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SENATOR WHEELER SAYS RADIO LAW SHOULD BE AMENDED

Senator Wheeler, Chairman of the Senate Committee on Interstate Commerce, during testimony today before the Committee by William S. Paley, president of the Columbia Broadcasting System, said he thinks the radio law ought to be amended and intimated that a new bill might be introduced. He suggested that a way might be found through court procedure for staying the effective date of the new FCC rules.

For several weeks the Committee has been holding hearings on a resolution to investigate the broadcasting industry introduced by Senator White, of Maine, following promulgation by the Federal Communications Commission on May 2 of regulations drastically affecting network broadcasting.

"What's the Rush Here?"

In his testimony, Mr. Paley pointed out that there is no wide-spread public demand for any such radical procedure as that followed by the FCC, and said the industry is asking, "What's the rush here?"

He reminded the Committee that the Federal Communications Act was passed 14 years ago and that in the meantime radio broadcasting in the United States had grown swiftly in national importance. Now, he asserted, the FCC has decreed new rules, effective 90 days from the date of promulgation, and that he and his associates, "were at a loss as to how to operate a network successfully" under them.

Senator Wheeler said he did not want to be understood as agreeing entirely with the Commission's report, in which the new rules were embodied. He agreed there was need of clearing up some points in the present radio law. If a new bill is introduced, he added, there would be hearings on it. If there are any objections to points in the law, the industry could appear so that all such points would be threshed out.

Mr. Paley declared he was appearing primarily to urge that Congress enact a new radio law.

Paley's Suggestions for Legislation

"There are four things," he asserted, "that I think it is most important to have in that new law:

"First of all, I think that radio networks should be licensed by the Commission.

"Second, I think fairness in dealing with controversial

questions and with news, already voluntarily adopted as the code of practice by the vast majority of networks and stations, should be made a condition to having or holding a network license or a station license.

"Third, I think the powers and duties of the Commission should be very much better defined than they are today, so that the Commission will know exactly what the Congress desires it to do and so that we broadcasters will know exactly what it is empowered to direct us to do.

"Fourth, I think, because of the grave danger of a Commission abusing the licensing power over the most important single means of mass communication in America with the inevitable ultimate effect of destroying freedom of the air, there should be a Commission divorced from the common carrier field, with which the regulation of broadcasting is now intertwined. Also there should be clear and specified provisions for proper judicial review which cannot be evaded by subtle legal technicalities either by the Commission or by any broadcaster."

Need for Licensing Networks

On licensing of networks, Mr. Paley recalled that no one foresaw when the radio law was first enacted that network broadcasting would become such a major part of radio in the United States. So swiftly has broadcasting developed, he said, that the 14 years since the law was enacted "may well be the equivalent of 50 years in an older and less dynamic industry."

Radio's popularity both with the listening audience and with advertisers shows, he added, that it has developed along the lines most acceptable to the American radio audience.

"While all this has been happening," Mr. Paley asserted, "the Commission seems to have been obsessed in its whole thinking by the fact that it is radio stations and not networks that hold the licenses. It seems to feel that under the circumstances the success of the networks must be in some way improper. From this they have gone on to reason that virtually every practice which we in long experience have found to be essential is wrong and must be stopped regardless of the effects on programs and the public service.

"That is why I said to you at the very outset that I think the time has come when the Congress should recognize the validity of networks and should license them.

"Once they are licensed it should cease to be fashion-

able in Commission circles to indicate that they are an illegitimate factor in the industry or that in any sense they are evading their responsibilities or inducing licensees to evade theirs."

Broadcasting has never been, Mr. Paley said, a recalcitrant or defiant industry, nor is it now. "We are perfectly willing," he added, "to abide by the decision of the Congress if it will only make an unprejudiced examination of all the facts and then tell us the answer. The very fact that in the things it seeks to do right now the Commission seems to find it necessary to slip through the back door and strike at us through the licensing power it holds over our affiliated stations is proof that there is something inadequate in the statute itself."

By being licensed under a properly drawn statute, the status of the network, Mr. Paley believes, will be recognized and its rights safeguarded.

Fears Oppression

In regard to making fairness a condition to having or holding a license, Mr. Paley pointed out that he had advocated this six years ago and added that he believes it more emphatically now than then.

"If this policy is not set and implemented by the Congress, I fear, from what I have observed in the past few years, that we will drift into an exercise of vague and undetermined powers by the Commission. I can even see conditions under which such vague powers can be used by a Commission, however confident it may be in the righteousness of its own intentions, as an instrument of oppression and a threat to genuine freedom of the air."

Powers and duties of the Commission should be better defined, Mr. Paley stated, because "any responsible business would always rather obey a law than obey a man."

"Certainly there has been ample evidence that some who have appeared here and the members of this Committee itself differ on the meaning of the law and the powers of the Commission. The Commission at times seems to rely upon a vague phrase here and there in the statute in seeking to exercise constantly broader powers."

Not Common Carriers

His fourth recommendation, the need for divorcing the Commission which administers the broadcasting law from the administrative body dealing with common carriers, such as the telephone and telegraph companies, has long been apparent to some students of broadcasting, Mr. Paley said.

"Congress," he pointed out, "very wisely decreed in the beginning that we were not common carriers subject to the precise and minute kind of regulation appropriate in that field. Yet a single group of men is now trying every day to think one minute in terms of that kind of common carrier regulation and in the next minute to think about the mere licensing regulation of a non-carrier which is in part a business and in part an art which deals so incessantly with public affairs."

"The passage of the White resolution will give this Committee and the Congress an opportunity to investigate and determine whether in the public interest there should be a separation of these two fields of activity, one calling for close and detailed regulation and the other calling for a large measure of unrestricted freedom."

As to judicial review, he said that "it does seem to me

that it should be possible and that it certainly is desirable for Congress to make the legal rights in this field crystal clear. There should not be any chicanery or evasion or technical fencing in such an important matter.

"I do not believe that a sensible businessman today wants to use the courts just to create delay. What he really wants to do is to find out where he stands and to know that there is reasonable protection against infringement of his rights. That is all we ask in this respect, and certainly the present Act does not seem to afford us that much."

In advocating network licensing and a new radio law, Mr. Paley said he did not want to create the false impression he was suggesting the industry should be put "into a strait-jacket of hampering and restricting regulation."

The industry could neither grow nor render the fullest public service in that way, he added, and "the harm that would be done to a medium of free expression and creative programming would be far greater than any theoretical good that might be accomplished."

Saying that the Commission had come into being because there had to be a "sort of traffic policing of the air," Mr. Paley asserted he thinks the new law should, in effect, limit the Commission to three things:

- "1. To doing this unquestionably necessary traffic job.
- "2. To insuring that the medium is used fairly and without editorial bias.
- "3. To reviewing the operations of any network or station and making a broad general decision based upon competent evidence as to whether that network or station is operating in the public interest."

Stations Now Benefit

As far as Mr. Fly's charge of monopoly is concerned, Mr. Paley said that under the existing physical situation there is, of course, a limit on radio facilities, and that as a result there is a corresponding restriction on the number of networks that can compete with each other.

"There is no testimony whatsoever," he declared, "except the suppositions of Chairman Fly that this condition has harmed the public. It is scarcely conceivable that a greater number of networks using the existing facilities, and therefore each reduced to scant resources, would have served the public better."

"Certainly money-wise the public has not been hurt because the public in America gets radio broadcasting service free. It is equally evident that the advertiser has not been hurt because he weighs our medium against other competitive media with extreme care and has over a period of years spent an increasing amount of money for network broadcasting. When Congress makes a thorough study of this subject, as eventually it must, I am sure it will find that the stations generally instead of being hurt have been economically benefited by the present system of operation."

The testimony so far in the hearings has not only failed to reassure him and his associates, Mr. Paley said, but has made them more uneasy.

"The repeated, easygoing assurances of Mr. Fly to the effect that he will take care of everything and that everything will be all right, despite his evident difficulties encountered in these very hearings in applying his theoretical reforms to the problems of practical operation, do not jibe with my practical experience over many years."

"I want to tell you that if a surgeon suddenly decided to cut off my leg without even giving me an anesthetic, his assurances that he was performing a minor operation and that no substantial injury to my person was intended would neither ease my pain nor save me from spending the rest of my life on crutches."

The statement of Mr. Fly that "two men control 86 per cent of the nighttime power of broadcasting in the United States" was characterized by Mr. Paley as an "unjustified accusation," and "demagogic" twisting of the fact that "most of the radio stations in America turn to the best program services."

The real heart of this "charge of domination," Mr. Paley asserted, "is the implication that the networks either can or do somehow manipulate public opinion to serve their own ends or the ends of favored persons or causes. This whole charge is false."

"The public today is too well educated for any broadcaster even to dare to try to use his facilities for sinister purposes. Public opinion will stop him, the code will stop him, and Congress certainly could, would and should if it ever became necessary."

In trying to create this "bogy man," Chairman Fly and the Commission in its report overlook, according to Mr. Paley, the fact that the local station has access to the news of the press associations, the local newspapers and the news and views of its local community. Under these circumstances, he asked how it would be possible for the networks to "dominate and control" public opinion.

Describes CBS Operations

The operations of Columbia were described by Mr. Paley, who said CBS had more than 2,000 employes in general management, sales, engineering, advertising, publicity, sales promotion, research, administrative and creative program functions and supervision.

CBS is set up, according to Mr. Paley, to originate programs in various parts of the country, principally at the key stations in New York, Chicago and Los Angeles, and to pick up programs from outside points, sometimes producing and broadcasting as many as four different programs to different sets of stations at the same time. He described the care taken to maintain a balanced program service, without too many programs of the same kind or an overweighting of commercial programs.

CBS network overhead, he said, is more than \$10,000,000 a year, not including payments to stations for commercial programs, and sustaining programs alone cost more than \$5,000,000 a year, the network agreeing to provide in most instances a minimum of 60 hours of sustaining programs a week to affiliates, which are not required to take any of these programs unless they wish to do so.

Moreover, the local station, Mr. Paley declared, can always displace a network commercial program with any event of local interest it wants to carry on a sustaining basis.

"The exclusive arrangement here," Mr. Paley told the Senators, "is a two-way street. The station and the network agree with each other that it is in their mutual interest to operate in this way. Neither is compelled to make the bargain."

When the contract is terminated, either party is free to negotiate for new terms or new arrangements, and, he added, more often than not it is the station which is more

insistent upon exclusive and long-term contracts because it knows the network will not then switch to another affiliate.

Station Network Income Increasing

"In 1931," said Mr. Paley, "the independent stations affiliated with us received 21.53 per cent of the income we received from the sales of these stations on commercial hookups. In 1940 this percentage had risen to 45.58 per cent. Thus in 10 years the stations' receipts had more than doubled percentage wise. This hardly sounds as if they were helpless captives with no bargaining power."

Mr. Paley said that national advertisers have invested so heavily in radio advertising only because they were assured of time for their programs and a nationwide audience, adding that he thinks the Commission has failed to grasp this fundamental of how broadcasting and advertising work. The advertiser must plan his program and time requirements well in advance, and Mr. Paley asserted he would not be able to do this under the new rules.

Against the background of the CBS operations, Mr. Paley took up the rules in detail. Before adjournment he covered only three: the rule forbidding a station to contract exclusively with only one network, that forbidding a station to contract for a network's exclusive services in a particular territory, and that forbidding the present arrangement under which a network has an option on a certain portion of the time of a local station.

The Commission, he declared, forbids "exclusivity anywhere in the country and under all circumstances, even in places like New York, Chicago and Los Angeles where there are three or four times as many stations as there are networks."

Some markets, he went on, will support only two stations just as some towns will support only two newspapers or movie houses or restaurants.

Says Rules Would Hit Smaller Stations

If two stations in a town make their facilities available to all four networks as the new rules provide, instead of to two networks, as is the existing practice, he reminded the Committee that each network would receive only half the income possible at present. Multiply this by 50 stations, he said, and the reduction in income would be considerable with a corresponding decrease in the network's ability to provide sustaining service.

Moreover, the advertiser, he continued, would want the larger stations, so the smaller would suffer a decrease in income, as had previously been contended by other witnesses.

Mr. Paley intimated the rule forbidding exclusive contracts with any network might benefit the Mutual Broadcasting System, which is supporting the rules, but said it would severely hurt the other networks. If Mutual wants to compete on an equal basis and provide network service instead of carrying sustaining programs originating on local stations, Mr. Paley asserted the way is already open for it.

World Series Broadcasts

The World Series baseball games, mentioned a number of times previously in discussions of this rule, Mr. Paley

termed one of the "most misrepresented" topics presented at the hearing. He said NBC and CBS "had believed for years that nobody should try to sew up the World Series," since baseball is the national game, and had urged the baseball managements to make the games available to all networks on a sustaining basis.

They were shocked, he went on, when "Mutual suddenly turned up with an exclusive contract to broadcast the World Series on a commercial basis."

Although NBC and CBS wrote to Judge Landis offering to broadcast the games on a non-commercial and non-exclusive basis with courtesy announcements for Mutual's sponsor and the baseball clubs, Mr. Paley said they received no response.

This information had been given to Mr. Fly, according to Mr. Paley, who said Mr. Fly "sat here before you and tried to make it appear that it was Columbia and National who were responsible for a large number of stations not having the World Series, whereas Columbia and National year after year had worked to the opposite end and it was Mutual which was simply and solely responsible."

Cites CBS Study

A study by CBS traffic experts, was cited by Mr. Paley as showing that it would be feasible under the rules for an advertiser or advertising agency to take his pick of stations and link them in a temporary network for commercial programs, thus freezing out regular networks and many small stations normally included in such hookups, because the advertiser or agency would furnish no sustaining or similar network service so that his cost would be less.

The rule forbidding a station to contract for a network's exclusive services in a particular territory would work similar hardships upon the stations, and networks, Mr. Paley said. In addition, he continued, "if the local station affiliated with the network does not wish to take any particular program from the network, it must face the possibility, if the new rule is in operation, that if another station in its territory desires to take that program

the refusing station not only contributes to the success of a competitor, but actually faces competition for audience supplied by the very network with which it is affiliated."

"A Masterpiece of Disruption"

The rule forbidding option time was characterized by Mr. Paley as a "masterpiece of disruption."

"The more I realize its actual effects," he said, "the more evident does it become to me that the Commission either did not know or did not care what was going to happen to network broadcasting.

"This rule means that network broadcasts, local broadcasts and phonograph records, including the large-size records known as transcriptions are all on a parity, and the necessary priority of network operations is ignored. Since a network can only exist when a number of stations are joined together for simultaneous broadcasting, it seems evident that there must be some kind of priority for the through program unless the whole network operation is to be haphazard, accidental, difficult and often impossible except on a patchwork basis.

"The national advertiser is interested in nationwide coverage and must be able if he is to use our medium to reach his whole market and to prorrate the great expense of his program over the many millions of listeners from Coast to Coast who are his potential customers."

Unless the network can get an option on station time, Mr. Paley contended, a network will be blocked, even when only a few key stations are tied up either by local programs or phonograph records.

Under this rule, Mr. Paley said, "our schedule of available time across the country would be like a jig-saw puzzle, except that if you have time and patience you can put the pieces of a jig-saw puzzle together, and there is absolutely no assurance of how often we can put a network together under these conditions."

Mr. Paley had not concluded his testimony when the hearings adjourned today. He will take the stand again tomorrow morning.