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NETWORK HEADS ASK CONGRESS TO ENACT NEW RADIO LAW

Heads of the two major network broadcasting companies, testifying before the Senate Committee on Interstate Commerce, today asked Congress to enact a new radio law which would define the powers of the Federal Communications Commission and the position of the industry.

As a first step toward clarification of the 14-year-old statute, all three of the witnesses heard today, William S. Paley, president of the Columbia Broadcasting System, Niles Trammell, president of the National Broadcasting Company, and Judge John B. Burns, CBS counsel, urged approval by the Committee of the White resolution calling for a congressional investigation of the broadcasting industry and the Commission.

The White resolution was introduced following the promulgation by the FCC on May 2 of new rules which both network presidents said today would have disastrous effects upon the broadcasting structure of the nation.

Says Agencies Given Too Much Power

At one point in the testimony, Senator Wheeler, chairman of the Committee, said, "I think there has been too much power given to various agencies of the Government, and I have opposed it from time to time. We are fast getting into a position in this country today where we are having government by man as distinguished from government by law."

At another time he said, "I do not want you to get the idea that I am upholding entirely the procedure of Commissions. I realize the fact that they become exceedingly arbitrary at times, and when they once have made up their mind they do not want to recede from it in the slightest degree."

Previous testimony during the hearings has brought out the fact that there is great confusion over the meaning of the rules. Today Senator Wheeler said to Mr. Paley, "You stated upon this witness stand that your lawyers and yourself did not know what those rules mean; and I can agree with you on that because I think different conclusions can be reached as to them."

Commenting upon a statement by Judge Burns concerning one part of the Commission's report in which the new rules are embodied, Senator White, of Maine, author of the resolution, indicated that there the Commission majority seemed to "proceed on the basis that what is possible is probable and may be assumed to be true."

In closing his testimony this morning, Mr. Paley said, "We have told you as earnestly as we can that we believe these regulations really imperil the broadcasting structure of this country."

He added that testimony, questions asked by Senators and other developments during the hearings cast "doubt on the workability of the whole scheme and suggest that the public interest cannot be seriously damaged by holding up the effectiveness of these rules until you can reach your own orderly decision.

"We are hopeful that a careful, impartial and judicial examination of broadcasting by Congress will provide us with a law that is clear and a manner of administration that is fair.

"We are hopeful that as a result of your deliberations we will no longer be besieged by doubt and confusion and threatened with punitive action, and that we will be allowed to bend our energies toward evolving a constantly improving broadcasting service.

"We are hopeful that an investigation such as is called for by the White resolution will provide a law that insures freedom of the air and eliminates the threats which radio is now facing.

"We are hopeful of all these things, and I am convinced they can be accomplished."

Congressional Study Asked

In opening his testimony late this afternoon, Mr. Trammell said he advocated approval of the White resolution because of three things:

"First, as one who has been in the radio industry since its inception, it is my firm belief that the orders and regulations recently issued by the Federal Communications Commission will disastrously affect the entire broadcasting structure of the nation.

"Second, the issues raised by the new regulations are not merely industry issues; they are distinctly public issues. They affect the users of fifty million radio receiving sets; they affect thousands of radio programs and those public interests which provide them; they affect the business life of the nation; and they affect the morale and welfare of the American people.

"Third, a national radio policy defined by Congress is urgently needed, at the present time, to protect by clear mandate the freedom of the air against either private or governmental control, and to insure the con-

tinued operation of broadcasting under the American system of private enterprise."

Judge Burns, in his testimony, called the roll on those who are favoring and opposing the new legislation which the industry is asking.

Support New Legislation

Among those who are on record as supporting such legislation, he listed President Roosevelt, who in 1939 asked a new radio law in a letter addressed to Senator Wheeler. Mr. Burns pointed out that Senator Wheeler, too, has stated several times that the present law needs amendment.

Commissioner T. A. M. Craven, who appeared last week to present to the Committee his own views and those of Commissioner Norman S. Case, strongly advocated new legislation clearly defining the powers and duties of the Commission, Judge Burns continued.

Even Louis G. Caldwell, counsel for the Mutual Broadcasting System, the only network supporting the FCC's position, indicated, said Mr. Burns, under questioning by Senator Clark, of Idaho, that he believes clarification of some points in the present law to be desirable. In an article Mr. Caldwell wrote for the *Annals of the American Academy of Political and Social Science* in 1935, Mr. Burns went on, he was more explicit, declaring that too much power was being exercised by the Commission.

To these, Judge Burns said, practically the entire broadcasting industry except Mutual, may be added.

A number of Senators, including White and Clark, have likewise indicated during the hearings that they believe new legislation should be enacted.

Chairman Fly, Judge Burns asserted, is thus practically alone in opposing the legislation.

When he resumed his testimony today, Mr. Paley took up the new FCC rule forbidding stations to contract with a network for more than one year at a time.

Says Rules Harm Small Stations

"This is not practical," Mr. Paley said, "for either the network or the station and seems to me a glaring example of the lengths to which the Commission has gone to upset existing arrangements and practices just for the sake of upsetting them, although its announced purpose is to protect the stations.

"You are going to have a reshuffling of network alignments every year, assuming that these alignments mean anything at all in face of the total effect of the various rules. One result of this one-year rule if these major outlets come into the market every year will be annual competitive bidding for the most desirable outlets in the large markets.

"This can well force networks to pay those stations which are already exceedingly prosperous so much money that there is not going to be enough of the network dollar left properly to compensate stations in smaller markets where the competition for outlets is not so keen."

Such things as studio construction and engineering installations cannot be undertaken on a one-year basis, Mr. Paley reminded the Committee. Artists, features like the Philharmonic Symphony Orchestra, management and personnel likewise must be reasonably secure, he added.

Citing an investment of \$700,000 in a studio annex in New York by CBS a little more than a year ago, Mr. Paley

said that with "the uncertainties now projected into our business" such investment would not be justified.

"No responsible business management," he stated, "can enter into such normally necessary business arrangements knowing that it can continue to do business only on a transient basis."

On the rule regarding network ownership of stations, Mr. Paley pointed out that CBS owns seven and leases one of the 127 stations in the Columbia network.

"Should we arbitrarily," asked Mr. Paley, "and without any evidence in the record that we have abused this ownership, be stripped of interests lawfully acquired?"

"When I recall to you that in relicensing these stations year after year the Commission has certified that we have operated them in the public interest, I think you will find yourselves confronted, among other things, with the plain issue of fairness.

"If the Commission can find a single one of the stations we own which, in the testimony of its own community, is not a better station today than it was before we owned it, I will agree right here and now to give up that station without an argument."

The rule on network ownership of stations is based, he said, on the argument that such stations will naturally favor the network to which they belong, and thus make their facilities unavailable to other networks.

Sees Threat To Broadcasting

"If there is any validity to this restriction," asserted Mr. Paley, "then I do not see how a network organized on a mutual plan is to be allowed to operate at all. If the network is owned by the stations affiliated with it, won't those stations favor their own network? And is this not in the Commission's view an evil? In the light of Mutual's own testimony here that it now has seven stockholders, and is about to add two or four more, the Commission's argument that it should disturb our ownership and leave Mutual's unmolested seems pretty lame.

"I am not upholding the validity of the Commission's argument; I am just pointing out how here again it strains and strives to injure Columbia and NBC and help Mutual. Its argument that there is some kind of evil in affiliates leaning toward a network seems to me one of the most destructive it has ever advanced, but it does argue that way, and yet insists that it is all right for Mutual to be owned by 15 stations and all wrong for us to own seven."

The rule forbidding stations to agree with networks as to rates was termed by Mr. Paley "a threat as dangerous to the individual radio station as it is to the networks."

CBS, he said, does not have any agreement with its network affiliates as to rates which they shall charge other users of their time.

Industry Harassed and Worried

"We point out, however," he went on, "That private contractual arrangements designed to prevent unfair competition are not necessarily undesirable.

"Moreover, if the Commission can do this there is no apparent limit to the extent to which it can control the whole financial structure of radio. Once let it control the economics of the industry, and its power over broadcasting will know no bounds."

The whole industry, Mr. Paley declared, is harassed, worried and jittery as the result of the new rules.

"If Chairman Fly," he said, "can successfully assert these revolutionary powers over the business practices of the networks and the stations, make no mistake about it, his control will be so absolute that we will have in this field regulation by raised eyebrows, in which a nod will put one program on the air and a frown will keep another off. If this type of regulation is dangerous with respect to a business dealing with wholly physical things, how much more deadly is it in the whole realm of information, ideas and culture."

Commenting on the statement that the issue is one for the courts, Mr. Paley said, "May I point out to you that we could well suffer irreparable damage in the years while the legal fight was in progress, and if I am sound in my contentions, the public would suffer with us at the very time when broadcasting should, more than ever before, be a powerful instrument for the public good. If we win, it may well be too late. If we lose on the technical issue of the Commission's power, the important issue of public policy still is this: Did the Congress intend and does the Congress now want a radical revision of the whole broadcasting structure by administrative fiat?"

Public Interest Seen at Stake

Pointing out that the five men comprising the Commission majority constituted the sole complainant, Mr. Paley asked the Committee to stay the regulations and "call off the wrecking operation."

Mr. Trammell told the Senators that not only are the operations of NBC seriously affected and the welfare of the 2,300 NBC employees at stake, but that NBC's interests are closely interwoven with the public groups the network serves, the independent radio stations affiliated with it and the "vast radio audience which has so heartily approved our service."

He did not oppose, he said, proper regulation of broadcasting under the licensing powers authorized by Congress and administered by the FCC.

"Such regulation is essential," he went on, "but we are operating under a law conceived fourteen years ago and before the present problems of network broadcasting could be foreseen. The vagueness of this old law, the lack of clarification of certain vital principles, and the limited rights of appeal all argue strongly for new legislation as the only solution of the major problem confronting us."

Says Rules Would Disrupt Service

The American public today, Mr. Trammell said, receives the greatest broadcasting service in the world.

"The changes decreed by the orders of the FCC," he continued, "will disrupt the present orderly distribution of this broadcast service. They are not the result of public demand or a deficiency of service. They are the result, apparently, of unproven charges of domination, control and monopoly. They stem from the competitive cry of those who seek, through Commission edict and without competitive effort, to replace the pioneers who developed our American system of network broadcasting."

"The Commission now essays to regulate the business practices of the industry. Therein lies the great danger of the new regulations. We have not believed Congress

intended to give the Commission the power to prescribe business rules or program practices for the broadcasting industry. We have believed that Congress intended to give the Commission power to regulate the industry, not to operate it."

Mr. Trammell said that neither the broadcasters, nor the Commission, nor Chairman Fly knows how the American system of broadcasting can operate under the new rules.

He pointed out that while the Commission promises to go to Congress for legislative help "if the new order does not function," the industry is asking for that help now.

"I believe," Mr. Trammell declared, "that we are properly apprehensive about the willingness of the Commission to perform a serious, and perhaps fatal, operation while limiting Congressional help to post mortem relief."

"There is no substitute, I am convinced, for legislative study and action on the problems that confront broadcasting."

Warns Against Chaos

The uncertainty of the Commission itself as to the effects of the new rules, Mr. Trammell indicated, is shown by the statement that if they do not achieve the purposes hoped for, Congress "should amend the Communications Act to authorize and direct regulations appropriate to a non-competitive industry."

He charged that "the Commission foresees the possible breakdown in the competitive system of broadcasting now maintained by private enterprise. It is perfectly willing, when the chaos and business anarchy predicted by the dissenting Commissioners becomes a reality, to recommend that a government controlled monopoly be legislated by Congress as the only alternative method of operation."

"The confusion and chaos that must follow the sudden removal of the business and contractual props upon which chain broadcasting now rests will signal the assumption of more and more control by the Commission. Neither the industry nor the FCC has any illusions about that."

Certain clauses in the contract between NBC and its affiliated stations, Mr. Trammell said, had been criticized by FCC Chairman Fly in his testimony earlier in the hearings. These were the clauses requiring the stations to give five years' notice of cancellation of agreement as against one year's notice for the network, preventing stations from having local rates below network rates, and that requiring stations cancelling network commercial programs for local commercial programs to rebate the difference between what the network would have paid for the network commercial and what the station received for the local program.

Eliminates Clauses from Contracts

None of the clauses, he said, has ever been a matter of issue between NBC and the stations, the first two never having been enforced, and the third invoked "only on rare occasions when a supplemental arrangement had been mutually agreed upon by the station and NBC." In addition, many of the affiliated stations, he continued, do maintain different rates for local and national spot business.

Nevertheless, Mr. Trammell stated, he had asked all NBC affiliates affected by these contract provisions to

agree to eliminate those clauses from their contracts.

In addition, he said that a total volume discount permitted by NBC since 1927 to advertisers on both the Red and Blue networks is being eliminated.

Mr. Trammell told the Senators he had taken this action to eliminate any need for consideration of lesser matters and so that there can be no confusion between the major and minor issues to be considered.

Of the 233 contracts NBC now has with affiliated stations, he said, 117 are firm commitments with equal rights of cancellation on the part of stations and NBC, and the other 116 contracts give NBC an option to cancel on a year's notice.

"The history of NBC," Mr. Trammell stated, "is public property. Its progress has been a source of pride to those in the company and of satisfaction to a vast American radio audience. The list of its contributions to broadcasting development, both in engineering technique and program service, is a matter of record. If it is a crime to grow, to extend service, to make reasonable profits—then we are guilty. But I submit that our record of achievement and public service is a matter for *commendation*, not *condemnation*."

In his statement to the Committee, Judge Burns attacked the Commission's majority report both as to content and the manner in which it had been arrived at. He also supplemented Mr. Paley's testimony with respect to the destructive effect of the new rules and analyzed the difficulties which will confront the networks if they attempt to secure relief through judicial review of the Commission's action.

Mr. Burns said that FCC Chairman Fly had gone "to great length to make out a very appealing case of due process" in connection with promulgation of the rules by having made a demonstration of holding lengthy hearings, taking voluminous testimony and giving opportunity for briefs, suggestions and arguments.

Nevertheless, he said, the Commission's report "still does not reflect what the testimony was before that Com-

mission." He added that the Commission had never produced, during its so-called "monopoly investigation," any testimony to contradict evidence by the industry that the abolishment of the existing type of contract relationships between the stations and the networks would be "serious."

Mr. Burns pointed out that Commissioner Craven has already testified before the Senate Committee that an earlier draft of the report contained a statement confessing the majority's inability to predict what the effect of the rules might be in "actual practice."

"This," he said, "is the very guts of the problem: What is going to happen to the business when you put these new, revolutionary, radical, undreamed-of reforms into effect?"

Mr. Burns quoted at length from a brief filed by the FCC in the Sanders case, in which the Commission argued that "there is not a single provision in the Act from which it can be inferred that Congress intended, by providing a licensing procedure for the use of radio transmitting equipment, to subject to regulation the business of the licensee." In addition, the Commission added in this brief that it "is not authorized to regulate the business of selling radio advertising or any other commercial use of radio frequencies; it is not authorized to regulate the rates for radio service or to limit the return upon the investment in radio broadcast stations."

In his review of alternative methods of seeking judicial relief, Judge Burns said that the primary difficulty was that in recent years the courts had demonstrated a disposition to reverse administrative rulings only where there was error in law.

The Commission, he said, has been "notorious in its efforts to immunize itself from judicial review and to free itself from any supervision by the courts. It has successfully established in the courts the principle that only errors of law will be considered by the reviewing court."