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INDEPENDENT STATIONS OPPOSE RULES, ASK NEW LAW

Owners and operators of independent radio broadcasting stations joined with representatives of the industry's principal trade associations at today's hearing on the White resolution before the Senate Committee on Interstate Commerce in opposing the new rules promulgated by the Federal Communications Commission and in urging Congress to enact a new radio law.

Witnesses today included Neville Miller, president of the National Association of Broadcasters, Paul W. Morency, vice-chairman of Independent Radio Network Affiliates, John J. Gillin, Jr., general manager of Station WOW, in Omaha, Neb., Samuel H. Cook, co-owner of Station WFBF, in Syracuse, N. Y., and D. M. Patrick, counsel for the National Broadcasting Company.

These witnesses pointed out that the present radio law was enacted 14 years ago when broadcasting was still in its early, experimental stages and network broadcasting was only beginning to develop.

Stations Oppose Rules

Mr. Miller placed in the record a resolution adopted by unanimous vote of the industry present at the Association's annual convention in St. Louis, May 12-14, urging passage of the White resolution "with a view to enactment of a new radio law," and a stay of the Commission's rules.

Mr. Morency presented a similar resolution adopted by the independent radio affiliates group and testified that polls of the membership showed they opposed the new rules by at least ten to one.

"Broadcasters are very apprehensive of these regulations," Mr. Miller said. "They believe, as has been stated here so many times, that the proper procedure is to have the Senate make a study and draft new legislation."

The rules, he testified, may cripple a vital instrument of national defense in a time of crisis.

There has been no complaint from either the public or the advertisers about radio service, Mr. Miller said. He questioned the claim by FCC Chairman Fly that the rules would be the "Magna Carta" to free the stations from the networks.

"Mr. Fly talked about this 'Magna Carta' for the small stations," said Mr. Miller, "as if he were freeing a group of slaves, as if he were issuing a second Emancipation Proclamation. I was not alive when the first Emancipation Proclamation was issued, but I am quite sure that it was received with a great deal more enthusiasm than this is being received by these stations which, as far as I can find out, do not want to be liberated from the con-

dition they are in, because they are not being dominated and they are getting along very nicely.

"I think this is just a technique that Mr. Fly has developed for the purpose of beclouding the issue."

Mr. Miller said he would be remiss in his duty if he did not tell the Committee the broadcasting industry is operating in a very fearful state of mind.

"I think," he continued, "that emphasizes one thing which I should like to say, and that is that we are getting very close to censorship. Stations have to come up every year for licensing. The licensing power is very broad. Whether or not they take a speech may come into the question of whether they get a renewal of license.

"If it gets to be known that the Commission or those in authority feel that this is a good kind of program, that this is a good speech, or that this is a bad speech, you are going to find the radio stations, as they are today, becoming very fearful, and you are going to get to the place where we lose freedom of speech over the radio.

"I think that one thing we overlook is that Chairman Fly seems to believe that you can tinker with radio and that you will not hurt radio sets at all. If you start knocking off sustaining programs and start knocking off the good programs, you are going to find out that you will have fifty million idle radio sets and that the public will turn for its information to other places. You will not have the system you now have."

Advertisers Concerned

Mr. Miller also placed in the record a letter from John Benson, president of the American Association of Advertising Agencies, who said national advertisers are disturbed over the new rules. Mr. Benson's letter asked adoption of the White resolution, revision of the present law and that the rules be held up until a proper study can be made.

Mr. Morency said the present radio law "gives no recognition whatever to the fact that national service is network service," because the law deals exclusively with licenses to individual stations.

The new regulations, he pointed out, are "aimed primarily at the terms of the contracts and relations between affiliates and networks, although the entities consisting of network organizations are unknown to the present law."

Mr. Morency declared that "it is clear that the overwhelming majority of contract affiliates believe the regulations as drawn go too far and will impair service to the public."

Describing radio as a part of the daily life of the

American home, Mr. Morency said, "It would be tragic to disrupt this medium of cheer and recreation in the world of trouble of today only to try out a theory of operation which most of the more experienced broadcasters believe is not practical.

"Before this risk is taken, affiliates believe the field should be studied more broadly, so that a new statement of the law may be made to catch up with the progress of the art since 1927."

Mr. Gillin, who said that his station, WOW, owned by the Woodmen of the World, is one of the oldest in the United States, testified that in his opinion as a broadcaster of fourteen years' experience, the rules would make national public service programs a "thing of the past," and would harm the small station.

An exclusive arrangement between the broadcaster and the network, forbidden under the new rules, means "reasonable permanency," Mr. Gillin asserted. He said "this is the only way that a broadcaster can be assured of a steady program, a continuing program of outstanding national public service programs and international news broadcasts and national special events."

If a station does not have an exclusive contract, Mr. Gillin told the Committee, "you can rest assured that the national public service programs that are not of a commercial character will be a thing of the past, because the network does not have any assurance under the rules and regulations that it can clear, even for commercial programs.

"Certainly it is not going to have the initiative it has had in the past to try to clear for public service programs."

Concerning the rule forbidding affiliation of a station with a network for more than one year, he said if this rule becomes effective "there will be a continual jockeying on the part of networks to get the best possible stations in each market, and, in the last analysis, the larger stations, namely the clear channel stations, will for the most part be the beneficiary."

Says Small Stations Would Get "Leavings"

Mr. Gillin said that under the new rules the stations with the poorer frequencies in each market will "receive only the leavings," whereas "the best station in each market will receive a great preponderance of the commercial programs available in that market, and, naturally, will receive the most money.

"The other stations in the market proportionately would be hurt. The second, third and fourth stations, which are now associated with some network exclusively, would not receive the proportion of commercial programs they are receiving today. Therefore, the second, third and fourth stations in each market in attempting to keep their heads above water, would take on the commercial programs of a much less desirable type of advertiser. This would do much harm to radio."

Mr. Gillin said he believes Congress should specify the power of the FCC in a new radio act and that the present rules should be stayed.

Mr. Cook, president of the Onondaga Radio Broadcasting Corporation, which owns and operates WFBL, told the Committee that as the result of a building and improvement program involving an outlay of approximately \$140,000, he and his associates had sought and obtained an extension of their network contract, because they wanted to be assured of service for as long a period

as they could obtain it. The contract, which would have expired in January, 1943, was extended last year until January 1, 1945.

"Had we known," Mr. Cook said, "of the impending regulations to be issued by the Federal Communications Commission, we might not have gone ahead with such ambitious plans."

Mr. Cook told the Committee that although the network had an option on all the station's time, this "has never prevented us from rendering commercial service to our local advertisers desiring to use our facilities," nor "from carrying all the local public service programs required by our community interests."

The station was always free, he said, to cancel network commercial programs whenever they conflicted with local public service programs.

"We are definitely convinced," Mr. Cook asserted, "that the granting of option time to a network and term contracts longer than one year, and fully as long as at present, are necessary both for the orderly operation of a station and for its sales, and that these are good business practices, essential to the best interests of both station and network.

Station Owners Disturbed

"My associates and I regret, with all due respect, that the Commission saw fit to issue regulations at this time, especially when we have made this expenditure, so drastically changing the system of broadcasting, which we as station operators have felt has been doing a thorough and inclusive job of broadcasting with the interests of the public always in mind.

"As businessmen, we would like to know where we are going. We confess we are completely in the dark and are greatly concerned about what may happen to the networks and to the stations when and if the regulations of the FCC go into effect next August 2.

"We urge this Committee to pass the White resolution. We urge that a thorough study be made looking toward the enactment of a new law which will definitely set out the powers of the Commission and will leave to Congress the determination of terms and policies under which we are to operate in the future."

Mr. Patrick's testimony dealt with questions of the power of the FCC and of judicial review. He pointed out that the United States Court of Appeals for the District of Columbia in the Scripps-Howard Radio case, decided last February that it did not have power to grant a stay order during the pendency of an appeal, a reversal of the Court's previous position.

He asked Chairman Fly, who is to take the stand again, if he thinks the District Court of Appeals has power, in view of its decision in the Scripps-Howard case, to grant interim relief; under what circumstances the FCC would consent to granting such relief; if the FCC could extend a license on a temporary basis while an appeal is pending; whether if the Court does not have power to grant interim relief how the Commission would grant interim relief under certain conditions; and if interim relief were granted by the FCC or the Court, and the Court decided in favor of the Commission, would the FCC relicense the station immediately after demonstration that it would conform to the disputed regulation.

Mr. Patrick charged that the promulgation of the rules by the FCC was "usurpation of legislative power."