

The National Association of Broadcasters

1760 N STREET, N. W. * * * * * WASHINGTON 6, D. C.

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FCC Requests Explanation From CBS With Regard To New Affiliation Agreements With Stations

(We are printing herewith the text of the FCC letter to CBS and the telegram sent by Paul W. Kesten, CBS executive vice president, to CBS affiliates concerning the FCC letter and press release. The press release follows the FCC letter.)

October 26, 1943.

Columbia Broadcasting System, Inc.,
485 Madison Avenue,
New York, New York.

Gentlemen:

The Commission is informed that since the effective date of the Chain Broadcasting Regulations, you have entered into new affiliation agreements with Stations WPAD, WHOP, KEYS, KGBS, and perhaps others, containing such clauses as the following:

"Columbia will continue the Station as the exclusive Columbia outlet in the present standard broadcast band in which the Station is located and will so publicize the Station, and will not furnish its exclusive network programs to any other station in the present standard broadcast band in that city, except in case of public emergency * * *"

"The Station will operate as the exclusive Columbia outlet in the present standard broadcast band in such city and will so publicize itself, and will not join for broadcasting purposes any other formally organized or regularly constituted group of broadcasting stations. The Station shall be free to join occasional local, state-wide or regional hook-ups to broadcast special events of public importance."

"The Station will broadcast all network sponsored programs furnished to it by Columbia during the time when the Station is licensed to operate; provided, however, that except in connection with occasional sponsored programs of special events (such as World Series broadcasts) during periods of not more than two weeks each, the Station need not in any week broadcast network sponsored programs totaling more than fifty 'converted hours' (as defined below, but for this purpose computed during the entire term of this agreement on the basis of

the differences in rates at different hours specified in Columbia's Rate Card No. 23). The Station may require Columbia to give not less than twenty-eight days' prior notice of the commencement of sponsored programs for new accounts."

Attached to the contracts in question are riders or "schedules" containing certain "saving clauses". No question is raised at this time concerning these "saving clauses" with respect to contracts effective prior to the effective date of the Regulations, since the Commission desired to achieve a transition to operation under the Regulations with minimum delay and without requiring a redrafting of all existing network affiliation contracts. However, the entering into of new contracts containing the very clauses which the Commission has found not to be in the public interest raises a very serious question under the Chain Broadcasting Regulations, even though the objectionable clauses may be limited by other clauses in a schedule attached to the contract. Such contracts would appear to hinder, if not to prevent, a station from exercising the degree of freedom specified in the Chain Broadcasting Regulations.

In addition to the above, your attention is called to that portion of Regulation 3.104 which provides:

"No license shall be granted to a standard broadcast station which options for network programs * * * more time than a total of 3 hours within each of the four segments of the broadcast day, as herein described * * *."

Under date of June 7, 1943, the Columbia Broadcasting System, Inc., addressed a circular letter to its affiliates, a copy of which was supplied to the Commission in response to a Commission request dated September 3, 1943. It appears that this letter sets up a time schedule which does not comply with the requirements of Regulation 3.104. With respect to the afternoon segment, it

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specifies 4½ hours rather than the 3 hours specified in the Regulations and with respect to the evening segment, it specifies 4¼ hours rather than the 3 hours specified in Regulation 3.104.

In the CBS letter dated June 7, 1943, the time schedule in question is described as "certain time periods in which we would make no effort to resell the time once present advertisers give it up, and thus give a green light, from our standpoint, to future guaranteed spot or local sales in these periods." The time periods in question are further described as: "the times in which you are perfectly safe in making future sales on a guaranteed basis, after the time has opened up * * *." The letter further emphasizes the desirability of the station "retaining the freedom to move local and sponsored accounts in order to accommodate network business in times other than those listed above * * *." It is thus clear that the time schedule specified in the CBS letter of June 7, 1943, is in fact an option time schedule.

At least some CBS affiliates appear specifically by letter to have accepted the time schedule set forth in the letter of June 7, 1943, thus entering into an express agreement or understanding with the Columbia Broadcasting System which violates Regulation 3.104. Thus the Orlando Broadcasting Company, Inc., licensee of Station WDBO, wrote to CBS on June 10, 1943:

"The periods of safety time for future sales on a guaranteed basis are excellent and will, of course, carefully and exactly be observed by us."

The Miami Broadcasting Company, licensee of WQAM, similarly wrote:

"We here at WQAM are completely in accord with the ideas as expressed, and we want you to know that Columbia can continue to have the same one hundred percent cooperation that we hope we have been able to extend to you in the past. The time clearance as shown in the letter I think will serve our needs very adequately and it should certainly facilitate the handling of certain local accounts without confusion in the future."

It further appears that a large number of CBS affiliates may have in fact agreed to sell time to others on a guaranteed basis only during the periods set forth in the CBS letter of June 7 and have refused to sell time on a guaranteed basis during other periods, thus evidencing their compliance with the arrangement or understanding set forth in the CBS letter.

Your comments concerning both the written contracts which contain clauses in violation of Regulations 3.101, 3.102, and 3.104, and concerning the agreement or understanding, express or implied, in violation of Regulation 3.104, are invited at an early date, in order that they may be considered in connection with applications for the renewal of licenses of stations having such contracts or such arrangements or understandings with the Columbia Broadcasting System.

By direction of the Commission,

T. J. SLOWIE,
Secretary.

Indicating that contracts being made with new affiliates by the Columbia Broadcasting System may be deemed to violate three of the Chain Broadcasting Regulations, the Federal Communications Commission today announced that it had written to the network for an explanation.

"Such contracts would appear to hinder, if not to prevent, a station from exercising the degree of freedom specified in the Chain Broadcasting Regulations," the Commission pointed out.

The Commission also noted that a circular letter sent by CBS to its affiliates June 7, 1943, appears to set up a time schedule not in compliance with the requirements of the regulation which specifies that a chain may not option more than three hours of a station's time in any one of the four segments of the broadcast day.

At least some of the CBS affiliates appear to have accepted this time schedule, thus entering into an express agreement or understanding which may violate this regulation, the Commission asserted.

The Commission letter asks CBS for its comments concerning both the written contracts and the agreements outlined in the circular letter. These comments will be considered in connection with applications for the renewal of licenses of stations having such contracts or such arrangements or understandings with the Columbia Broadcasting System, the letter states.

Copies of the letter were also sent to all CBS affiliates.

The regulations involved are 3.101 which prohibits contracts preventing a station from broadcasting the programs of more than one network; 3.102 which prohibits a network from making a contract with a station preventing another station serving substantially the same area from broadcasting the network's programs not taken by the former station, or which prevents another station serving a substantially different area from broadcasting any program of the network organization; 3.104 which prohibits a network from optioning more than three hours in any one segment of the broadcast day.

Columbia has signed the contracts in question with Stations WPAD, Paducah, Ky.; WHOP, Hopkinsville, Ky.; KEYS, Corpus Christi, Texas; KGBS, Harlingen, Texas, and perhaps others, the Commission notes.

The Chain Broadcasting Regulations were adopted by the Commission on May 2, 1941, after an extensive investigation and hearings. They were contested by the National Broadcasting Company and by the Columbia Broadcasting System, which carried the case to the United States Supreme Court. The Supreme Court upheld the regulations on May 10, 1943, and they became effective in June, 1943.

October 27, 1943

COPY OF CBS WIRE TO AFFILIATES:

We have today learned of letter which FCC is sending us criticizing our affiliation contracts as amended to conform with the rules and further criticizing Akerberg's June 8 letter to you concerning the periods in which we would seek no clearance for network programs. We have also seen copy of Commission press release charging that affiliation contracts violate three Commission regulations and stating Commission is sending duplicate letter all CBS affiliates. This will inform you that language of amended contracts was discussed with Commission's Chief Counsel Denny in August when Denny agreed same fully complied with Commission rules from legal standpoint. We are therefore amazed at sudden public attack without warning threatening license renewals of stations in connection with phraseology of new contracts despite full legal compliance with Commission rules. In criticizing June 8 letter the Commission apparently refers to helpful information from us advising you of certain time periods in which we would not seek clearance for network programs and misconstrues this as an

option to us on your part on all other time periods. This completely ignores our telegram of May 29 which officially specified option time under the rules and which Mr. Fly approved personally in advance. The Commission's letter also ignores the express desire to many affiliated stations for more than the three hours of sponsored programs covered by network options in each time segment. You will see from the above that we have made every reasonable effort to protect our affiliates from any claim of non-compliance with the rules. If as a result of further conferences with the Commission it confirms its desire to extend its jurisdiction into the field of phraseology of contracts, as distinct from their legal content or effect, we will, of course, in view of the present state of the law, have no alternative but to comply. If the Commission also finds that its jurisdiction applies to non-legal but purely informative letters from us to our affiliates, we will do our best to handle these in a manner satisfactory to the Commission.

(signed) PAUL W. KESTEN
(Executive Vice President
Columbia Broadcasting System, Inc.)