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FCC RULES WOULD HARM SMALL STATION, SENATORS TOLD

Small stations would be hard hit by the new FCC rules, Commissioner T. A. M. Craven and Mark Ethridge, vice-president and general manager of the Louisville Courier-Journal and Times, told the Senate Committee on Interstate Commerce at today's hearing on the White resolution asking a Senate investigation of the radio broadcasting industry. Both witnesses and several Senators urged a revision of the Federal Communications Act.

Commissioner Craven and Mr. Ethridge were the only witnesses at today's hearing. Both asked for new legislation to clear up the confusion resulting from the Commission's action which, the industry contends, hits at stations in an attempt to reach chain broadcasting.

Senators White, of Maine, author of the resolution, and Clark, of Idaho, likewise declared new legislation is needed. They said they favor holding the rules in abeyance until the legislation is enacted. Senator Wheeler, of Montana, Chairman of the Committee, agreed that the Act should be revised but said that Congressional action might take two or three sessions, and opposed holding up the rules, adding that there is a great divergence of opinion in Congress as to what the new law should be.

Says Rules Change Radio Pattern

"What is involved here," Commissioner Craven stated, "is a fundamental change in the pattern of American broadcasting. In effect it amounts to new legislation." He added that he believed the Communications Act of 1934 "should be reappraised by the Congress, rather than have the Commission institute a radical change in the pattern."

Mr. Ethridge said: "Here is an industry saying we want a new law and are willing to take our chances with Congress. We believe that the public interest demands such study be made."

Referring to the assertion of FCC Chairman Fly, during his testimony at the start of the hearings, that the Commission's action in issuing the new rules started in Congress, Mr. Ethridge asserted, "That's why we're here,

with the industry as the aggressor and the FCC as defendant. To say we have no right to come to Congress is to say we have no right of petition."

Law Written 14 Years Ago

The radio law, Mr. Ethridge added, was written 14 years ago, "when neither you nor we nor anybody else knew very much about broadcasting."

Senator Clark observed, "It occurs to me that since we shall have a lot of time free this summer, we might have a subcommittee go to work on a bill, rather than a resolution, looking toward a revision of the law, and yet not unduly hold up the regulations of the Commission as issued. In that way something might be accomplished."

Commenting on Senator Clark's suggestion, Senator White said, "I have been working on a tentative draft of legislation which I think will cure some of the serious defects in the law as it now stands. I have definitely in mind some things that ought to be dealt with that are in addition to anything I now have in the drafts to which I have referred.

"The situation which now exists has been growing up over the years, and it took the Commission all of three years to make up its mind—the majority of the Commission, I should say—which course to pursue in dealing with the thing.

"I felt it was proper and highly desirable that we ask the Commission just to hold up on the execution of its regulations until the Committee had a chance to study and possibly until the Committee had a chance to formulate legislation.

"I still believe that if the effective date of these regulations could be postponed a reasonable time, only a part of the time which it took the Commission to bring them forth, legislation could be presented which would form, at least, a basis for Committee consideration."

He suggested that Senator Clark ask Senator Wheeler

to say to the Commission, "We want to study this thing. We want to undertake some changes in the radio law. It took you three years to evolve these regulations. No public calamity will follow if you just hold up for a little while."

Later in the hearing, when Mr. Ethridge was testifying, Senator Wheeler stated, "I am not going to disagree with you as to the need for new legislation." But, he added, such legislation might require a long time and he thought the rules ought not to be held up.

Effect on Small Stations

Both Commissioner Craven and Mr. Ethridge pointed out that the new rules will harm the smaller stations.

One effect of the new rules, Commissioner Craven said, "is that the small stations will not be benefited and that the bulk of the business will gravitate toward the larger stations in each community.

"This will result in monopoly and will help the rich to get richer and the poor to get poorer."

Mr. Ethridge elaborated on this point by referring to the situation in Louisville, where his newspaper owns the largest of four stations in the city. With stations shifting from network to network under the new rules, he pointed out, it would be possible for this station to carry the most popular programs on all networks.

In spite of this, he said, he opposed the rules, which "were no answer to the plight of the small station."

Referring to the Mutual Broadcasting System, which is supporting the rules, he said they would benefit the owners of Mutual but would "gut" the small stations.

Says Commission Confused

During previous hearings, the point has often been made that there is much confusion over just what the rules mean and what their effect will be. The Commission itself, according to Commissioner Craven's testimony today, is as confused as is the industry. "I will wager that the majority itself does not know what the rules mean," he said.

He went on to say that "it is no exaggeration to predict that the decision of the majority, instead of resulting in free competition, would more likely create anarchy, or a kind of business chaos in which the service to the public would suffer.

"Not only will the application of the rules increase the inequalities between the small and large broadcasting stations, but the revolutionary change proposed by the majority will result in the destruction of the present excellent national program distribution system and the substitution of some new kind of system, the effects of which the majority does not adequately visualize."

This was admitted in the original draft of what is now

the majority report of the Commission, Commissioner Craven testified. This draft, he said, in reference to contract provisions, contained this statement:

"We cannot now determine the competitive effect of such contractual provision; or how they will work out in actual practice. They will have to be examined later in the light of all developments in the field of network broadcasting."

This statement, Commissioner Craven brought out, was eliminated in the final draft of the report.

While, under the new rules, stations may still make affiliation contracts, and networks and advertisers may contract for outlets, Mr. Craven said he and Mr. Case believe "this can be done only for individual programs and for blocks of time."

He pointed out that "this is a 'piecemeal' basis, and affords no continuity of stability to the industry."

"Fraught With Peril"

It is axiomatic, he said, that "unlimited availability of the few existing radio facilities and efficient national program distribution cannot both be attained at the same time.

"There is no open market condition in the business of broadcasting as in other businesses. Nature has determined that. To attempt to circumvent these basic economic laws is fraught with peril to an industry which has hitherto achieved a marked degree of success.

"Regulation in disregard of economic laws may foster a situation in which competition among competently managed networks would be replaced by an unwholesome conglomeration of local monopolies in the various towns and cities of the nation."

With regard to the question of the power of the Commission, Mr. Craven stated: "A Commissioner is constantly confronted with the charge of either failing to do his duty under the term 'public interest, convenience and necessity,' or of exceeding his authority. So my plea to you is to clarify this law, to the end that the powers of the Commission may be clearly defined, and that the responsibilities of the industry may be clearly defined. I think when and if you do that you will end a great many things which I think are wrong. You will end a great deal of trouble on the Commission."

Mr. Ethridge said that FCC Chairman Fly had built up a "big, bad wattage" theory during his testimony. He pointed out that wattage does not determine a station's audience; that in Louisville a survey he had made showed that the other three stations, with only a little more than a fourth of his station's wattage, had almost half the total number of listeners in the city. The "wattage" theory, he said, was a "straw man built up in boogie-woogie style," referring to claims made by Mr. Fly that NBC and CBS had most of the night-time power.