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WHITE RESOLUTION HEARING: THIRD DAY

Senator Wheeler announced at the opening of the hearing Wednesday that after today's session the hearing would be adjourned until next Monday. Some discussion of the order of appearances indicated that Chairman Fly would conclude his testimony next Monday; that he would be followed by Mutual witnesses; that Commissioner Craven would follow these; and that industry proponents of the White resolution would appear, starting next Thursday or possibly Friday.

Mr. Fly and Senator White continued their debate as to whether the FCC had the authority to make the new network rules. The Senator contended it was never the intention of Congress to delegate such authority to the Commission and pointed out that he had some intimate knowledge of Congressional intention since he drafted several of the sections of the law upon which the FCC based its authority. The Senator said it was not the intention of Congress to give the FCC power to determine whether stations violated the anti-trust laws. That was left to the courts. The commission, he said, had been given power only to revoke licenses of those stations which the courts had found guilty of anti-trust law violation. Mr. Fly answered that surely Congress did not want the FCC to sit by and watch monopoly develop, without doing anything about it. He also quoted from a speech by Senator Dill, made at the time the radio law was being considered in the Senate, which Mr. Fly said showed that Congress intended the commission to prevent the growth of radio monopoly.

Senator Wheeler said that Congress did have in mind, when the radio law was enacted, that monopoly should not be built up in the industry, and that the FCC in issuing licenses should consider whether they tended to build up a monopoly. Senator White reiterated, how-

ever, that he was "as certain as anything human that we didn't intend by that (Section 303(i)) to give the FCC power to write an anti-trust statute of its own. . . ." He suggested that this section should be rewritten to both grant and limit powers to the FCC in this respect. Senator Wheeler pointed out, at one point in the discussion, that radio stations had the right to go into court to determine the issue, while at another point Senator McFarland of Arizona said that there seemed to be confusion and asked why Congress shouldn't interpret what it meant and write it into law.

When Mr. Fly returned to his discussion of the "exclusivity" sections of the new rules, Senator Wheeler asked him whether it was not possible that advertising agencies in many instances would single out the most powerful stations in the best markets for their programs, thus depriving many smaller affiliates of network revenue they now enjoy. Mr. Fly said this would be possible but that he didn't think it would be feasible since the agencies then would have to go into the network business—getting wires, setting up studios, and all.

As to territorial exclusivity, Mr. Fly said he agreed that duplicate coverage in one market was not desirable, but that other stations should have the opportunity to take programs rejected by an affiliate, particularly speeches by senators and members of Congress.

As to program rejection and the terms of current network affiliation contracts dealing with this subject, Mr. Fly said the discretion for acceptance or rejection of programs was rightly lodged with the licensee and should not be transferred to "a couple of New York Corporations."

Senator Tobey remarked, "I think that is elementary."

When he turned to the sale of the Blue, Mr. Fly said he didn't think NBC would have any difficulty in mak-

ing the sale. Under independent ownership, he said, "it ought to be a much healthier network" and "will make more money than it is making today."

In connection with the sale, discussion again turned to possible court action. Mr. Fly said he would welcome a court test, but indicated that the Commission might take steps against those involved "if they attempted to paralyze the rules through long delays," such as the introduction of bills in Congress and similar actions.

Senator Wheeler commented that he thought the industry should not be penalized for going to court, and that the NBC should be given reasonable time to dispose of the Blue. At that point Senator Smith asked Mr. Fly whether he had understood him to say that the industry should be given time to go to court but not to go to Congress for relief. That led to an exchange between Senator White and Mr. Fly in which Mr. Fly accused the industry of "marching behind" Senator White in an effort to stymie the operation of the new rules. When the senator objected to this, Mr. Fly hastily assured him that he did not mean to imply that the senator's motives were anything but the highest.

Senator Wheeler remarked during this discussion that there had been "too much heat" generated by both the broadcasters and the Commission in connection with the monopoly issue and that "it ought to stop." "Those who are doing it are making a mistake from their own standpoint," he said.

Senator Johnson asked Mr. Fly why so many affiliates didn't want all the liberty that the FCC was proposing to give them. Mr. Fly said they hadn't had the opportunity to express an independent opinion. Senator Wheeler added that there were two things the industry feared: the FCC and the industry. "I found out in St. Louis that they weren't afraid of me," Mr. Fly laughed. He agreed with Senator Wheeler about the "heat."

At the end of the day's hearing, Mr. Fly reiterated his frequently made assertion that "I don't think for a moment that we ought to have government ownership" of radio. The growth of monopoly, he said, was a step toward government ownership, and the industry was "moving step by step, hour by hour, toward monopoly."