	Tampa, Fla.
J. Leonard Reinsch	WSB	Atlanta, Ga.
H. H. Buttner	WKAQ	San Juan, Puerto Rico
Juan Piza	WNEL	San Juan, Puerto Rico
*Ed Zimmerman	KARK	Little Rock, Ark.
James A. Noe	WNOE	New Orleans, La.
*Wiley P. Harris	WJDX	Jackson, Miss.
Harry Stone	WSM	Nashville, Tenn.
*W. L. Coulson	WHAS	Louisville, Ky.
*Richard A. Borel	WBNS	Columbus, Ohio
*Eugene C. Pulliam	WIRE	Indianapolis, Ind.
John E. Fetzer	WKZO	Kalamazoo, Mich.
Leslie C. Johnson	WHBF	Rock Island, Ill.
H. H. Born	WHBL	Sheboygan, Wis.
J. O. Maland	WHO	Des Moines, Iowa
George M. Burbach	KSD	St. Louis, Mo.
John J. Gillin, Jr.	WOW	Omaha, Neb.
Earl H. Gammons	WCCO	Minneapolis, Minn.
F. E. Fitzsimonds	KFYR	Bismarck, N. Dak.
A. A. Fay	KABR	Aberdeen, S. Dak.
*Ben Ludy	WIBW	Topeka, Kans.
Neal Barrett	KOMA	Oklahoma City, Okla.

<i>Name</i>	<i>Station</i>	<i>City and State</i>
Harold Hough	WBAP	Fort Worth, Tex.
*Gene O'Fallon	KFEL	Denver, Colo.
C. G. Phillips	KIDO	Boise, Idaho
Ed Craney	KGIR	Butte, Mont.
S. S. Fox	KDYL	Salt Lake City, Utah
H. L. McCracken	KYAN	Cheyenne, Wyo.
*Howard Lane	KFBK	Sacramento, Calif.
J. Howard Worral	KGMB	Honolulu, Hawaii
W. D. Warren	KOH	Reno, Nev.
Dick Lewis	KTAR	Phoenix, Ariz.
Ivan R. Head	KVSF	Sante Fe, N. Mex.
A. S. Lathrop	KFAR	Fairbanks, Alaska
C. Roy Hunt	KOIN	Portland, Ore.
H. J. Quilliam	KIRO	Seattle, Wash.

* Proclamation received or agreed.

In many states the Governor's office will release a copy of the proclamation to all state papers, to press associations, radio stations and other interested parties. To make sure, however, that all stations receive news of the proclamation, without fail, it is suggested that members of the Governors' Movin' Day Proclamation Committee also notify stations by mail when, as and if the proclamation is issued.

It might be helpful also to carry a line in the letter stating the exact time after which the proclamation may be released. This is because the date of issuance of a proclamation may be later than the date stamped thereon.

LINE UP MAYORS

While the Governors' Committee is arranging matters don't forget to see the Mayors of cities in your service area about similar proclamations or resolutions.

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either to actual performances during the term of the licenses of the musical compositions licensed by said defendant for performance or to the number of programs on which musical compositions licensed by defendant shall be performed, defendant shall act in good faith so that there shall be a relationship between such per program basis and such other basis, justifiable by applicable business factors, including availability, so that there will be no frustration of the purpose of this sub-paragraph to afford radio broadcasters alternative basis of license compensation.

(4) Defendant, American Society of Composers, Authors and Publishers, shall not license the public performance for profit of any musical composition or compositions except on a basis whereby, in so far as network radio broadcasting is concerned, the issuance of a single license, authorizing and fixing a single license fee for such performance by network radio broadcasting, shall permit the simultaneous broadcasting of such performance by all stations on the network which shall broadcast such performance, without requiring separate licenses for such several stations for such performance.

(5) With respect to any musical composition in defendant's catalogue of musical compositions licensed for radio broadcasting and which is or shall be lawfully recorded for performance on specified commercially sponsored programs on an electrical transcription or on other specially prepared recordation intended for broadcasting purposes, said defendant shall not refuse to offer to license the public performance for profit by designated radio broadcasting stations of such compositions by a single license to any manufacturer, producer or distributor of such transcription or

recordation or to any advertiser or advertising agency on whose behalf such transcription or recordation shall have been made who may request such license, which single license shall authorize the broadcasting of the recorded composition by means of such transcription or recordation by all radio stations enumerated by the licensee, on terms and conditions fixed by said defendant, without requiring separate licenses for such enumerated stations.

(6) Defendant, American Society of Composers, Authors and Publishers, shall not, in connection with any offer to license by it the public performance for profit of musical compositions by users other than broadcasters, refuse to offer a license at a price or prices to be fixed by said defendant for the performance of such specific (i.e., per piece) musical compositions, the use of which shall be requested by the prospective licensee.

(7) Defendant, American Society of Composers, Authors and Publishers, shall not, in connection with any offer to license by it the public performance for profit of musical compositions by radio broadcasters, refuse to offer a license on a per performance on per program basis as provided for in paragraph II (3) hereof at a price or prices to be fixed by said defendant for the performance of such programs, the use of which shall be requested by the prospective licensee.

(8) Defendant, American Society of Composers, Authors and Publishers, shall not assert or exercise any right or power nor shall any of its members exercise any right or power to restrict from public performance for profit by any licensee of said defendant any copyrighted musical composition in order to exact additional consideration for the performance thereof, or for the purpose of permitting the fixing or regulating of fees for the recording or transcribing of such composition; provided, however, that nothing in this sub-paragraph shall prevent said defendant or its members from restricting performances of a musical composition in order reasonably to protect the work against indiscriminate performances or the value of the public performance for profit rights therein or to protect the dramatic performing rights therein, or, as may be reasonably necessary in connection with any claim or litigation involving the performing rights in any such composition.

(9) The Society shall not elect the members of the Board of Directors in any manner other than by a membership vote in which all author, composer and publisher members shall have the right to vote for their respective representatives to serve on the Board of Directors. Due weight may be given to the classification of the member within the Society in determining the number of votes each member may cast for the election of directors. Upon the expiration of the terms of office of the present directors, the provisions of this section shall apply to the election of their successors. Thereafter, not less than one-twelfth of the total membership of the Board of Directors shall be elected annually.

(10) Defendant, American Society of Composers, Authors and Publishers, shall provide in its by-laws that the Society shall not distribute to its members the moneys received by granting the right to perform copyrighted musical compositions publicly for profit on any basis other than the number, nature, character and prestige of the copyrighted musical compositions composed, written or published by each member, the length of time in which the works of the member have been a part of the catalog of the Society, and popularity and vogue of such works, all to be determined in a fair and non-discriminatory manner.

(11) Defendant, American Society of Composers, Authors and Publishers, shall not require as a condition precedent to eligibility for author or composer membership in the Society the regular publication of more than one musical composition or writing by any person who regularly practices the profession of writing music and the text or lyrics of musical works.

III. The terms of this decree shall be binding upon, and shall extend to each and every one of the successors in interest of defendant, American Society of Composers, Authors and Publishers, and to any and all corporations, partnerships, associations and individuals who or which may acquire the ownership or control, directly or indirectly, of all or substantially all of the property, business and assets of defendant, American Society of Composers, Authors and Publishers, whether by purchase, merger, consolidation, reorganization or otherwise. None of the restraints or requirements herein imposed upon the defendant shall apply to the acquisition of or licensing of the right to perform musical compositions publicly for profit outside the United States of America, its territories and possessions.

IV. For the purpose of securing compliance with this decree, and for no other purpose, duly authorized representatives of the Department of Justice shall, on the written request of the Attorney General or an Assistant Attorney General and on reasonable notice to defendant, American Society of Composers, Authors and Publishers, made to the principal office of said defendant, be permitted (a) reasonable access, during the office hours of said defendant, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of said defendant, relating to any of the matters contained in this decree; (b) subject to the reasonable convenience of said defendant and without restraint of interference from it, and subject to any legally recognized privilege, to interview officers or employees of said defendant, who may have counsel present, regarding any such matters; and said defendant, on such request, shall submit such reports in respect of any such matters as may from time to time be reasonably necessary for the proper enforcement of this decree; provided, however, that information obtained by the means permitted in this paragraph shall not be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice, except in the course of legal proceedings in which the United States is a party or as otherwise required by law.

V. This decree shall become effective ninety (90) days after the entry hereof, except that the provisions of subparagraph (6) of paragraph II shall become effective nine (9) months after the effective date of the other provisions of this decree.

VI. Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this decree to make application to the Court any time after the effective date hereof for such further orders and directions as may be necessary or appropriate in relation to the construction of or carrying out of this decree, for the modification hereof upon any ground for the enforcement of such compliance herewith and the punishment of violations hereof. Jurisdiction of this cause is retained for the purpose of granting or denying such applications so made as justice may require and the right of the defendant to make such application and to obtain such relief is expressly granted.

United States District Judge.

We hereby consent to the entry of the foregoing decree.

For the complainant:

THURMAN ARNOLD

VICTOR O. WATERS

Special Assistant to the Attorney General

WARREN CUNNINGHAM, JR.

Special Attorney

For the Defendants:

BMI

THE NEW MUSIC CONQUERS CANADA

Broadcasts Music, Inc., announces that it has concluded arrangements for the printing of all of its leading popular tunes in Canada. A recent Canadian edition of 5,000 copies of *I Hear A Rhapsody* was sold within a week and was followed by the second 5,000 which was likewise exhausted within a week. Canada's three best-selling records at the present are *I Hear A Rhapsody*, *Frenesi*, and *You Walk By*, in the order named. Aside from war songs more than 90% of the songs ordered in the Dominion are BMI publications or licensed through BMI.

Copyright counsel for BMI recently appeared before the Copyright Appeal Board of Canada to request four cents out of the eight cents on each licensed receiving set in Canada for performing rights. This is the first time that the Copyright Appeal Board has received claims of two competitive agencies, the entire field having been covered heretofore by the Canadian Performing Rights Society, a subsidiary of ASCAP. The Canadian Association of Broadcasters stated at the hearing that they welcomed BMI to the field as a competitive source of music.

Analysis based on the performance of representative Canadian stations presented at the hearing indicated that total performances in Canada are now in the ratio of three BMI tunes to five ASCAP tunes. Each performing rights agency is required to file its catalogues and its tariff of expected charges with the Canadian Copyright Board for decision. An announcement of the proportion of the eight cents which will be allotted to BMI and to ASCAP is expected soon.

BMI GIVES A SONG TO BRITAIN

Peter Colefax, member of the Administrative Committee of the British War Relief Society, has acknowledged receipt of a letter from M. E. Tompkins, General Manager of Broadcast Music, Inc., which sets forth the desire of the composers of a new song, *The Vesper Bells of Dover*, to contribute their entire royalties from the sale and performance of the song to the Society. At the suggestion of the composers, Mr. Tompkins points out that BMI is also contributing its full share of any profits accruing from the sale and performance of the composition.

The song, written by Don McCray, Robert Sour, and Ernest Gold, appeals to the nostalgia in the heart of every Englishman for a return of "the days we knew

before" and "of the days that once again must be." The chorus follows:

"The quiet hush of evening was falling once again
And the VESPER BELLS WERE RINGING IN DOVER.
Here friends could talk together and wander down the lane
While the VESPER BELLS WERE RINGING IN DOVER.
Now the old cathedral is facing troubled times
But still it welcomes nightfall with the same familiar chimes.
The great white cliffs are watching while waves come rolling in
And the VESPER BELLS KEEP RINGING CLEAR IN DOVER."

BMI FEATURE TUNES

March 3-10

1. HIGH ON A WINDY HILL
2. YOU WALK BY
3. HERE'S MY HEART
4. WHERE'S THE CAPTAIN'S HAT
5. IT ALL COMES BACK TO ME NOW
6. MAY I NEVER LOVE AGAIN
7. I CAN'T REMEMBER TO FORGET
8. WISE OLD OWL
9. ACCIDENT'LY ON PURPOSE
10. KEEP AN EYE ON YOUR HEART
11. BECAUSE OF YOU
12. ALL I DESIRE
13. WALKIN' BY THE RIVER
14. LET'S DREAM THIS ONE OUT
15. LITTLE SLEEPYHEAD
16. TALKING TO THE WIND
17. BREAKFAST FOR TWO
18. I LOOK AT YOU
19. SHADOWS IN THE NIGHT
20. STONE'S THROW FROM HEAVEN

The appeal of BMI tunes to the public is clearly established by their position in the coin machines, in phonograph record sales, and sheet music sales. In this week's issue of *Billboard* 3 of the 6 top numbers in the coin machines and 5 of the 8 in the "coming up" group are numbers published or licensed by BMI. In *Variety*, 6 of the top 10 and 4 of the next 8 are from the BMI list. Phonograph record sales show that the 9 best selling records are all covered by the BMI license, while in sheet music sales the first 13 (according to *Variety*), 10 of the first 15 (according to *Billboard*) are covered by the BMI license.

Twenty-five new publishers have sprung up during the "battle of music," 15 of them licensing their music through BMI. Among those who have recently entered the publishing business are a number of band leaders, singers, and composers. Claude Lapham, well-known composer and teacher, recently resigned from ASCAP and opened his own publishing house which will feature his music. Included in the firms whose performing rights

are controlled by BMI are Regent Music Corp., publishing originals by Benny Goodman; Mutual Music, outlet for the music of the Glenn Miller band; Republic Music, owned by Sammy Kaye; London Music, issuing originals by the Guy Lombardo band; and Nationwide Music, specializing in songs written by its owner, Lanny Ross.

At the present time *The Moon Won't Talk*, published by Regent Music, *Number 10 Lullaby Lane* from Warren Music, and *I Do, Do You?* published by Stevens Music, all licensed through BMI, are coming up rapidly among the most popular tunes of the country.

HIT MADE HIT-MAKER

A hefty swing to the jaw of Alberto Dominguez determined the future career of Latin America's composer of the currently popular BMI hit tunes *Frenesi* and *Perfidia*.

Nine years ago, Dominguez, one of eighteen children, aspired to pugilistic fame. He had already made good as musician and composer at the age of nineteen with two musical hits to his credit. However, a deep-rooted hankering to become the bantam-weight champion of all Mexico obsessed him. He had up to that time slugged his way up to the top of the amateur class in his native Chiapas and the surrounding land. To test his boxing skill he entered the professional ranks in Mexico City and signed up for his premiere bout—a six-rounder. In the second round his opponent swung a haymaker that completed its arc of motion on Alberto's chin. Alberto heard music, slumped to the ring floor, and later in his dressing room decided his future was in music. Today Dominguez contends that in the few seconds of semi-consciousness when he lay on the rosin-strewn ring mat he heard the most beautiful music. He's been trying to interpret the charm of that elusive tune ever since.

Substituting the baton for the boxing gloves, Dominguez organized five of his eleven music-playing brothers into the "Dominguez Marimba Band." Within four years his aggregation of tunemakers became the rage of music-made Mexico City. Radio Station XEW, most powerful south of the Rio Grande, signed Dominguez and his brothers for long-term service.

Dominguez relaxes by writing music. He is master of piano, trumpet, saxophone, violin, xylophone, and clarinet.

He hails from a family with wide musical background. His parents, in moderate circumstances, taught school with special emphasis on music. At the age of nine Dominguez played piano, xylophone, and trumpet sufficiently well to participate in the family circle orchestra. At ten he wrote *Viva La Feria*. It is still being played at festivals and county fairs in Mexico.

Frenesi and *Perfidia* have been pleasing Mexican ears for several years. Artie Shaw, vacationing in Mexico City last year, heard Dominguez play and got permission to feature *Frenesi* on his American radio program several months later. Shaw, it can be said, by featuring the tune really discovered the merits of Dominguez' work. *Perfidia* followed *Frenesi* and when BMI pushed the songs they became hits.

Dominguez composes his music when inspired by mood or stress of emotion. When in the "moody groove," he says, he can finger out on the piano a likeable tune in fifteen or twenty minutes. *Frenesi* was written after a hard day's work and excitement. Dominguez couldn't sleep and in his restlessness the melody came to him. He climbed out of bed, rushed to the piano with manuscript paper and pencil and poured out his feelings onto paper, via music. When dawn broke *Frenesi* was born. Not a note from the original manuscript has been changed, Dominguez says.

The unassuming 28-year-old composer recently slipped unheralded into New York, bringing a bagful of tunes which he believes will strike American public fancy. One of the numbers, *Un Momento* (One Moment) he regards as his best selection. Another recent composition, *Mala Noche* (Insomnia), which he knocked off after a mild nightmare, will be played with *Un Momento* for the first time over an NBC network.

Apparently unaware of the tremendous popularity of his music in New York, Dominguez was startled when the bellboy in the Hotel Edison, where he is staying, pushed the button which set the room radio in tone and *Frenesi* filled the room.

"That's a lovely song," commented the bellhop, not knowing the guest's identity. "I hear some ambitious Mexican music student wrote it. I bet he's going places someday."

Dominguez smiled and said simply, "It would be nice for that to happen."

FRENESI GOES OVER THE TOP

The sales of phonograph records of *Frenesi* are giving a demonstration of the popularizing power of radio. Artie Shaw's record has already become one of the half-dozen best-sellers published by the RCA Victor Company in recent years. It was placed on sale about nine months ago. Its sales were good but not phenomenal until it began to be featured by BMI stations. During the past four months the sales of the record have mounted steadily and at the present time there are about ten other records of *Frenesi* selling under various labels. It is reliably stated that a record of *Frenesi* is to be found in nearly all of the country's 500,000 coin phonographs, with the Shaw recording featured in about half of them. According to present indications the total sale of *Frenesi*

records by various orchestras will hit well over the million mark.

For the past ten weeks *Frenesi* has been among the leading sheet music sales with about 175,000 piano copies sold to date.

FIRST 100 PER CENT BMI PICTURE

The first 100% BMI picture will be *Puddin' Head*, starring Judy Canova and produced by Republic Pictures. Jack Owens will do the complete score. BMI will promote the top songs of the film on all of its member stations.

DUKE ELLINGTON RECORDS BMI HITS

Duke Ellington and his orchestra have recorded seven Broadcast Music, Inc. hit songs on electrical transcriptions for the Standard Radio, Inc., of Hollywood. The discs have been released to radio stations throughout the country and mark the first radio appearance of the Ellington group since last December when the band went on a tour of the west coast.

Numbers recorded by Ellington were: *Bounce* from *Hellzapoppin'*, *Frenesi*, *I hear A Rhapsody*, *It's Sad But True*, *Love and I*, *Madame Will Drop Her Shawl*, and *Until Tonight*.

90 PER CENT BMI

Leon Mojica has written the BMI office in Hollywood as follows:

"Just a reminder to let you know that your tunes are very popular here in San Francisco.

"To be truthful I get requests every night for about 90 per cent BMI songs. Your *Macumba*, *I'm At a Loss For Words* and *Walkin' By The River* are very outstanding. In fact, they are tops."

MARKS FEATURES NEW CUBAN FOX TROTS

The Edward B. Marks Music Corporation is featuring two new fox trots by Ernesto Lecuona, well-known Cuban composer whose most recent hit was *The Breeze and I*. The two new numbers are *For Want Of A Star* and *Two Hearts That Pass In The Night*. Both of these numbers are already being featured by leading orchestras including Jimmy Dorsey, Orrin Tucker, Tony Pastor, Guy Lombardo, and others and record companies have already scheduled them for waxing.

Engineering

ENGINEERING CONFERENCE

The last two days of the Ohio State Broadcast Engineering Conference were devoted to frequency modulation

and UHF tubes. The banquet at the Fort Hayes Hotel on Thursday night, February 20, served to bring the Conference to a successful climax.

John F. Morrison, of the Bell Laboratories, discussed the various FM circuit designs, pointing out the good features and the limitations of each system. Major Armstrong, in commenting on Mr. Morrison's presentation, said that we were fortunate to have a number of ways to produce frequency modulation, and that the competition between the various laboratories undoubtedly brings about a better and more rapid development of circuit design.

I. R. Weir, of the General Electric Company, discussed practical operating problems in FM transmitters.

E. D. McArthur, of the General Electric Company, during his discourse on UHF tubes, pointed out that the size of elements and the relation to other elements in the tube was of much more importance than at lower frequencies. He showed how leads of a few inches length could have many ohms reactance, and that therefore it was necessary to build UHF tubes as small and compact as possible.

The sessions on FM were fittingly summed up during the "round table on FM problems" conducted by Mr. Paul DeMars, Yankee Network, E. J. Content, WOR, and Dan Gellerup, WTMJ. Many questions on various FM problems had been submitted in advance and these were discussed. Mr. DeMars, chairman of the round table, showed slides of the new turnstile antenna installation at Paxton. The slides showed how a separate transmission line had been run from each element to a termination house at the base of the tower, and the various elements were then properly phased at that point. In showing slides of the Mount Washington FM installation, DeMars pointed out that in order to obtain the proper strength the turnstile elements were made from automobile springs, because the biggest hazard from ice was large chunks of it falling on the elements and breaking them off.

Present at the banquet Thursday night at the Fort Hayes Hotel were 19 engineers who had attended all four of the Annual Broadcast Engineering Conferences. Professor Everitt, Director of the Conference, presented each of these engineers with a diploma, attesting to their four-year attendance. In token of appreciation for the Conferences, the members presented to Professor Everitt a chronometer wrist watch, and a cigarette case and lighter were presented to his secretary, Miss Dorothea Fismer.

The registration of 287, a gain of 39 over last year, attested to the steady growth and popularity of the Conferences. The list of those present shows that the members of the Conference assembled from Coast to Coast. Several of those in attendance came all the way from the West Coast and Western Canada.

The Conference has come to be looked upon as the

main meeting each year for Broadcast Engineers. NAB officially cooperated in the Fourth Broadcast Engineering Conference, and Professor Everitt has indicated his desire that this cooperation be extended to future conferences.

TELEVISION HEARING

The FCC on February 27 issued its release No. 47872 entitled "Procedure For Television Hearing Scheduled For March 20, 1941."

The following is quoted from this release:

The Commission on January 27, 1941, directed that a hearing be held at its offices, Washington, D. C., beginning Thursday, March 20, 1941, for the purpose of considering the various engineering standards that have been suggested for television broadcast stations, to determine when television broadcasting shall be placed upon a commercial basis, and to afford all interested parties full opportunity to be heard on all the pertinent problems related to the standardization and commercialization of television broadcasting. This action of the Commission was set forth in a press release dated January 28, 1941. The press release included the statement: "The Commission will issue a more specific notice as to suggested rules for consideration, and the procedure for the scheduled hearing."

Pursuant to the above, interested parties are requested to consider the advisability and effect of the promulgation by the Commission of the attached drafts: (1) rules and regulations for commercial television broadcast stations; (2) rules and regulations for experimental television broadcast stations, and (3) standards of good engineering practice for television broadcast stations. In several instances the suggested standards are in the alternative, and the Commission desires to hear interested parties on the advisability and effect of alternative suggestions, as well as on the question when the rules and regulations permitting commercialization shall be placed in effect, and the question whether standardization and commercialization shall apply to any of the higher television channels Nos. 8 to 18, both inclusive. It is to be understood that neither the regulations nor the standards have received the approval of the Commission and are to be taken solely as a basis for directing the attention of the parties to the issues in this proceeding.

All interested parties will be afforded full opportunity to propose standards, to comment upon standards which have been proposed by others, to cross-examine various witnesses and, generally, to be heard upon all the pertinent problems in connection with the standardization and commercialization of television.

The attention of persons interested in frequency modulation for the sound channel is invited to the alternative transmission standards Nos. 13 and 22.

All parties desiring to appear are requested to file with the Commission in this proceeding (Docket No. 5806), on or before March 15, 1941, a notice of desire to be heard setting forth the subjects to which their testimony will be directed, the number of witnesses desired to be heard, and the estimated time for presenting testimony. In the event any party desires to make proposals for regulations or standards not set forth in the attachments the notice should specifically set forth such proposals. Eighteen copies of the notice of desire to be heard should be submitted, and, in addition, at least 18 copies of any printed or typewritten material desired to be offered in connection with the testimony should be made available at the hearing.

The hearing will begin at 10 a. m., and will be held in Hearing Room "A", Interstate Commerce Commission Building.

The public notice contained attached drafts of rules and regulations for commercial and experimental television broadcast stations and standards of good engineering practice for television stations.

The proposed rules, regulations and standards were outlined in complete detail and in the cases where there may be a controversy, the alternatives were listed.

While being guided by the final finding of the National Television Systems Committee, it is apparent that the

rules and regulations outlined for discussion by the FCC contain the alternatives wherever there may be a minority opinion opposed to the general opinion of the NTSC.

Legislation

FEDERAL

HOUSE

H. R. 3464 (WALTER, D-Penna.)—To provide for the more economical, expeditious, and just settlement of disputes with the United States, and for other purposes. Referred to Committee on Judiciary.

HOUSE JOINT RESOLUTION

H. J. Res. 123 (SHERIDAN, D-Penna.)—To define the principle of international reciprocity in the protection of American patents, trade-marks, secret formulas and processes, and copyrights by providing a method for assuring the payments of amounts due to persons in the United States from users thereof in countries restricting international payments from their territories. Referred to Committee on Patents.

STATE

GEORGIA:

S. 133 (EDENFIELD ET AL.) SMALL LOANS—To define and regulate the business of making loans in the amount of \$300 or less. Referred to Committee on Special Judiciary.

MARYLAND:

H. 394 (BAYNES) FRAUDULENT ADVERTISING—AMUSEMENTS—To add a new section to Article 27 of the Annotated Code of Maryland (1939 Edition), title "Crimes and Punishments", sub-title "Fraud-Advertisements", said new section to be known as Section 212A, relating to the use of the true names of performers in advertisements publicizing shows given for the amusement and entertainment of the public. Referred to Committee on Judiciary.

S. 303 (LINDSAY) MUSICAL COPYRIGHTS—To add Secs. 364-370 to Art. 56 of the Annotated Code (1939 Ed.), providing for the licensing and regulation of the business of collecting royalties from copyrighted musical compositions. Referred to Committee on Finance.

MASSACHUSETTS:

Public Document 12 (B & B 5) (Recommendation of Attorney General) SMALL LOANS—ADVERTISING—To provide that there shall be no advertising by small loan businesses unless such advertising has first received the approval of the commissioner of banks. Referred to Committee on Banks and Banking.

NEW MEXICO:

S. 149 (ARMIJO) FEEDING STUFFS—To amend school (sales) tax law to provide that feed stuffs sold in bulk shall take wholesale instead of retail rate and among other things imposes a 2% tax on gross receipts of broadcasting stations. Referred to Committee on Livestock.

PENNSYLVANIA:

S. 324 (DENT) MUSIC COPYRIGHTS—RADIO STATIONS—Regulating the copyrights and the performing rights of any composition of music, lyrics, verse or drama; providing for a filing fee of 5 cents for each number registered and an annual maintenance fee of 2 cents for each number; prohibiting a flat performing fee in contracts with radio stations and providing for a compensation on a program basis; prohibiting the use of material without permission. Referred to Committee on Judiciary Special.

PROPOSED REVISION OF EXCESS-PROFITS TAX

On Tuesday the House passed a series of amendments to the Excess-Profits Tax Section of the Second Revenue

Act of 1940. The Bill has now been placed on the Senate calendar and prompt passage is expected.

These amendments are the result of study by Treasury and Congressional tax experts since the Excess-Profits Tax Act was passed last October. They are designed to alleviate hardships inherent in the original tax measure. In general the amendments provide methods for eliminating hardships caused by abnormalities of income in the base period years, on which the excess-profits credit is based, and in the taxable year itself.

Of particular interest to many broadcasting corporations is the amendment providing for an alternative method for computing the excess-profits credit on the average earnings method. As pointed out in a previous article on the excess-profits tax, appearing in NAB REPORTS, of October 4, 1940, corporations subject to the tax which are just emerging from their development period with a record of meager earnings in the base period years (1936-39), would be penalized unduly by the existing law.

This amendment provides an alternative method; permitting the averaging of the first two and the second two years of the base period separately, taking the difference between the two averages and adding half of this difference to the average for the last 2-year period. However, it is provided that this credit shall not exceed the amount of the excess-profits tax net income of any one year of the base period.

This means, in effect, that a corporation with constantly increasing earnings during the 4-year base period can have a credit up to the amount of the highest excess-profits tax net income year of the four.

Other amendments relate to a 2-year carry-over of unused credit against income, subject to the excess-profits tax, as compared to a 1-year carry-over in the present bill; specific deductions for abnormal income in the 4-year base period; joint returns for insurance companies; the recapitalization of advertising and other goodwill expenses included in the base year period which are clearly of a nature of a capital investment; revision of income categories affecting the excess-profits tax base in years now subject to statute of limitations, and revision of the general relief section of the excess-profits law to permit upward revision of abnormally low incomes in base period years.

BILL TO ARBITRATE MUSIC FEES

A measure (H. R. 3456) has been introduced in Congress by Representative Martin J. Kennedy (D.-N. Y.) which seeks to protect the public in hearing and enjoying the playing of copyrighted music. The price for performing rights is declared affected with public interest, and whenever a copyright pool refuses to sell performing rights at a fair and reasonable compensation, the Federal

Trade Commission is empowered to arbitrate the price. If the pool fails to comply, it shall be guilty of an unfair method of competition, and its copyrights subject to condemnation proceedings. Any person wilfully refusing to license performing rights at a fair and reasonable price would be subject to \$5000 fine or one year's imprisonment or both.

We print the bill in full:

H. R. 3456
77TH CONGRESS—1ST SESSION
IN THE HOUSE OF REPRESENTATIVES
FEBRUARY 18, 1941

Mr. MARTIN J. KENNEDY introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

A BILL

To protect the public, sponsors of broadcasting programs, broadcasting stations, performers, and all persons interested in radio from being deprived of the enjoyment by means of radio broadcast of music.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Protection of the Public in Hearing and Enjoying the Playing of Copyrighted Music".

DEFINITIONS

SEC. 2. As used in this Act—

(a) The term "person" means an individual, partnership, corporation, association, or any other form of business enterprise, plural or singular, as the case may be.

(b) The term "music" means any musical composition, with or without lyrics, and for which a United States copyright has been issued.

(c) "The public" means all persons citizens of the United States.

(d) "Sponsors" means persons who for value engage time on broadcasting stations and pay for programs thereon.

(e) "Programs" means any time on broadcasting stations giving entertainment, musical or nonmusical.

(f) "Broadcasting stations" means any person engaged in broadcasting by radio.

(g) "Performers" means any persons engaged in presenting entertainment, either musical or nonmusical, on broadcasting programs.

(h) The term "Commission" means the Federal Trade Commission.

(i) The term "Territory" includes the insular possessions and any Territory of the United States.

SEC. 3. It is hereby determined and declared that the price or charge for a license or permission to perform copyright music in theaters, places of amusement or entertainment, or other places where public exhibitions, games, contests, or performances are held, or by means of radio or other electrical devices, is a matter affected with public interest and subject to regulation by the Government of the United States for the purpose of safeguarding the public against fraud, extortion, exorbitant rates, and similar abuses.

SEC. 4. Whenever two or more persons, owners, assignees, or possessors of a United States copyright on any musical production combine or join in an association to fix or limit the price charged for the public use or performance of said musical production shall refuse to enter into an agreement or contract with any other person permitting that person to publicly use said musical productions upon the payment of a fair and reasonable compensation, the Federal Trade Commission shall, upon the application of any interested party, summon before it the persons seeking the use of said copyright musical production and the owner, assignee, or possessor of such copyright musical and after hearing all parties fix a reasonable compensation for such use and shall make an order thereon permitting the use of said copyright music upon the payment of such fixed compensation. Any person refusing to comply with the terms of such order shall be guilty of an unfair method of competition within the meaning of the Federal Trade Commission Act.

SEC. 5. (a) Except as otherwise specifically provided herein, this Act shall be enforced by the Federal Trade Commission under rules,

regulations, and procedure provided for in the Federal Trade Commission Act.

The Commission is authorized and directed to prevent any person from violating the provisions of this Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this Act; and any such person violating the provisions of this Act shall be subject to the penalties and entitled to the privileges and immunities provided in said Federal Trade Commission Act, in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though the applicable terms and provisions of the said Federal Trade Commission Act were incorporated into and made a part of this Act.

SEC. 6. Any copyright of any musical production shall be liable to be proceeded against in the district court of the United States for the district in which the owner, assignee, or possessor of such copyright shall reside or maintain a place of business and to be seized for confiscation by process of libel for condemnation if the Commission has reasonable cause to believe that the owner, licensee or possessor of such copyright has refused to comply with the order of the Commission as provided for by section 4 of this Act. Proceedings in such libel cases shall conform as nearly as may be to suits in rem in admiralty and may be brought by the Commission.

If such copyrights are condemned by the court, they shall be disposed of in the discretion of the court by sale to the highest bidder on a public sale or by cancellation. If such copyrights are disposed of by sale, the proceeds less legal costs and charges shall be paid into the Treasury of the United States.

SEC. 7. Any person who willfully violates section 4 of this Act shall be guilty of a misdemeanor and upon conviction shall be fined not more than \$5,000 or be imprisoned not more than one year or both in the discretion of the court; provided that nothing herein shall limit other provisions of this Act.

Whenever the Commission has reason to believe any person is guilty of a misdemeanor under this section it shall certify all pertinent facts to the Attorney General, whose duty it shall be to cause appropriate proceedings to be brought for the enforcement of the provisions of this section against such person.

SEC. 8. The provisions of this Act shall be held to be in addition to, and not in substitution for or limitation of, the provisions of any other Act of the United States.

EFFECTIVE DATE

SEC. 9. This Act shall take effect six months after the date of its passage.

SEPARABILITY CLAUSE

SEC. 10. If any provision of this Act, or the application thereof to any person, partnership, corporation, or circumstance is held invalid, the remainder of the Act and the application of such provisions to any other person, partnership, corporation, or circumstance shall not be affected thereby.

Sales

COST-PER-INQUIRY

On the cost-per-inquiry front, a number of concerns are trying to get stations to accept contingent deals and guarantee a fixed return. Some of these are:

Mendenhall Manufacturing Company, Mendenhall, Miss. (hoiery).

Don Howard, Radio Advertising, Del Rio, Texas, on behalf of Bargain Book House ("The Home Book of Medicine").

Haldeman-Julius Publications, Girard, Kansas (Little Blue Books).

Walter E. Battenfield Company, Des Moines, Iowa, on behalf of Speed King Hot Water Heater Company, Kristee Company and Safety Signal Company.

The Bible Press, Richmond, Virginia (Bibles).

Precision Window Springs Company, Newark, N. J.

All six, in the opinion of the Bureau of Radio Advertising, are opposed to the best interests of radio stations, and

the Bureau has written them accordingly. At the same time, it has invited each of the above-named companies to give serious consideration to a paid radio campaign, if they wish to obtain maximum results and maintain the continued goodwill and cooperation of the broadcasting industry.

Miscellaneous

DISTRICT 1 MEETING

A meeting of the NAB stations in the First District (New England) is scheduled for March 4, at the Hotel Bancroft in Worcester, Massachusetts, beginning at 10 a.m. A staff representative of NAB will attend to discuss industry problems and Association activities, and bring the New England broadcasters up to date on music developments. Election of a District Director for the ensuing two-year term will be an important item of business.

THAD BROWN DIES

Thad H. Brown, 54 years old, former member of the Federal Communications Commission, died Tuesday night at Cleveland, Ohio, according to word received in Washington, from an intestinal ailment.

He served on the Federal Communications Commission from its inception until last October. The former secretary of state of Ohio, unsuccessful candidate for governor in 1926, left the FCC to return to private law practice after the Senate Interstate Commerce Committee refused to confirm his reappointment to the Commission.

MONOPOLY REPORT A "CURRENT PROBLEM"

Asked about the FCC monopoly report at a press conference early this week, James Lawrence Fly, Chairman, said that the report from the Legal Division had been somewhat delayed because of the illness of Assistant General Counsel Rauh. He expressed the hope that the Legal Division's draft of the report would be made to the Commission itself sometime this week.

Chairman Fly said that the "report is a current problem and will receive current attention." He said how long it will take the Commission to iron out the report, he did not know.

Mr. Fly told the newspapermen that there is nothing particularly new insofar as the Defense Communications Board is concerned. Committees of the Board, he stated, are starting to function in turning out their reports. There are now three or four before the Board and the Coordinating Committee has received a considerable number. Such reports are preliminary and cover special phases.

Mr. Fly in answer to a question said that he did not believe that the reports themselves would be made public, but stated that he would try to devise some means to give out a general statement covering at least some of the reports.

FM EXPERIMENTALLY OPERATING

FCC has announced its policy concerning the existing high frequency broadcast stations operating experimentally by means of frequency modulation as follows:

I. A person having (1) an experimental FM station and (2) a commercial FM construction permit may be authorized, upon appropriate request, to operate his existing station commercially on the frequency designated in the commercial construction permit with commercial call letters, provided the applicant demonstrates that he has made a bona fide effort to comply with the construction permit. Such showing must include photostatic copy of acknowledgment of order for transmitter and promised delivery date.

II. A person having (1) an experimental FM station and (2) an application pending for a commercial FM construction permit may be granted one or more extensions of his present special temporary experimental authorization, on condition that operations thereunder shall be experimental only, on the experimental frequency, and with experimental call letters.

III. A person having an experimental FM station but no commercial construction permit or application pending therefor may be granted one or more extensions of his present special temporary experimental authorization, so long as no commercial FM broadcast service is actually rendered in the area served by such experimental station. When such commercial FM service is placed in operation the special temporary experimental authorization will be discontinued.*

CHANGE IN INTERNATIONAL BROADCAST RULE

The following paragraph has been added to FCC Rule 4.44(c):

"Any frequency assigned to an international broadcast station shall also be available, during hours when such frequency is not regularly used by such station or when no objectionable interference would be caused to the service rendered by any existing international broadcast station, for assignment to other international broadcast stations."

BROADCAST MEASUREMENTS

FCC experts during January measured 722 broadcast stations, leaving 153 stations not measured.

Of these stations 673 showed a maximum deviation within 0-10 cycles; 44 stations within 11-25 cycles; and 5 stations within 26-50 cycles. No stations showed a deviation over either 20 or 50 cycles.

FROM THE FCC MAIL BAG

The Federal Communications Commission has received the following resolution from the Greenwich (Conn.) Council of Women:

"Resolved, That the Greenwich Council of Women commend the increased policing of radio by the Federal Communications Commission, to guard against subversive activity, and the Council also notes with gratification the special appropriation of \$1,600,000

* No authorization for any class of high frequency broadcast station (whether AM or FM) which expired January 1, 1941, by Order No. 69, and which has not heretofore been extended, may be reinstated.

authorized for this purpose by the President, and \$175,000 from Congress with which to reallocate six of its seven main monitoring stations to detect unlicensed transmitters."

The Commission, which functions largely as a licensing authority, informs a Canadian professor that it is unable to confirm a radio announcement concerning the capture of a member of the British RAF as a prisoner of war, but suggests that the inquirer communicate direct with the management of the station over which the announcement was made.

A New Orleans man is advised that the Commission has issued no rules or regulations with reference to the transmission and delivery of interstate telegrams. It explains that ordinarily the telegraph companies in their tariff schedules establish the rules and regulations applicable to this subject. The companies are required by the Commission to maintain copies of such tariff schedules for public inspection. Accordingly, these schedules can be consulted at New Orleans.

Since it has no jurisdiction over oil pipe lines, the Commission has referred to an appropriate authority the request of a State commission for information as to the date certain pipe lines were laid in that State.

An advertising agency which wants the broadcast industry to observe standard time throughout the year as a solution to the time-change problem is informed that the matter is one for determination by the industry itself.

A Yonkers, N. Y., man would ban from the air continuities of finance companies on the ground that they have a tendency to undermine stability of those not in a position to borrow money. He is advised that complaints relative to misrepresentation and unfair methods of competition in interstate commerce should more properly be addressed to the Federal Trade Commission.

A Long Island man opines that certain news commentators "are alarmists and should be held in restraint." His attention is invited to that section of the Communications Act which prohibits censorship of radio programs.

A woman protests the cancellation of a certain radio contract and a manufacturer complains of the refusal of a station to broadcast an advertising announcement with respect to a patent medicine. The Commission is without authority to require that a station transmit a particular program against the will and judgment of the licensee. The Communications Act specifically states that a person engaged in radio broadcasting shall not be considered a common carrier. Any business contract between a station and a sponsor is private in nature.

Various persons who complain about advertising on the air are reminded that the Commission is limited by statute from exercising any power of censorship. Existing legislation places the responsibility for the selection of program material upon the station licensees, who are

charged with the duty of operating in the public interest. In connection with renewals of licenses the Commission reviews the conduct of stations during preceding license periods and considers complaints involving any action of the station claimed to have been against the public interest. In his application for a station construction permit, the applicant is required to furnish an analysis of the average number of hours devoted to the various types of commercial and sustaining programs, such as religious, educational, civic, agricultural, and fraternal, as well as those intended solely for entertainment. As previously pointed out, the Commission has no jurisdiction over private contracts for program service.

A New Yorker who applied for a license to do "radio servicing" is told that this is not a Commission function.

A Providence, R. I., inquirer is informed that as of February 1 of the current year there were 294 standard broadcast stations owned or controlled by newspapers or affiliated with newspapers.

To frequent requests for a copy of the International Morse Code, the Commission advises that the same appears in its printed booklet, "Study Guide and Reference Material for Commercial Radio Operator Examinations," which is sold by the Superintendent of Documents, Government Printing Office, Washington, at 15 cents a copy.

FEDERAL COMMUNICATIONS COMMISSION DOCKET

Following hearings are scheduled to be heard in broadcast cases before the Commission during the week beginning Monday, March 3. They are subject to change.

Monday, March 3

NEW—William D. Hudson and Violet Hutton Hudson, Clarksville, Tenn.—C. P., 1370 kc., 250 watts, unlimited time.

Tuesday, March 4

KFEQ—KFEQ, Inc., St. Joseph, Mo.—C. P., 680 kc., 5 KW, unlimited, DA day and night.

KWK—Thomas Patrick, Inc., St. Louis, Mo.—C. P., 630 kc., 50 KW, unlimited, DA day and night.

KMBC—Midland Broadcasting Co., Kansas City, Kans.—C. P., 690 kc., 50 KW, unlimited, DA night; requests facilities of KGGF, KFEQ and WNAD as proposed by N.A.R.A.

KOMA—KOMA, Inc., Oklahoma City, Okla.—C. P., 690 kc., 50 KW, unlimited, DA night.

KGGF—Hugh J. Powell, Coffeyville, Kans.—C. P., 690 kc., 5 KW, specified hours, DA night.

Thursday, March 6

Consolidated Hearing

WGNY—WGNY Broadcasting Company, Inc., Newburgh, N. Y.—C. P., 1370 kc., 250 watts, unlimited.

NEW—Stephen R. Rintoul, Stamford, Conn.—C. P., 1370 kc., 250 watts, unlimited.

FUTURE HEARINGS

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

March 28

- KGNO—The Dodge City Broadcasting Co., Inc., Dodge City, Kans.—Modification of license, **1340 kc.**, 500 watts night, 1 KW day, unlimited. Present assignment: **1340 kc.**, 250 watts night, 1 KW day, unlimited.
- NEW—J. C. Kaynor, Ellensburg, Wash.—C. P., **1310 kc.**, 250 watts, unlimited.

April 3

To Be Heard Before Commissioner Paul A. Walker, Place of Hearing to Be Later Designated

- WTMC—Ocala Broadcasting Company, Inc., Ocala, Fla.—In the Matter of Revocation of License of Station.
- WDLF—Panama City Broadcasting Company, Panama City, Fla.—In the Matter of Revocation of License of Station.

April 10

- NEW—Granite District Radio Broadcasting Co., Murray, Utah.—C. P., **1500 kc.** (**1490 kc.** when Havana treaty is effective), 250 watts, unlimited.

FEDERAL COMMUNICATIONS COMMISSION ACTION

APPLICATIONS GRANTED

- WTAG—Worcester Telegram Publishing Co., Inc., Worcester, Mass.—Granted construction permit to increase power from 1 KW night, 5 KW LS, to 5 KW day and night; install new radiators for nighttime directional array; directional antenna with different patterns day and night; **580 kc.** (B1-P-3019).
- KGGE—Hugh J. Powell, Coffeyville, Kans.—Granted renewal of license on a temporary basis to operate on **690 kc.**, with 1 KW day and 500 watts night, commencing March 29, 1941, pending Commission final action on amended application (B4-P-2883).
- WNAD—University of Oklahoma, Norman, Okla.—Granted construction permit to move transmitter site from Engineering Bldg., University of Oklahoma, to approximately 1 mile south of the center of Norman, Okla., East Stadium. University of Okla.; change frequency from **1010 kc.** to **640 kc.**; install new antenna; and change hours of operation from specified to daytime only, subject to approval of antenna and antenna site (B3-P-3074).
- KFBI—The Farmers and Bankers Broadcasting Corp., Wichita, Kans.—Granted modification of construction permit to make changes in directional antenna for night use (B4-MP-1156).
- WABI—Community Broadcast Service, Inc., Bangor, Maine.—Granted construction permit to install new transmitter; install directional antenna for use after sunset at Chicago; change frequency from **1200** to **910 kc.** (after March 29); and increase power from 250 watts to 5 KW (B1-P-2349).
- WCFL—Chicago Federation of Labor, Chicago, Ill.—Granted construction permit to increase power from 5 to 10 KW, unlimited time, on **970 kc.**; install new transmitter and directional antenna for day and night use (B4-P-2961).
- WINS—Hearst Radio, Inc., New York City.—Granted construction permit to install new transmitter, directional antenna for day and night use; increase power from 1 to 50 KW; change frequency from **1180** to **1000** (NARBA frequency) **kc.**, and increase hours of operation from limited to unlimited, subject to approval of antenna and antenna site (B1-P-3026).
- Lewistown Broadcasting Co., Lewistown, Pa.—Granted construction permit for a new station to operate on **1500 kc.**, 250 watts, unlimited time (B2-P-2977).

- WCRC—Columbia Broadcasting System, Inc., Brentwood, N. Y.—Granted modification of construction permit (B1-PIB-26) for new international broadcast station, approving antenna and adding frequency **9650 kc.** in addition to present frequencies; time of operation: sharing with WCAB on **6060** and **21520 kc.**, with WCAB and WCBX on **9650**, **11830** and **15270 kc.** (B1-MPIB-17).
- WCBX—Columbia Broadcasting System, Inc., Brentwood, N. Y.—Granted modification of construction permit (B1-PIB-27) for international broadcast station approving antenna system and change in type of operation: share **9650**, **11830** and **15270 kc.** with WCAB and WCRC (B1-MPIB-18).
- WCSH—Congress Square Hotel Co., Portland, Me.—Granted modification of construction permit (B1-P-2535 which authorized installation of directional antenna for day and night use and increase in power to 5 KW on **940 kc.**), for extension of completion date to April 25, 1941 (B4-MP-1174).

DESIGNATED FOR HEARING

- KWTO—Ozarks Broadcasting Company, Springfield, Mo.—Construction permit to increase hours of operation from specified hours, 5 a. m. to local sunset, to unlimited time, and install directional antenna for night use; frequency **560 kc.**, 1 KW night, 5 KW day (B4-P-2827).
- Western Gateway Broadcasting Corp., Schenectady, N. Y.—Application for construction permit amended so as to request new station in Schenectady to operate on **1210 kc.**, 250 watts, unlimited time, to be heard with application filed by Van Curler Broadcasting Corp. requesting same facilities (B1-P-2690).
- Parkersburg Sentinel Co., Parkersburg, W. Va.—Application for construction permit to establish a new station to operate on **1310 kc.**, 250 watts, unlimited time, exact location of transmitter and studio sites to be determined with Commission's approval (B2-P-3010).
- KOVO—Clifton A. Tolboe, tr/as Citizens Voice and Air Show (Assignor), KOVO Broadcasting Co., a corp. (Assignee), Provo, Utah.—Application for consent to voluntary assignment of license of station KOVO from an individual (Clifton A. Tolboe) to a corporation formed and controlled by that individual; **1210 kc.**, 250 watts; unlimited time (B5-AL-278).
- WFNC—W. C. Ewing and Harry Layman, d/b as Cumberland Broadcasting Co. (Assignor), W. C. Ewing and T. K. Weyher, partners, tr/as Cumberland Broadcasting Co. (Assignee), Fayetteville, N. C.—Application for consent to voluntary assignment of license of WFNC from W. C. Ewing and Harry Layman, d/b as Cumberland Broadcasting Co., to W. C. Ewing and T. K. Weyher, a partnership, doing business under same firm name; (B-3-AL-288) and application for renewal of license to operate on **1340 kc.**, 250 watts, daytime.
- Federated Publications, Inc., Grand Rapids, Mich.—Application for construction permit for new high frequency (FM) station to operate on frequency **46100 kc.**, service area 5,300 square miles, hours of operation day 4 hours, night 4 hours (B2-PH-60).
- Federated Publications, Inc., Battle Creek, Mich.—Application for construction permit for new high frequency (FM) station to operate on frequency **48100 kc.**, service area 4,100 square miles, hours of operation day 4 hours, night 4 hours (B2-PH-59).
- Federated Publications, Inc., Lansing, Mich.—Application for construction permit for new high frequency (FM) station to operate on frequency **47100 kc.**, service area 3,820 square miles, hours of operation day 4 hours, night 4 hours (B2-PH-61).
- (The above three applications to be heard in consolidated hearing.)

RENEWAL OF LICENSES

- W3XEP—RCA Manufacturing Co., Inc., Camden, N. J.—Granted renewal of television broadcast station license for the period ending February 1, 1942.
- W9XUI—State University of Iowa, Iowa City, Ia.—Granted renewal of television broadcast station license for the period ending February 1, 1942.
- W3XE—Philco Radio and Television Corp., Philadelphia, Pa.—Present television station license further extended upon a

- temporary basis only, for the period ending April 1, 1941, pending determination upon application for renewal.
- W3XP—Philco Radio and Television Corp., Portable area of Philadelphia, Pa.—Present television station license further extended upon a temporary basis only, for the period ending April 1, 1941, pending determination upon application for renewal.
- W2XH—General Electric Co., Schenectady, N. Y.—Present television station license further extended upon a temporary basis only, for the period ending April 1, 1941, pending receipt of application for renewal.
- W2XWE—WOKO, Inc., Albany, N. Y.—Granted renewal of facsimile broadcast station license for the period ending March 1, 1942.
- W8XUM—WBNS, Inc., Columbus, Ohio.—Granted renewal of facsimile broadcast station license for the period ending March 1, 1942.
- W9XWT—Courier-Journal and Louisville Times Co., Eastwood, Ky.—Granted renewal of facsimile broadcast station license for the period ending March 1, 1942.
- W9XYZ—The Pulitzer Publishing Co., St. Louis, Mo.—Present facsimile broadcast station license extended to April 1, 1941, pending action on renewal application.

MISCELLANEOUS

- WFLA—The Tribune Co., Tampa, Fla.—Adopted order authorizing The Tribune Co. to continue its program tests for a period not to exceed 30 days beyond February 22, 1941; denied petition in respect to issuance of a license (B3-P-2866).
- KWK—Thomas Patrick, Inc., St. Louis, Mo.—Granted motion to dismiss the petition for rehearing filed November 19, 1940, directed against Commission action of October 29, 1940, granting without hearing the application of Brown County Broadcasting Co., for a new station in Brownwood, Texas, to operate on frequency 1350 ke., 500 watts, unlimited time (B3-P-2672).
- J. C. Kaynor, Ellensburg, Wash.—Granted petition to advance hearing date now scheduled for April 2 to March 28 on application for new station to operate on 1310 ke., 250 watts, unlimited time.
- J. C. Kaynor, Ellensburg, Wash.—Granted petition for order to take depositions in rehearing on application listed above.
- Community Broadcasting Corp., Middletown, N. Y.—Granted motion for order to take depositions in re application for construction permit to operate on 1310 ke., 250 watts, unlimited time.
- WTMC—Ocala Broadcasting Co., Inc., Ocala, Fla.—Adopted order designating Commissioner Walker to preside at the hearing on the order revoking the license of Ocala Broadcasting Co., Inc., for the operation of station WTMC, said hearing to be held April 3, in a Florida city to be designated.
- WDLF—Panama City Broadcasting Co., Panama City, Fla.—Adopted order designating Commissioner Walker to preside at the hearing on the order revoking the license of Panama City Broadcasting Co. for the operation of station WDLF, such hearing to be held April 3, in a Florida city to be designated.
- KBPS—Benson Polytechnic School, R. T. Stephens, Agent, Portland, Ore.—Granted authority to install automatic frequency control apparatus (B5-F-172).
- KWKH—International Broadcasting Corp., Shreveport, La.—Granted authority to determine operating power by direct measurement of antenna power (B3-Z-408).
- WDBO—Orlando Broadcasting Co., Inc., Orlando, Fla.—Granted authority to determine operating power by direct measurement of auxiliary transmitter (B3-Z-666).
- W45V—Evansville on the Air, Inc., Evansville, Ind.—Granted modification of construction permit (B4-PH-11), which authorized a new FM station, for change in type of transmitter and change in location of transmitter from 519 Vine St. to 2nd Floor, 203 NW, 5th St., Evansville, Ind. (B4-MPH-10).
- WEGQ—Broadcasting Service Organization, Inc., Mobile (area of Boston).—Granted construction permit for reinstatement of relay broadcast station WEGQ, make changes in equipment, and increase power from 5 to 15 watts; frequencies 30820, 33740, 35820, 37980 ke. (B1-PRE-382).
- Piedmont Publishing Co., Portable-Mobile (area of Winston-Salem, N. C.).—Granted construction permit for new relay broadcast station to be used in connection with applicant's standard broadcast station WSJS; frequencies 1622, 2058, 2150, 2790 ke., 100 watts (B3-PRY-233).
- The Yankee Network, Inc., Portable-Mobile (area of Boston, Mass.).—Granted construction permit for new relay broadcast station; frequencies 156750, 158400, 159300, 161100 ke., 20 watts (B1-PRE-381).
- WLOY—Loyola University, Portable-Mobile (area of New Orleans, La.).—Granted license to cover construction permit (B3-PRY-230), which authorized a new relay broadcast station to be used with applicant's standard broadcast station WWL; frequencies 1622, 2058, 2150, 2790 ke., 100 watts (B3-LRY-219).
- WEND—WHP, Inc., Portable-Mobile (area of Harrisburg, Pa.).—Granted license to cover construction permit (B2-PRY-228), to make changes in equipment, increase power to 2 watts, and change frequencies to 1606, 2074*, 2102, 2758 ke., to be used with applicant's standard broadcast station WHP. (*Subject to condition no interference is caused to Government stations on adjacent frequencies.) (B2-LRY-220).
- WDAC—State of Wisc., Univ. of Wisconsin, Portable-Mobile, area of Madison, Wis.—Granted license to cover construction permit (B4-PRY-227), for new relay station to be used with applicant's standard broadcast station WHA, Madison; frequencies 1622, 2058, 2150, 2790 ke., 30 watts (B4-LRY-215).
- WOAI—Southland Industries, Inc., San Antonio, Tex.—To re-broadcast program consisting of conversations between Army planes and control tower flying in vicinity of Randolph Field, Texas, between 8 and 8:30 p. m., EST, February 21, to be carried over Blue network of affiliated NBC stations. (Action taken February 19.)
- WAAT—Bremer Broadcasting Corp., Jersey City, N. J.—Granted modification of construction permit (B1-P-2704), for new transmitter, installation of directional antenna for night use, change in power and time from 500 watts daytime to 6 p. m., to unlimited, using 1 KW day and night, and move of transmitter, for extension of completion date to April 25, 1941 (B1-MP-1172).
- WCBT—J. Winfield Grew, Jr., Roanoke Rapids, N. C.—Granted license to cover construction permit (B5-P-2647), which authorized a new station, 1200 ke., 250 watts, unlimited time. (B3-L-1313). Also granted authority to determine operating power by direct measurement of antenna power (B3-Z-634).
- WDBO—Orlando Broadcasting Co., Inc., Orlando, Fla.—Granted license to cover construction permit (B3-P-2734), which authorized increase in power, installation of directional antenna and changes in equipment; 680 ke., 5 KW, unlimited time, using DA night. (B3-L-1328). Also granted authority to determine operating power by direct measurement of antenna input (B3-Z-665).
- KFXM—J. C. Lee & E. W. Lee (Lee Bros. Broadcasting Co.), San Bernardino, Cal.—Granted license to cover construction permit (B3-P-2017), which authorized installation of new transmitter. (B5-L-1322).
- KROD—Dorrance D. Roderick, El Paso, Texas.—Granted license to cover construction permit (B3-P-2725), for new equipment, increase in power from 250 watts to 500 watts night, 1 KW day, and change frequency from 1500 to 600 ke. (B3-L-1325). Also granted authority to determine operating power by direct measurement of antenna input (B3-Z-661).
- KGBX—Springfield Broadcasting Co., Springfield, Mo.—Granted license to cover construction permit (B4-P-2510), which authorized installation of new transmitter, increase in power to 5 KW, and changes in directional antenna for night use. (B4-L-1331). Also granted authority to determine operating power by direct measurement of antenna input (B4-Z-672).
- KYW—Westinghouse E & M Co., Philadelphia, Pa.—Granted license to cover construction permit (B2-P-2904), for increase in power from 10 to 50 KW, and changes in equipment (B2-L-1323). Also granted authority to determine operating power by direct measurement of antenna input (B2-Z-658).
- WEOA—Evansville on the Air, Inc., Evansville, Ind.—Granted construction permit to move transmitter from 319 Vine St., to 2nd Floor YMCA Bldg., Evansville, Ind., 1370 ke., 250 watts, unlimited time (B4-P-3079).

WIBA—Badger Broadcasting Co., Madison, Wisc.—Granted modification of construction permit (B4-P-2689), which authorized changes in antenna system, increase in power from 1 KW night, 5 KW day, to 5 KW day and night), to install new transmitter, make changes in directional antenna system, approve transmitter site and studio site (B4-MP-1157).

WBTA—Batavia Broadcasting Corp., Batavia, N. Y.—Granted modification of construction permit (B1-P-2909), which authorized a new station on **1500 kc.**, 250 watts, unlimited time, for authority to install new transmitter (B1-MP-1171).

WTOC—Savannah Broadcasting Co., Savannah, Ga.—Granted modification of construction permit (B3-P-2944), which authorized installation of directional antenna for night use, for extension of commencement and completion dates to 4-4-41 and 10-4-41 respectively.

WCNW—Arthur Faske, Brooklyn, N. Y.—Granted special temporary authority to operate with power of 250 watts from 9 to 10 p. m., EST, on February 17, in order to broadcast talk by former Russian Premier Alexander Kerensky only (B1-S-216).

WAGM—Aroostook Broadcasting Corp., Presque Isle, Maine.—Granted special temporary authority to operate from 7 to 9 p. m., EST, February 27, 28, March 1, 1941, in order to broadcast basketball games only.

KTRB—KTRB Broadcasting Co., Inc., Modesto, Calif.—Granted special temporary authority to operate from 7:30 p. m., PST, to the conclusion of basketball games described in letter dated February 13, 1941, on February 28, March 1 and 8, 1941, in order to broadcast said games and to broadcast events in connection with Annual Oakdale Almond Blossom Festival on March 1, only; to operate from 7:45 p. m., PST, to the conclusion of Modesto Community Forum, in order to broadcast said program on March 4, 1941, only.

KFBI—The Farmers and Bankers Broadcasting Corp., Wichita, Kans.—Granted special temporary authority to operate with 1 KW, non-directional, from 7:30 p. m. to 8:30 p. m. on February 21, 1941, in order to broadcast interviews from Washington Day dinner to be held by the Democratic party in Topeka, only; to operate from 7:30 p. m. to 9 p. m., CST, February 22, 1941, in order to broadcast a speech by Senator Pepper of Florida, only.

WSAZ, Inc., Huntington, W. Va.—Granted special temporary authority to operate equipment licensed to the Charleston Broadcasting Co. as Relay Station WADA on **1622, 2058, 2150, 2790 kc.**, 40 watts power, in order to broadcast special event programs on February 21, 28, March 7, 14, 21, and 28, 1941, to Radio Station WSAZ.

WNEL—Juan Piza, San Juan, P. R.—Granted modification of construction permit for changes in equipment, antenna, increase in power from 1 KW night, $2\frac{1}{2}$ KW day, to 5 KW day and night, and move of transmitter, for extension of completion date from February 25, 1941, to April 25, 1941 (B-MP-1170).

KEYS—Earl C. Dunn and Charles W. Rossi, d/b as Nueces Broadcasting Co., Corpus Christi, Tex.—Granted modification of construction permit which authorized construction of new broadcast station, for approval of transmitter site at Shell Road, near Corpus Christi, Tex., approval of antenna; **1200 kc.**, 250 watts, unlimited time (B3-MP-1144).

WQBC—Delta Broadcasting Co., Inc., Vicksburg, Miss.—Dismissed petition to intervene and for rehearing directed against the action of the Commission October 22, 1940, granting without hearing application of WTJS, Jackson, Tenn., for construction permit to change frequency, increase power, etc.

WMBG—Havens and Martin, Inc., Richmond, Va.—Granted petition for reconsideration and grant without hearing, setting aside action of the Commission November 13, 1940, designating for hearing the application of WMBG for modification of license to increase night power from 1 to 5 KW on frequency **1350 kc.**, unlimited time, using directional antenna at night. However, issuance of authorization will be withheld pending the filing by WMBG and approval by the Commission of an application for construction permit specifying a directional antenna such that the radiation in the direction of WTSP, St. Petersburg, Fla., shall be reduced so as not to exceed 405 millivolts per ground wave at one mile from a standard .31 wave length antenna or 398 millivolts, 8 degrees above the earth's surface using a bearing from Richmond to St. Petersburg of 206 degrees true and

that no authorization to operate on the new terms and conditions will be made effective prior to March 29, 1941.

Worcester Broadcasting, Inc., Worcester, Mass.—Adopted decision and order denying petition for rehearing directed against the action of the Commission, December 17, 1940, granting without hearing the application of C. T. Sherer Company, Inc., for a new station in Worcester to operate on **1200 kc.**, with power of 250 watts, unlimited time, with three 100-watt amplifier stations to be located near Auburn, Whitinsville, and Marlborough, Mass., and designated for hearing the application of Worcester Broadcasting, Inc., for same facilities, with two amplifier stations to be located near Whitinsville and Marlborough, Mass.

WREN—WREN Broadcasting Co., Inc., Lawrence, Kans.—Denied petition for action upon application and other relief directed against the action of the Commission of February 4 granting in part the application of WREN for construction permit authorizing increase in night power from 1 to 5 KW, subject to Commission approval of transmitter location and antenna system at Lawrence, Kans. The Commission amended its order of February 4 to specify "subject to Commission approval of transmitter location and antenna system at Lawrence or Tonganoxie, Kans."

WBAX—John H. Stenger, Wilkes-Barre, Pa.—Denied petition of WBAX to set aside ruling of Motions Docket Commissioner made on February 7, which extended the date of oral argument on application for renewal of license of WBAX from February 13 to March 13, 1941.

WRDO—WRDO, Inc., Augusta, Maine.—Designated for further hearing the application for renewal of license of WRDO, in order to obtain full information with respect to control of the station.

APPLICATIONS FILED AT FCC

560 Kilocycles

KSFO—The Associated Broadcasters, Inc., San Francisco, Calif.—Construction permit to change frequency from **560 kc.** to **740 kc.** under North American Regional Broadcasting Agreement; increase power from 1 KW night, 5 KW day, to 50 KW day and night; move transmitter from approximately southeast corner Seawall Lot No. 344, San Francisco, Calif., to $2\frac{1}{2}$ miles southwest of Alvarado, Calif.; install new equipment and directional antenna for day and night use; Class II station. Amended to change requested transmitter site from $2\frac{1}{2}$ miles southwest of Alvarado, Calif., to 2 miles northwest of Redwood City, Calif., and make changes in requested directional antenna for day and night use.

610 Kilocycles

WIOD—Isle of Dreams Broadcasting Corp., Miami, Fla.—License to cover construction permit (B3-P-2476) as modified for new transmitter, increase in power, installation of directional antenna for day and night use, and move of transmitter.

WIOD—Isle of Dreams Broadcasting Corp., Miami, Fla.—Authority to determine operating power by direct measurement of antenna power.

620 Kilocycles

WAGE—Sentinel Broadcasting Corp., Syracuse, N. Y.—Modification of construction permit (B1-P-1934) for a new station, requesting change in type of transmitter and extension of commencement date to 30 days after grant and completion date 90 days thereafter.

NEW—Frequency Broadcasting Corp., New York, N. Y.—Construction permit for a new station to be operated on **620 kc.**, 500 watts, daytime. Amended re antenna system.

740 Kilocycles

WHEB—Granite State Broadcasting Corp., Portsmouth, N. H.—Voluntary assignment of license from Granite State Broadcasting Corp. to WHEB, Inc.

990 Kilocycles

WBZ—Westinghouse Electric & Mfg. Co., Boston, Mass.—License to cover construction permit (B1-P-2998) which authorized

new transmitter and directional antenna for day and night use, and move of transmitter.

WBZ—Westinghouse Electric & Mfg. Co., Boston, Mass.—Authority to determine operating power by direct measurement of antenna power.

1050 Kilocycles

WIBC—Indiana Broadcasting Corp., Indianapolis, Ind.—Modification of construction permit (B4-P-2886) for change in hours of operation; increase in power; installation of new transmitter; move of transmitter and installation of directional antenna for night use, requesting approval of directional antenna for night use; **1050 kc., 1070 kc.** when North American Regional Broadcasting Agreement becomes effective.

1070 Kilocycles

WCAZ—Superior Broadcasting Service, Inc., Carthage, Ill.—Authority to install automatic frequency control equipment on **1080 kc.** under North American Regional Broadcasting Agreement.

1120 Kilocycles

WTAW—Agricultural & Mechanical College of Texas, College Station, Tex.—Modification of construction permit (B3-MP-1006) as modified for new equipment and increase in power, requesting change in type of transmitter and **1150 kc.** under North American Regional Broadcasting Agreement.

1160 Kilocycles

WOWO—Westinghouse Radio Stations, Inc., Fort Wayne, Ind.—Authority to install automatic frequency control equipment on **1190 kc.** under North American Regional Broadcasting Agreement.

1210 Kilocycles

WBIR—J. W. Birdwell, Knoxville, Tenn.—Modification of construction permit (B3-P-2840) as modified for a new station, requesting authority to change type of transmitter.

WBIR—J. W. Birdwell, Knoxville, Tenn.—License to cover construction permit (B3-P-2840) as modified for a new station.

WBIR—J. W. Birdwell, Knoxville, Tenn.—Authority to determine operating power by direct measurement of antenna power.

1230 Kilocycles

NEW—Scripps-Howard Radio, Inc., Houston, Tex.—Construction permit for a new station to be operated on **1210 kc.,** 250 watts, unlimited time, Class IV. Amended to request **1230 kc.** under North American Regional Broadcasting Agreement.

1260 Kilocycles

KHSL—Golden Empire Broadcasting Co., Chico, Calif.—Construction permit to increase power from 500 watts night, 1 KW day, to 1 KW day and night, and install directional antenna for day and night use, requesting **1260 kc., 1290 kc.** when North American Regional Broadcasting Agreement effective.

1300 Kilocycles

KFH—Radio Station KFH Co., Wichita, Kans.—Authority to determine operating power by direct measurement of antenna power on **1330 kc.** under North American Regional Broadcasting Agreement.

1360 Kilocycles

KGER—Consolidated Broadcasting Corp., Long Beach, Calif.—Construction permit to make changes in equipment, increase power from 1 KW to 5 KW, install directional antenna for night use, requesting **1360 kc., 1390 kc.** under North American Regional Broadcasting Agreement.

1370 Kilocycles

WGL—Westinghouse Radio Stations, Inc., Fort Wayne, Ind.—Authority to install automatic frequency control equipment on **1450 kc.** under North American Regional Broadcasting Agreement.

1400 Kilocycles

WARD—United States Broadcasting Corp., Brooklyn, N. Y.—Voluntary assignment of license from United States Broadcasting Corp. to Unified Broadcasting Corporation of Brooklyn. Contingent on B1-ML-1054.

WARD—Unified Broadcasting Corp. of Brooklyn, Brooklyn, N. Y.—Modification of license to change hours of operation from shares with WLTH, WVFV and WBBC to unlimited time, requesting facilities of WLTH, WVFV and WBBC, and move studio. Contingent on grant of WARD's application B1-AL-302.

1420 Kilocycles

WPRP—Julio M. Conesa, Ponce, P. R.—Modification of construction permit (B-P-2377) which authorized new transmitter, move transmitter, increase power and hours of operation, requesting change in equipment and approval of transmitter site and antenna. Amended to specify **1520 kc.** under North American Regional Broadcasting Agreement.

WLAP—American Broadcasting Corp. of Kentucky, Lexington, Ky.—Modification of construction permit (B2-P-2900) to move transmitter and install new antenna, requesting extension of completion date from 3-16-41 to 5-1-41.

1450 Kilocycles

KIEM—Redwood Broadcasting Co., Inc., Eureka, Calif.—Authority to determine operating power by direct measurement of antenna power on **1450 kc., 1480 kc.** under North American Regional Broadcasting Agreement.

1500 Kilocycles

NEW—Barclay Craighead, Butte, Mont.—Construction permit for a new station to be operated on **1500 kc.,** 250 watts, unlimited time, Class IV.

FM APPLICATION

NEW—Gibraltar Service Corporation, Philadelphia, Pa.—Construction permit for a new high frequency broadcast station to be operated on **46100 kc.,** coverage 9,318 square miles. Amended re antenna changes.

TELEVISION APPLICATION

W2XD—General Electric Company, Schenectady, N. Y.—License to cover construction permit (B1-PVB-55) as modified for a new relay television station.

MISCELLANEOUS APPLICATIONS

NEW—WGN, Inc., Chicago, Ill.—Modification of construction permit (B4-PH-7) for a new high frequency broadcast station, requesting approval of transmitter and antenna, and request multiplex transmission of facsimile.

KAQX—Central States Broadcasting Co., Portable-Mobile (area of Omaha, Nebr.)—License to cover construction permit (B4-PRY-210) as modified, for a new relay broadcast station.

WNYE—Board of Education, City of New York, Brooklyn, N. Y.—Construction permit to change frequency from **41100 kc.** to **42100 kc.,** increase power from 500 watts to 1000 watts, and install new equipment. Amended: To change emission from A-3 to special for frequency modulation.

NEW—Piedmont Publishing Co., Portable-Mobile (area of Winston-Salem, N. C.)—Construction permit for a new relay broadcast station to be operated on **30820, 33740, 35820, 37980 kc.,** 2 watts, A-3 emission.

NEW—Piedmont Publishing Co., Portable-Mobile (area of Winston-Salem, N. C.)—License to cover above construction permit.

KAQW—Central States Broadcasting Co., Portable-Mobile (area of Omaha, Nebr.)—License to cover construction permit (B4-PRY-209) as modified for a new relay broadcast station.

NEW—Muzak Corporation, New York, N.Y.—Construction permit for a new developmental broadcast station to be operated on **117000 kc.** or some channel not now allocated for some purpose, 1000 watts, special emission for frequency modulation.

FEDERAL TRADE COMMISSION ACTION

COMPLAINTS

Federal Trade Commission has alleged unfair competition 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.

Helen Harrison Candies, Inc.—Use of lottery methods in the sale of candy is alleged in a complaint issued against Helen Harrison Candies, Inc., 325 North Wells St., Chicago.

The respondent corporation, according to the complaint, sells to wholesalers, jobbers and retail dealers certain assortments of candy so packed or assembled as to involve the use of a game of chance, gift enterprise or lottery scheme, when sold to the consuming public. Punch board devices are used, the complaint alleges.

Charging that the respondent's practices have been of a sort which are contrary to Federal Government public policy and in violation of the Federal Trade Commission Act, the complaint grants the respondent 20 days for filing answer. (4467)

Arthur Jacobson—A complaint has been issued charging Arthur Jacobson, Upsala, Minn., with dissemination of advertisements containing false representations to induce purchase of products represented as comprising a treatment for defective eyesight without resort to glasses, drugs or surgery. According to the complaint, the respondent sells "Eye Tester" and "Eye Adjuster" devices with printed instructions, charts and other paraphernalia.

The respondent allegedly represents that his system is new and revolutionary; that 90 per cent of the defects of the eye can be remedied by its use; that it will improve eyesight and eliminate headaches and nervousness, and that it will correct nearsightedness, astigmatism and strabismus.

Alleging that the respondent's system is not new or revolutionary and that its use will not accomplish the results claimed, the complaint charges violation of the Federal Trade Commission Act and grants the respondent 20 days for answering the charges. (4466)

Parke, Austin & Lipscomb, Inc.—Misuse of the names of the Smithsonian Institution and the United States Flag Association, Washington, in connection with the sale of books of an encyclopedic nature, is alleged in a complaint issued against Parke, Austin & Lipscomb, Inc., and its subsidiary, Smithsonian Institution Series, Inc., both of 500 Fifth Ave., New York. Other respondents are Alfred Monett and Robert A. Hogan, Jr., officers of the two corporations, and Joseph M. McAndrews, an officer of the parent company.

The complaint alleges that use of the words "Smithsonian Institution" as a part of the corporate name of the respondent Smithsonian Institution Series, Inc., constitutes a misleading representation that the corporation is a part of, or connected with, the Smithsonian Institution, Washington, a non-profit organization devoted to scientific research and the promotion of learning.

According to the complaint, the respondents, through their salesmen and by other means, represent that such salesmen are employed by, or connected with, the Smithsonian Institution; that their publication "Smithsonian Scientific Series" is published and sold by that institution, and that it receives the entire profit from such sale, when such are not the facts. The complaint alleges that the books are sold by the respondents as an ordinary commercial enterprise, and that the Smithsonian Institution receives from the respondents only a royalty of 10 per cent on all gross sales of the books under a contract providing that the Smithsonian Institution furnish the Smithsonian Institution Series, Inc., manuscripts and illustrations for use in its books.

The complaint further alleges that Parke, Austin & Lipscomb, Inc., and the individual respondents represent that their salesmen

are representatives of the United States Flag Association, Washington, and that that organization receives the entire profit from the sale of the respondents' "World Epic" books, which profits are used to maintain a lobby in Washington for combating anti-American and subversive organizations and influences, when such are not the facts.

According to the complaint, the respondents sell their books as an ordinary commercial enterprise for profit, and the only benefit derived by the flag association from such sales is a small royalty for issuing bulletins and letters recommending the books. The United States Flag Association, according to the complaint, is a patriotic non-profit organization and has not engaged in lobbying.

The respondents are further charged with wrongful use of letters from United States Senators and other prominent persons endorsing the aims and purposes of the United States Flag Association. Such letters allegedly are represented by the respondents as endorsements of their books, when in fact they relate to the association and not to the respondents' books. (4465)

CEASE AND DESIST ORDERS

No cease and desist orders were issued by the Commission last week.

STIPULATIONS

Following stipulations have been entered into during the past week:

American Concrete Receptacle Company, trading as American Vault Company, 579 Kenilworth Ave., Detroit, a dealer in equipment and materials for use in manufacturing burial vaults composed principally of asphalt and concrete, has entered into a stipulation. Under the stipulation the respondent agrees to cease employing statements implying that burial vaults made in molds or forms or containing materials sold by it will assure everlasting protection to the caskets or bodies encased therein, or that such vaults are permanently waterproof. The respondent further agrees to cease representing that such vaults are better than competitive products in preventing or retarding the formation of "sweat" or moisture on their inner surfaces. (3037)

Gamble-Skogmo, Inc., 700 Washington Ave., North, Minneapolis, entered into a stipulation to cease advertising that "Gamble's Electric Fence Controller" has been approved, tested or certified by the Underwriters' Laboratories, Inc., or by the National Bureau of Standards of the United States Department of Commerce. The stipulation recites that this product has not been so tested or approved. (02739)

Master Gas-Saver Company, 218 South Wabash Ave., Chicago, stipulated to cease advertising that any gain in power or miles per gallon will result from the use of its device "Master Gas-Saver," on an automobile equipped with a correctly adjusted carburetor of proper size. The respondent also agrees to cease representing that the device stops gasoline waste, reduces carbon, makes starting easy, increases riding efficiency, operates as a super-charger, or is new or different from other devices used for the same purpose. The respondent further agrees to discontinue use of the words "Gas-Saver" to describe its device or as part of its corporate or trade name. (02744)

Merz & Co., Chemical Works, Inc., East Orange, N. J., stipulated that it will cease advertising its medicinal preparation "Merz-Allium" as being bactericidal and as being effective in treating colitis, intestinal catarrh, diarrhea, coughs, bronchitis, arthritis, rheumatism, sciatica, colic, influenza, asthma or tuberculosis. The respondent corporation also agrees to desist from advertising that results obtained from the use of its preparation are unobtainable from any other, and that Merz-Allium is recommended by the "drugless profession." (02740)

E. W. Rahn, Harvard Ave., and East 42nd St., Cleveland, has entered into a stipulation to cease representing that "Rahnous Capsules," "Rahnous Nasal Drops No. 1" and "Rahnous Nasal Drops No. 2," alone or in combination, comprise a competent treatment for colds, hay fever, rose fever, asthma, or catarrh, in excess of affording temporary relief from symptoms and the discomforts associated with these conditions; that either of the products is a specific, and that the product Rahnous Capsules is of aid in building body resistance or that it regulates the body. (02738)

Sal-Fayne Corporation, Dayton, Ohio, entered into a stipulation to cease certain representations in the sale of "Sal-Fayne," a medicinal preparation.

Under its stipulation, the respondent corporation agrees to cease advertising that use of its product banishes headaches, distress after over-indulgence, periodic pains or muscular pains; that it is an effective remedy for post-operative pains, or has therapeutic value in treating such disorders and conditions in excess of a palliative affording temporary relief; and that it is capable of stopping or preventing colds, preventing the development of "flu", relieving mental or physical dullness, and effectively treating the nerves.

The respondent also agrees not to publish advertisements which fail to reveal that the frequent or continued use of its preparation may be dangerous, causing serious blood disturbances, and that no more than the dosage recommended should be taken. The stipulation provides that such advertisements need contain only a statement that the preparation should be used only as directed on the label, if and when the label either carries a warning to the same effect or specifically directs attention to a similar caution or warning statement in the accompanying labeling.

The Sal-Fayne Corporation further stipulates that it will desist from using the words "laboratory" or "laboratories" as part of any trade name, and from making any representations implying that it has a laboratory unless it owns and operates, or controls and operates, a laboratory properly equipped and supervised for scientific work. (02741)

Steel Storage File Company, 2216 West 63rd St., Cleveland, entered into a stipulation with the Federal Trade Commission to discontinue representing that the cost of its "Safe-T-Stack Steel Storage Files" is lower than that of cardboard file cases of comparable size together with shelving used therewith, and that use of its file cases instead of competitive products will result in records or files occupying one-fifth the space formerly used. (3038)

E. B. S. Manufacturing Company—Eva B. Smith, trading as E. B. S. Mfg. Co., and E. B. S. Co., 730 St. Nicholas Ave., New York, has entered into a stipulation in which she agrees to discontinue advertising that "Antiseptic Tar Hair Grower" will promote the growth of hair, possesses antiseptic properties, contains essential oils or vegetable oils, and will eliminate itching scalp or have any value in its treatment in excess of affording temporary relief. The respondent further stipulates to cease representing (1) by use of the word "eliminate" or similar words that the preparation is a remedy or cure for dandruff, and (2) by use of the words "antiseptic" or "grower" in the brand name, that it has antiseptic properties or will promote the growth of hair. (02743)

FTC CLOSES CASES

The Federal Trade Commission has closed its case against Louis Baskind & Co., Inc., 1220 Broadway, New York, without prejudice to its right to resume proceedings, should the facts so warrant. The respondent had been charged with violation of the Federal Trade Commission Act in the sale of shirts. According to information received by the Commission, the respondent corporation is no longer engaged in manufacturing or selling activity and is in process of liquidation.

The Commission dismissed a complaint charging the Royal Metal Manufacturing Co., 175 North Michigan Ave., Chicago, with violation of the Federal Trade Commission Act in the sale of furniture.