The National Association of Broadcasters

1760 N STREET, N. W. ★ ★ ★ ★ ★ ★ ★ WASHINGTON, D. C.

May 21, 1943 **SPECIAL LEGISLATIVE BULLETIN** No. 1

Government Control Looms for Radio

Meeting in Washington May 19 to study the White-Wheeler bill, the NAB legislative committee considered, among other things, the loss of control of the American System of Broadcasting to a government agency and after due deliberation issued the following statement, which was dispatched to all newspaper, radio wire, trade press and press association channels:

Washington, D. C., May 19. Unless Congress enacts a new radio law, government control of broadcasting in this country is an accomplished fact, a special legislative committee of the National Association of Broadcasters announced today.

The committee assembled to study the bill introduced by Senator Wallace H. White, Jr., and Burton K. Wheeler, which re-establishes the liberties and limitations of radio, and to consider the effect of the Supreme Court decision of May 10 which "places broad and fantastic powers in the hands of the Federal Communications Commission", the committee said.

"The Supreme Court decision," it was explained, "hands over to the Commission complete control of broadcasting. This government agency now has the power, whenever it wishes, to determine what the American people shall and shall not hear, whether it be news, music, drama, comedy or political broadcasts. The world's last remaining system of free radio has been brought under complete government domination by this decision, a condition which previously has been bitterly deplored by the people and the press of the United States. This result, astonishing to the radio industry and the public alike, emerged from a case purportedly concerned only with the power of the Commission to regulate contracts between stations and networks. The decision went far beyond these issues and constituted an hitherto unsuspected interpretation of 'public interest, convenience and necessity' by the majority of the court, with strong minority dissent. New legislation is the only hope of free radio in America," spokesmen for the committee concluded.

The committee, consisting of Neville Miller, President of NAB, Chairman; Don S. Elias, WWNC, Asheville, North Carolina; Clair R. McCullough, WGAL, Lancaster, Pa.; James D. Shouse, WLW, Cincinnati, Ohio; Frank M. Russell, NBC, Washington, and Joseph H. Ream, CBS, New York, laid plans for NAB participation in hearings on the White-Wheeler bill, scheduled to begin May 25.

Following issuance of this release, the following telegram was sent to the NAB board of directors, stating that a special session of the board to consider problems arising from the network decision would probably be called about June 1.

LEGISLATIVE COMMITTEE MET TODAY. DUE TO EMERGENCY CREATED BY COURT DECISION COMMITTEE BELIEVES IT PROBABLY WILL BE ADVISABLE TO HOLD SPECIAL BOARD MEETING WASHINGTON TUESDAY WEEK, JUNE FIRST. WILL ADVISE YOU DEFINITELY BY MIDDLE OF NEXT WEEK. SUGGEST YOU MAKE RESERVATIONS NOW. REGARDS.

NEVILLE MILLER

The decision in the network case was printed in full in the May 14 issue of the NAB REPORTS. The decision in the KOA case is printed in full in this week's issue of the REPORTS.

The National Association of Broadcasters
1760 N STREET, N. W. ★ ★ ★ ★ ★ ★ ★ WASHINGTON, D. C.
May 25, 1943 SPECIAL LEGISLATIVE BULLETIN No. 2

Hearings Postponed Until Late June

The hearings on the White-Wheeler Bill scheduled to start before the Senate Interstate Commerce Committee, Tuesday, May 25, were postponed.

Senator Wheeler, chairman of the Committee announced late Tuesday that the hearings will start the latter part of June and that the definite date for the commencement of the hearings will be announced on or before June 15th.

A meeting of the NAB Board of Directors has been called to be held Thursday and Friday, June 3rd and 4th at the Hotel Statler, Washington, D. C.

At that meeting the Board will give careful consideration to the provisions of the White-Wheeler Bill, proposed amendments to the bill and to the effect of the recent decision of the U. S. Supreme Court.

The industry will be kept advised of all developments.

WHAT THE MAY 10th SUPREME COURT DECISION MEANS

to American Broadcasting

to the American People

National Association of Broadcasters
1760 N STREET, NORTHWEST
WASHINGTON, D. C.

May 25, 1943

On May 10, the Supreme Court, by a 5-to-2 decision, written by Justice Frankfurter, placed in the hands of a government agency—the Federal Communications Commission—complete control of radio broadcasting in the United States.

The decision, which was expected to deal only with the Commission's right to enforce eight disputed rules governing the contracts between stations and networks, went far beyond that issue and conferred upon this government agency powers over radio broadcasting as complete as those existing in many foreign countries.

Thus overnight American radio, under the law as interpreted by the Court, has lost all the characteristics of freedom so vital to our two-party political system and so essential to American democracy.

Under the Radio Act of 1927, and under the amended Act of 1934, the Federal Communications Commission was given regulatory power over the technical aspects and physical allocations of radio frequencies. For ten years the Commission did not seek to stretch its powers into the field of program content or business operations of the broadcasters. Five years ago the Commission began a gradual effort to encroach upon these other fields. The fight against this encroachment culminated in the surprising decision of the Court, which, in one sweep, granted the Commission not only the specific powers it sought, but unlimited power over every aspect of this great medium of mass communication.

Lawyers for the radio industry, reading and re-reading the decision, can find no limits placed on the Commission's power to control programs and business operations of the broadcasters. The concept of absolute government-dictatorship over broadcasting is plainly set forth in the Frankfurter decision in such terms as these:

> Page 19. ". . . we are asked to regard the Commission as a kind of traffic officer, policing the wave lengths to prevent stations from interfering with each other. But the Act does not restrict the Commission merely to supervision of the traffic. It puts upon the Commission the burden of determining the composition of that traffic."
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> Page 20. "These provisions, individually and in the aggregate, preclude the notion that the Commission is empowered to deal only with technical and engineering impediments to the 'larger and more effective use of radio in the public interest.' We cannot find in the Act any such restriction of the Commission's authority."
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> Page 21. "In the context of the developing problems to which it was directed, the Act gave the Commission not niggardly but expansive powers."

The control of what the American people hear on the air, under the language of this decision, passed from the American public whose wishes have determined the programs broadcast daily by over 900 radio stations into the hands of a single all-powerful Commission whose edicts are final and conclusive.

A searching analysis of the decision indicates that indirectly or directly:

> The FCC can tell broadcasters what must be broadcast whether it be news, public discussion, political speeches, music, drama or other entertainment.
>
> The Commission can likewise enforce its edicts of what may not be broadcast in any one of these fields.
>
> The Commission can regulate the business arrangements by which broadcasters operate and direct the management of each individual radio station. It can issue or deny licenses based upon business affiliations.

The minority opinion of the Court vigorously attacked the majority decision. Written by Justice Murphy, it pointed out:

> Page 31. "By means of these regulations and the enforcement program, the Commission would not only extend its authority over business activities which represent interests and investments of a very substantial character, which have not been put under its jurisdiction by the Act, but would greatly enlarge its control over an institution that has now become a rival of the press and pulpit as a purveyor of news and entertainment and a medium of public discussion. To assume a function and responsibility of such wide reach and importance in the life of the nation, as a mere incident of its duty to pass on individual applications for permission to

operate a radio station and use a specific wave length, is an assumption of authority to which I am not willing to lend my assent."

Page 28. ". . . we exceed our competence when we gratuitously bestow upon an agency power which the Congress has not granted. Since that is what the Court in substance does today, I dissent."

". . . because of its vast potentialities as a medium of communication, discussion and propaganda, the character and extent of control that should be exercised over it by the government is a matter of deep and vital concern. Events in Europe show that radio may readily be a weapon of authority and misrepresentation, instead of a means of entertainment and enlightenment. It may even be an instrument of oppression. In pointing out these possibilities I do not mean to intimate in the slightest that they are imminent or probable in this country, but they do suggest that the construction of the instant statute should be aproached with more than ordinary restraint and caution."

The far-reaching effects of the decision are further illustrated by the following comments in the press:

ALBANY KNICKERBOCKER-NEWS (editorial) May 14

". . . Radio is something more than a communications medium. It is one of the greatest channels of free expression. Naturally any regulatory power which could suppress free expression concerns one of our deepest rights. A Supreme Court decision on the operation of a radio station may seem very distant to the individual but when a man here in Albany asks, 'Why do they have to send out that propaganda?' or 'Do they have to give him that much time?' the answer is plain in Justice Frankfurter's decision the FCC has 'expansive powers'."

WHEELING INTELLIGENCE (editorial) May 14

"We do feel, however, that the opinion opens up a vast field of bureaucratic activity which most of us thought was at least restricted if not actually closed. We would like to know, for example, what happens to the various prohibitions of the Bill of Rights if some Commission, duly appointed and delegated by act of Congress, decides that infringement of certain of these individual rights is in the public interest."

WALL STREET JOURNAL (editorial) May 12

". . . It needs little imagination to picture the possible consequences to the public's *liberty* of the rule by a group of commissions all equipped with powers to make regulations which the respective majorities of commissioners deem to be 'in the public interest, convenience or necessity.' If the logic of the Supreme Court's majority—and for that matter of the minority—is sound, the Constitution of the United States and particularly the Bill of Rights and some other amendments, is little more than empty verbiage, and might be replaced by the 'welfare clause' with a single commission to give it effect."

WASHINGTON TIMES-HERALD (Frank C. Waldrop) May 12

". . . No radio broadcasting license really means anything. The Government really owns radio here—behind the shadow of the broadcasting companies.

"Somebody in Congress had better read the Supreme Court discussions on Cases Nos. 554 and 555.

"The Communications Act of 1934 needs to be rewritten in the interest of free speech. Radio dares not say that now, but every radio operator knows how great the need is, and if Congress will speak up first, the radio operators will follow with their testimony."

David Lawrence (syndicated column) May 11

"The first step toward abridging the freedom of the press in America has been taken by five members of the Supreme Court of the United States in a decision which, while it puts radio broadcasting into a government strait-jacket, opens the way for strangulation of the newspapers of America."

INDIANAPOLIS STAR (editorial) May 16

"Some interpret the Supreme Court decision upholding the Federal Communications Commission's order hobbling radio broadcasting as an indirect sniping at the general principle of freedom of expression."

LOUISVILLE COURIER-JOURNAL (editorial) May 12

"An administrative agency has found, in authority to grant licenses to individual radio stations, authority, if not to destroy it outright, at least to change the face of radio

completely according to the agency's ideas without Congress' direction."

This is not the kind of radio that the country wants and needs. The remedy is squarely up to the Congress. Mr. Justice Frankfurter said in his opinion that "the responsibility belongs to the Congress for the grant of valid legislative authority." The question of the authority of the FCC is now before Congress in both the Senate and the House, through a bill introduced in the Senate by Senator Wallace H. White, Jr., of Maine, and Senator Burton K. Wheeler of Montana, and in the House by Representative Pehr G. Holmes of Massachusetts.

THE MAY 10th SUPREME COURT DECISION

Relating to Government Regulation of Radio

National Association of Broadcasters
1760 N STREET, NORTHWEST
WASHINGTON 6, D. C.

May 27, 1943

National Broadcasting Company, Inc., Woodmen of the World Life Insurance Society, and Stromberg-Carlson Telephone Manufacturing Company, Appellants,

554 *vs.*

The United States of America, Federal Communications Commission, and Mutual Broadcasting System, Inc.

Columbia Broadcasting System, Inc., Appellant,

555 *vs.*

The United States of America, Federal Communications Commission, and Mutual Broadcasting System, Inc.

Appeals from the District Court of the United States for the Southern District of New York.

[May 10, 1943.]

Mr. Justice Frankfurter delivered the opinion of the Court.

In view of our dependence upon regulated private enterprise in discharging the far-reaching role which radio plays in our society, a somewhat detailed exposition of the history of the present controversy and the issues which it raises is appropriate.

These suits were brought on October 30, 1941, to enjoin the enforcement of the Chain Broadcasting Regulations promulgated by the Federal Communications Commission on May 2, 1941, and amended on October 11, 1941. We held last Term in *Columbia System* v. *U. S.*, 316 U. S. 407, and *Nat. Broadcasting Co.* v. *U. S.*, 316 U. S. 447, that the suits could be maintained under § 402 (a) of the Communications Act of 1934, 48 Stat. 1093, 47 U. S. C. §402 (a) (incorporating by reference the Urgent Deficiencies Act of October 22, 1913, 38 Stat. 219, 28 U. S. C. § 47), and that the decrees of the District Court dismissing the suits for want of jurisdiction should therefore be reversed. On remand the District Court granted the Government's motion for summary judgment and dismissed the suits on the merits. 47 F. Supp. 940. The cases are now here on appeal. 28 U. S. C. § 47. Since they raise substantially the same issues and were argued together, we shall deal with both cases in a single opinion.

On March 18, 1938, the Commission undertook a comprehensive investigation to determine whether special regulations applicable to radio stations engaged in chain broadcasting [1] were required in the "public interest, convenience or necessity". The Commission's order directed that inquiry be made, *inter alia*, in the following specific matters: the number of stations licensed to or affiliated with networks, and the amount of station time used or controlled by networks; the contractual rights and obligations of stations under their agreements with networks; the scope of network agreements containing exclusive affiliation provisions and restricting the network from affiliating with other stations in the same area; the rights and obligations of stations with respect to network advertisers; the nature of the program service rendered by stations licensed to networks; the policies of networks with respect to character of programs, diversification, and accommodation to the particular requirements of the areas served by the affiliated stations; the extent to which affiliated stations exercise control over programs, advertising contracts, and related matters; the nature and extent of network program duplication by stations serving the same area; the extent to which particular networks have exclusive coverage in some areas; the competitive practices of stations engaged in chain broadcasting; the effect of chain broadcasting upon stations not licensed to or affiliated with networks; practices or agreements in restraint of trade, or in furtherance of monopoly, in connection with chain broadcasting; and the scope of concentration of control over stations, locally, regionally, or nationally, through contracts, common ownership, or other means.

On April 6, 1938, a committee of three Commissioners was designated to hold hearings and make recommendations to the full Commission. This committee held public hearings for 73 days over a period of six months, from November 14, 1938, to May 19, 1939. Order No. 37, announcing the investigation and specifying the particular matters which would be explored at the hearings, was published in the Federal Register, 3 Fed. Reg. 637, and copies were sent to every station licensee and network organization. Notices of the hearings were also sent to these parties. Station licensees, national and regional networks, and transcription and recording companies were invited to appear and give evidence. Other persons who sought to appear were afforded an opportunity to testify. 96 witnesses were heard by the committee, 45 of whom were called by the national networks. The evidence covers 27 volumes, including over 8,000 pages of transcript and more than 700 exhibits. The testimony of the witnesses called by the national networks fills more than 6,000 pages, the equivalent of 46 hearing days.

The committee submitted a report to the Commission on June 12, 1940, stating its findings and recommendations. Thereafter, briefs on behalf of the networks and other interested parties were filed before the full Commission, and on November 28, 1940, the Commission issued proposed

[1] Chain broadcasting is defined in § 3(p) of the Communications Act of 1934 as the "simultaneous broadcasting of an identical program by two or more connected stations." In actual practice, programs are transmitted by wire, usually leased telephone lines, from their point of origination to each station in the network for simultaneous broadcast over the air.

regulations which the parties were requested to consider in the oral arguments held on December 2 and 3, 1940. These proposed regulations dealt with the same matters as those covered by the regulations eventually adopted by the Commission. On January 2, 1941, each of the national networks filed a supplementary brief discussing at length the questions raised by the committee report and the proposed regulations.

On May 2, 1941, the Commission issued its Report on Chain Broadcasting, setting forth its findings and conclusions upon the matters explored in the investigation, together with an order adopting the Regulations here assailed. Two of the seven members of the Commission dissented from this action. The effective date of the Regulations was deferred for 90 days with respect to existing contracts and arrangements of network-operated stations, and subsequently the effective date was thrice again postponed. On August 14, 1941, the Mutual Broadcasting Company petitioned the Commission to amend two of the Regulations. In considering this petition the Commission invited interested parties to submit their views. Briefs were filed on behalf of all the national networks, and oral argument was had before the Commission on September 12, 1941. And on October 11, 1941, the Commission (again with two members dissenting) issued a Supplemental Report, together with an order amending three Regulations. Simultaneously, the effective date of the Regulations was postponed until November 15, 1941, and provision was made for further postponements from time to time if necessary to permit the orderly adjustment of existing arrangements. Since October 30, 1941, when the present suits were filed, the enforcement of the Regulations has been stayed either voluntarily by the Commission or by order of court.

Such is the history of the Chain Broadcasting Regulations. We turn now to the Regulations themselves, illumined by the practices in the radio industry disclosed by the Commission's investigation. The Regulations, which the Commission characterized in its Report as "the expression of the general policy we will follow in exercising our licensing power", are addressed in terms to station licensees and applicants for station licenses. They provide, in general, that no licenses shall be granted to stations or applicants having specified relationships with networks. Each Regulation is directed at a particular practice found by the Commission to be detrimental to the "public interest", and we shall consider them *seriatim*. In doing so, however, we do not overlook the admonition of the Commission, that the Regulations as well as the network practices at which they are aimed are interrelated: "In considering above the network practices which necessitate the regulations we are adopting, we have taken each practice singly, and have shown that even in isolation each warrants the regulation addressed to it. But the various practices we have considered do not operate in isolation; they form a compact bundle or pattern, and the effect of their joint impact upon licensees necessitates the regulations even more urgently than the effect of each taken singly." (Report, p. 75.)

The Commission found that at the end of 1938 there were 660 commercial stations in the United States, and that 341 of these were affiliated with national networks. 135 stations were affiliated exclusively with the National Broadcasting Company, Inc., known in the industry as NBC, which operated two national networks, the "Red" and the "Blue". NBC was also the licensee of 10 stations, including 7 which operated on so-called clear channels with the maximum power available, 50 kilowatts; in addition, NBC operated 5 other stations, 4 of which had power of 50 kilowatts, under management contracts with their licensees. 102 stations were affiliated exclusively with the Columbia Broadcasting System, Inc., which was also the licensee of 8 stations, 7 of which were clear-channel stations operating with power of 50 kilowatts, 74 stations were under exclusive affiliation with the Mutual Broadcasting System, Inc. In addition, 25 stations were affiliated with both NBC and Mutual, and 5 with both CBS and Mutual. These figures, the Commission noted, did not accurately reflect the relative prominence of the three companies, since the stations affiliated with Mutual were, generally speaking, less desirable in frequency, power, and coverage. It pointed out that the stations affiliated with the national networks utilized more than 97% of the total nightime broadcasting power of all the stations in the country. NBC and CBS together controlled more than 85% of the total nighttime wattage, and the broadcast business handled by the three national network companies amounted to almost half of the total business of all stations in the United States.

The Commission recognized that network broadcasting had played and was continuing to play an important part in the development of radio. "The growth and development of chain broadcasting," it stated, "found its impetus in the desire to give widespread coverage to programs which otherwise would not be heard beyond the reception area of a single station. Chain broadcasting makes possible a wider reception for expensive entertainment and cultural programs and also for programs of national or regional significance which would otherwise have coverage only in the locality of origin. Furthermore, the access to greatly enlarger audiences made possible by chain broadcasting has been a strong incentive to advertisers

to finance the production of expensive programs. . . . But the fact that the chain broadcasting method brings benefits and advantages to both the listening public and to broadcast station licensees does not mean that the prevailing practices and policies of the networks and their outlets are sound in all respects, or that they should not be altered. The Commission's duty under the Communications Act of 1934 is not only to see that the public receives the advantages and benefits of chain broadcasting, but also, as far as its powers enable it, to see that practices which adversely affect the ability of licensees to operate in the public interest are eliminated." (Report, p. 4.)

The Commission found that eight network abuses were amendable to correction within the powers granted it by Congress:

Regulation 3.101—Exclusive affiliation of station. The Commission found that the network affiliation agreements of NBC and CBS customarily contained a provision which prevented the station from broadcasting the programs of any other network. The effect of this provision was to hinder the growth of new networks, to deprive the listening public in many areas of service to which they were entitled, and to prevent station licensees from exercising their statutory duty of determining which programs would best serve the needs of their community. The Commission observed that in areas where all the stations were under exclusive contract to either NBC or CBS, the public was deprived of the opportunity to hear programs presented by Mutual. To take a case cited in the Report: In the fall of 1939 Mutual obtained the exclusive right to broadcast the World Series baseball games. It offered this program of outstanding national interest to stations throughout the country, including NBC and CBS affiliates in communities having no other stations. CBS and NBC immediately invoked the "exclusive affiliation" clauses of their agreements with these stations, and as a result thousands of persons in many sections of the country were unable to hear the broadcasts of the games.

"Restraints having this effect", the Commission observed, "are to be condemned as contrary to the public interest irrespective of whether it be assumed that Mutual programs are of equal, superior or inferior quality. The important consideration is that station licensees are denied freedom to choose the programs which they believe best suited to their needs; in this manner the duty of a station licensee to operate in the public interest is defeated. . . . Our conclusion is that the disadvantages resulting from these exclusive arrangements far outweigh any advantages. A licensee station does not operate in the public interest when it enters into exclusive arrangements which prevent it from giving the public the best service of which it is capable, and which, by closing the door of opportunity in the network field, adversely affect the program structure of the entire industry." (Report, pp. 52-57.) Accordingly, the Commission adopted Regulation 3.101, providing as follows: "No license shall be granted to a standard broadcast station having any contract, arrangement, or understanding, express or implied, with a network organization under which the station is prevented or hindered from, or penalized for, broadcasting the programs of any other network organization."

Regulation 3.102—Territorial exclusivity. The Commission found another type of "exclusivity" provision in network affiliation agreements whereby the network bound itself not to sell programs to any other station in the same area. The effect of this provision, designed to protect the affiliate from the competition of other stations serving the same territory, was to deprive the listening public of many programs that might otherwise be available. If an affiliated station rejected a network program, the "territorial exclusivity" clause of its affiliation agreement prevented the network from offering the program to other stations in the area. For example, Mutual presented a popular program, known as "The American Forum of the Air", in which prominent persons discussed topics of general interest. None of the Mutual stations in the Buffalo area decided to carry the program, and a Buffalo station not affiliated with Mutual attempted to obtain the program for its listeners. These efforts failed, however, on account of the "territorial exclusivity" provision in Mutual's agreements with its outlets. The result was that this program was not available to the people of Buffalo.

The Commission concluded that "It is not in the public interest for the listening audience in an area to be deprived of network programs not carried by one station where other stations in that area are ready and willing to broadcast the programs. It is as much against the public interest for a network affiliate to enter into a contractual arrangement which prevents another station from carrying a network program as it would be for it to drown out that program by electrical interference." (Report, p. 59.)

Recognizing that the "territorial exclusivity" clause was unobjectionable in so far as it sought to prevent duplication of programs in the same area, the Commission limited itself to the situations in which the clause impaired the ability of the licensee to broadcast programs otherwise available. Regulation 3.102, promulgated to remedy this particular evil, provides as follows: "No license shall be granted to a standard broadcast station having any contract, arrangement, or understanding, express or implied, with a network

organization which prevents or hinders another station serving substantially the same area from broadcasting the network's programs not taken by the former station, or which prevents or hinders another station serving a substantially different area from broadcasting any program of the network organization. This regulation shall not be construed to prohibit any contract, arrangement, or understanding between a station and a network organization pursuant to which the station is granted the first call in its primary service area upon the programs of the network organization."

Regulation 3.103—Term of affiliation. The standard NBC and CBS affiliation contracts bound the station for a period of five years, with the network having the exclusive right to terminate the contracts upon one year's notice. The Commission, relying upon § 307(d) of the Communications Act of 1934, under which no license to operate a broadcast station can be granted for a longer term than three years, found the five-year affiliation term to be contrary to the policy of the Act: "Regardless of any changes that may occur in the economic, political, or social life of the Nation or of the community in which the station is located, CBS and NBC affiliates are bound by contract to continue broadcasting the network programs of only one network for 5 years. The licensee is so bound even though the policy and caliber of programs of the network may deteriorate greatly. The future necessities of the station and of the community are not considered. The station licensee is unable to follow his conception of the public interest until the end of the 5-year contract." (Report, p. 61.) The Commission concluded that under contracts binding the affiliates for five years, "stations become parties to arrangements which deprive the public of the improved service it might otherwise derive from competition in the network field; and that a station is not operating in the public interest when it so limits its freedom of action." (Report, p. 62.) Accordingly, the Commission adopted Regulation 3.103: "No license shall be granted to a standard broadcast station having any contract, arrangement, or understanding, express or implied, with a network organization which provides, by original term, provisions for renewal, or otherwise for the affiliation of the station with the network organization for a period longer than two years: [2] *Provided*, That a contract, arrangement, or understanding for a period up to two years, may be entered into within 120 days prior to the commencement of such period."

Regulation 3.104—Option time. The Commission found that network affiliation contracts usually contained so-called network optional time clauses. Under these provisions the network could upon 28 days' notice call upon its affiliates to carry a commercial program during any of the hours specified in the agreement as "network optional time". For CBS affiliates "network optional time" meant the entire broadcast day. For 29 outlets of NBC on the Pacific Coast, it also covered the entire broadcast day; for substantially all of the other NBC affiliates, it included 8½ hours on weekdays and 8 hours on Sundays. Mutual's contracts with about half of its affiliates contained such a provision, giving the network optional time for 3 or 4 hours on weekdays and 6 hours on Sundays.

In the Commission's judgment these optional time provisions, in addition to imposing serious obstacles in the path of new networks, hindered stations in developing a local program service. The exercise by the networks of their options over the station's time tended to prevent regular scheduling of local programs at desirable hours. The Commission found that "shifting a local commercial program may seriously interfere with the efforts of a [local] sponsor to build up a regular listening audience at a definite hour, and the long-term advertising contract becomes a highly dubious project. This hampers the efforts of the station to develop local commercial programs and affects adversely its ability to give the public good program service. . . . A station licensee must retain sufficient freedom of action to supply the program and advertising needs of the local community. Local program service is a vital part of community life. A station should be ready, able, and willing to serve the needs of the local community by broadcasting such outstanding local events as community concerts, civic meetings, local sports events, and other programs of local consumer and social interest. We conclude that national network time options have restricted the freedom of station licensees and hampered their efforts to broadcast local commercial programs, the programs of other national networks, and national spot transcriptions. We believe that these considerations far outweigh any supposed advantages from 'stability' of network operations under time options. We find that the optioning of time by licensee stations has operated against the public interest." (Report, pp. 63, 65.)

The Commission undertook to preserve the advantages of option time, as a device for "stabilizing" the industry, without unduly impairing the ability of local stations to develop local program service. Regulation 3.104 called for the modification of the option-time provision in three respects: the minimum notice period for exercise of the option could not be less than 56 days; the number of hours which could be optioned was limited; and specific restrictions were placed upon exercise of

[2] Station licenses issued by the Commission normally last two years. Section 3.34 of the Commission's Rules and Regulations governing Standard and High-Frequency Broadcast Stations, as amended October 14, 1941.

the option to the disadvantage of other networks. The text of the Regulation follows: "No license shall be granted to a standard broadcast station which options for network programs any time subject to call on less than 56 days' notice, or more time than a total of three hours within each of four segments of the broadcast day, as herein described. The broadcast day is divided into 4 segments, as follows: 8:00 a.m. to 1:00 p.m.; 1:00 p.m. to 6:00 p.m.; 6:00 p.m. to 11:00 p.m.; 11:00 p.m. to 8:00 a.m. Such options may not be exclusive as against other network organizations and may not prevent or hinder the station from optioning or selling any or all of the time covered by the option, or other time, to other network organizations."

Regulation 3.105—Right to reject programs. The Commission found that most network affiliation contracts contained a clause defining the right of the station to reject network commercial programs. The NBC contracts provided simply that the station "may reject a network program the broadcasting of which would not be in the public interest, convenience, and necessity." NBC required a licensee who rejected a program to "be able to support his contention that what he has done has been more in the public interest than had he carried on the network program". Similarly, the CBS contracts provided that if the station had "reasonable objection to any sponsored program or the product advertised thereon as not being in the public interest, the station may, on 3 weeks prior notice thereof to Columbia, refuse to broadcast such program unless during such notice period such reasonable objection of the station shall be satisfied."

While seeming in the abstract to be fair, these provisions, according to the Commission's finding, did not sufficiently protect the "public interest". As a practical matter, the licensee could not determine in advance whether the broadcasting of any particular network program would or would not be in the public interest. "It is obvious that from such skeletal information [as the networks submitted to the stations prior to the broadcasts] the station cannot determine in advance whether the program is in the public interest, nor can it ascertain whether or not parts of the program are in one way or another offensive. In practice, if not in theory, stations affiliated with networks have delegated to the networks a large part of their programming functions. In many instances, moreover, the network further delegates the actual production of programs to advertising agencies. These agencies are far more than mere brokers or intermediaries between the network and the advertiser. To an ever-increasing extent, these agencies actually exercise the function of program production. Thus it is frequently neither the station nor the network, but rather the advertising agency, which determines what broadcast programs shall contain. Under such circumstances, it is especially important that individual stations, if they are to operate in the public interest, should have the practical opportunity as well as the contractual right to reject network programs. . . .

"It is the station, not the network, which is licensed to serve the public interest. The licensee has the duty of determining what programs shall be broadcast over his station's facilities, and cannot lawfully delegate this duty or transfer the control of his station directly to the network or indirectly to an advertising agency. He cannot lawfully bind himself to accept programs in every case where he cannot sustain the burden of proof that he has a better program. The licensee is obliged to reserve to himself the final decision as to what programs will best serve the public interest. We conclude that a licensee is not fulfilling his obligations to operate in the public interest, and is not operating in accordance with the express requirements of the Communications Act, if he agrees to accept programs on any basis other than his own reasonable decision that the programs are satisfactory." (Report, pp. 39, 66.)

The Commission undertook in Regulation 3.105 to formulate the obligations of licensees with respect to supervision over programs: "No license shall be granted to a standard broadcast station having any contract, arrangement, or understanding, express or implied, with a network organization which (a), with respect to programs offered pursuant to an affiliation contract, prevents or hinders the station from rejecting or refusing network programs which the station reasonably believes to be unsatisfactory or unsuitable; or which (b), with respect to network programs so offered or already contracted for, prevents the station from rejecting or refusing any program which, in its opinion, is contrary to the public interest, or from substituting a program of outstanding local or national importance."

Regulation 3.106—Network ownership of stations. The Commission found that NBC, in addition to its network operations, was the licensee of 10 stations, 2 each in New York, Chicago, Washington, and San Francisco, 1 in Denver, and 1 in Cleveland. CBS was the licensee of 8 stations, 1 in each of these cities: New York, Chicago, Washington, Boston, Minneapolis, St. Louis, Charlotte, and Los Angeles. These 18 stations owned by NBC and CBS, the Commission observed, were among the most powerful and desirable in the country, and were permanently inaccessible to competing networks. "Competition among networks for these facilities is nonexistent, as they are completely removed from the network-station market. It gives the network complete control

over its policies. This 'bottling-up' of the best facilities has undoubtedly had a discouraging effect upon the creation and growth of new networks. Furthermore, common ownership of network and station places the network in a position where its interest as the owner of certain stations may conflict with its interest as a network organization serving affiliated stations. In dealings with advertisers, the network represents its own stations in a proprietary capacity and the affiliated stations in something akin to an agency capacity. The danger is present that the network organization will give preference to its own stations at the expense of its affiliates." (Report, p. 67.)

The Commission stated that if the question had arisen as an original matter, it might well have concluded that the public interest required severance of the business of station ownership from that of network operation. But since substantial business interests have been formed on the basis of the Commission's continued tolerances of the situation, it was found inadvisable to take such a drastic step. The Commission concluded, however, that "the licensing of two stations in the same area to a single network organization is basically unsound and contrary to the public interest", and that it was also against the "public interest" for network organizations to own stations in areas where the available facilities were so few or of such unequal coverage that competition would thereby be substantially restricted. Recognizing that these considerations called for flexibility in their application to particular situations, the Commission provided that "networks will be given full opportunity, on proper application for new facilities or renewal of existing licenses, to call to our attention any reasons why the principle should be modified or held inapplicable." (Report, p. 68.) Regulation 3.106 reads as follows: "No license shall be granted to a network organization, or to any person directly or indirectly controlled by or under common control with a network organization, for more than one standard broadcast station where one of the stations covers substantially the service area of the other station, or for any standard broadcast station in any locality where the existing standard broadcast stations are so few or of such unequal desirability (in terms of coverage, power, frequency, or other related matters) that competition would be substantially restrained by such licensing."

Regulation 3.107—Dual network operation. This regulation provides that: "No license shall be issued to a standard broadcast station affiliated with a network organization which maintains more than one network: *Provided*, That this regulation shall not be applicable if such networks are not operated simultaneously, or if there is no substantial overlap in the territory served by the group of stations comprising each such network." In its Supplemental Report of October 11, 1941, the Commission announced the indefinite suspension of this regulation. There is no occasion here to consider the validity of Regulation 3.107, since there is no immediate threat of its enforcement by the Commission.

Regulation 3.108—Control by networks of station rates. The Commission found that NBC's affiliation contracts contained a provision empowering the network to reduce the station's network rate, and thereby to reduce the compensation received by the station, if the station set a lower rate for non-network national advertising than the rate established by the contract for the network programs. Under this provision the station could not sell time to a national advertiser for less than it would cost the advertiser if he bought the time from NBC. In the words of NBC's vice-president, "This means simply that a national advertiser should pay the same price for the station whether he buys it through one source or another source. It means that we do not believe that our stations should go into competition with ourselves." (Report, p. 73.)

The Commission concluded that "it is against the public interest for a station licensee to enter into a contract with a network which has the effect of decreasing its ability to compete for national business. We believe that the public interest will best be served and listeners supplied with the best programs if stations bargain freely with national advertisers." (Report, p. 75.) Accordingly, the Commission adopted Regulation 3.108, which provides as follows: "No license shall be granted to a standard broadcast station having any contract, arrangement, or understanding, express or implied, with a network organization under which the station is prevented or hindered from or penalized for, fixing or altering its rates for the sale of broadcast time for other than the network's programs."

The appellants attack the validity of these Regulations along many fronts. They contend that the Commission went beyond the regulatory powers conferred upon it by the Communications Act of 1934; that even if the Commission were authorized by the Act to deal with the matters comprehended by the Regulations, its action is nevertheless invalid because the Commission misconceived the scope of the Act, particularly § 313 which deals with the application of the anti-trust laws to the radio industry; that the Regulations are arbitrary and capricious; that if the Communications Act of 1934 were construed to authorize the promulgation of the Regulations, it would be an unconstitutional delegation of legislative power; and that, in any event, the Regulations abridge the appellants'

right of free speech in violation of the First Amendment. We are thus called upon to determine whether Congress has authorized the Commission to exercise the power asserted by the Chain Broadcasting Regulations, and if it has, whether the Constitution forbids the exercise of such authority.

Federal regulation of radio [3] begins with the Wireless Ship Act of June 24, 1910, 36 Stat. 629, which forbade any steamer carrying or licensed to carry fifty or more persons to leave any American port unless equipped with efficient apparatus for radio communication, in charge of a skilled operator. The enforcement of this legislation was entrusted to the Secretary of Commerce and Labor, who was in charge of the administration of the marine navigation laws. But it was not until 1912, when the United States ratified the first international radio treaty, 37 Stat. 1565, that the need for general regulation of radio communication became urgent. In order to fulfill our obligations under the treaty, Congress enacted the Radio Act of August 13, 1912, 37 Stat. 302. This statute forbade the operation of radio apparatus without a license from the Secretary of Commerce and Labor; it also allocated certain frequencies for the use of the Government, and imposed restrictions upon the character of wave emissions, the transmission of distress signals, and the like.

The enforcement of the Radio Act of 1912 presented no serious problems prior to the World War. Questions of interference arose only rarely because there were more than enough frequencies for all the stations then in existence. The war accelerated the development of the art, however, and in 1921 the first standard broadcast stations were established. They grew rapidly in number, and by 1923 there were several hundred such stations throughout the country. The Act of 1912 had not set aside any particular frequencies for the use of private broadcast stations; consequently, the Secretary of Commerce selected two frequencies, 750 and 833 kilocycles, and licensed all stations to operate upon one or the other of these channels. The number of stations increased so rapidly, however, and the situation became so chaotic, that the Secretary, upon the recommendation of the National Radio Conference which met in Washington in 1923 and 1924, established a policy of assigning specified frequencies to particular stations. The entire radio spectrum was divided into numerous bands, each allocated to a particular kind of service. The frequencies ranging from 550 to 1500 kilocycles (96 channels in all, since the channels were separated from each other by 10 kilocycles) were assigned to the standard broadcast stations. But the problems created by the enormously rapid development of radio were far from solved. The increase in the number of channels was not enough to take care of the constantly growing number of stations. Since there were more station than available frequencies, the Secretary of Commerce attempted to find room for everybody by limiting the power and hours of operation of stations in order that several stations might use the same channel. The number of stations multiplied so rapidly, however, that by November, 1925, there were almost 600 stations in the country, and there were 175 applications for new stations. Every channel in the standard broadcast band was, by that time, already occupied by at least one station, and many by several. The new stations could be accommodated only by extending the standard broadcast band, at the expense of the other types of service, or by imposing still greater limitations upon time and power. The National Radio Conference which met in November, 1925, opposed both of these methods and called upon Congress to remedy the situation through legislation.

The Secretary of Commerce was powerless to deal with the situation. It had been held that he could not deny a license to an otherwise legally qualified applicant on the ground that the proposed station would interfere with existing private or Government stations. *Hoover* v. *Intercity Radio Co.*, 286 Fed. 1003. And on April 16, 1926, an Illinois district court held that the Secretary had no power to impose restrictions as to frequency, power, and hours of operation, and that a station's use of a frequency not assigned to it was not a violation of the Radio Act of 1912. *United States* v. *Zenith Radio Corp.*, 12 F. 2d 614. This was followed on July 8, 1926, by an opinion of Acting Attorney General Donovan that the Secretary of Commerce had no power, under the Radio Act of 1912, to regulate the power, frequency or hours of operation of stations. 35 Ops. Atty. Gen. 126. The next day the Secretary of Commerce issued a statement abandoning all his efforts to regulate radio and urging that the stations undertake self-regulation.

But the plea of the Secretary went unheeded. From July, 1926, to February 23, 1927, when Congress enacted the Radio Act of 1927, 44 Stat. 1162, almost 200 new stations went on the air. These new stations used any frequencies they desired, regardless of the interference thereby caused to others. Existing stations changed to other frequencies and increased their power and hours of operation at will. The result was confusion and chaos. With everybody on the air, no-

[3] The history of federal regulation of radio communication is summarized in Herring and Gross, Telecommunications (1936) 239-86; Administrative Procedure in Government Agencies, Monograph of the Attorney General's Committee on Administrative Procedure, Sen. Doc. No. 186, 76th Cong., 3d Sess., Part 3, dealing with the Federal Communications Commission, pp. 82-84; 1 Socolaw, Law of Radio Broadcasting (1939) 38-61; Donovan, Origin and Development of Radio Law (1930).

body could be heard. The situation became so intolerable that the President in his message of December 7, 1926, appealed to Congress to enact a comprehensive radio law:

> "Due to the decisions of the courts, the authority of the department [of Commerce] under the law of 1912 has broken down; many more stations have been operating than can be accommodated within the limited number of wave lengths available; further stations are in course of construction; many stations have departed from the scheme of allocations set down by the department, and the whole service of this most important public function has drifted into such chaos as seems likely, if not remedied, to destroy its great value. I most urgently recommend that this legislation should be speedily enacted." (H. Doc. 483, 69th Cong., 2d Sess., p. 10.)

The plight into which radio fell prior to 1927 was attributable to certain basic facts about radio as a means of communication—its facilities are limited; they are not available to all who may wish to use them; the radio spectrum simply is not large enough to accommodate everybody. There is a fixed natural limitation upon the number of stations that can operate without interfering with one another.[4] Regulation of radio was therefore as vital to its development as traffic control was to the development of the automobile. In enacting the Radio Act of 1927, the first comprehensive scheme of control over radio communication, Congress acted upon the knowledge that if the potentialities of radio were not to be wasted, regulation was essential.

The Radio Act of 1927 created the Federal Radio Commission, composed of five members, and endowed the Commission with wide licensing and regulatory powers. We do not pause here to enumerate the scope of the Radio Act of 1927 and of the authority entrusted to the Radio Commission, for the basic provisions of that Act are incorporated in the Communications Act of 1934, 48 Stat. 1064, 47 U. S. C. § 151 *et seq.*, the legislation immediately before us. As we noted in *Federal Communications Comm'n* v. *Pottsville Broadcasting Co.*, 309 U. S. 134, 137, "In its essentials the Communications Act of 1934 [so far as its provisions relating to radio are concerned] derives from the Federal Radio Act of 1927. . . . By this Act of Congress, in order to protect the national interest involved in the new and far-reaching science of broadcasting, formulated a unified and comprehensive regulatory system for the industry. The common factors in the administration of the various statutes by which Congress had supervised the different modes of communication led to the creation, in the Act of 1934, of the Communications Commission. But the objectives of the legislation have remained substantially unaltered since 1927."

Section 1 of the Communications Act states its "purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges". Section 301 particularizes this general purpose with respect to radio: "It is the purpose of this Act, among other things, to maintain the control of the United States over all the channels of interstate and foreign radio transmission; and to provide for the use of such channels, but not the ownership thereof, by persons for limited periods of time, under licenses granted by Federal authority, and no such license shall be construed to create any right, beyond the terms, conditions, and periods of the license." To that end a Commission composed of seven members was created, with broad licensing and regulatory powers.

Section 303 provides:

> "Except as otherwise provided in this Act, the Commission from time to time, as public convenience, interest, or necessity requires, shall—
>
> (a) Classify radio stations;
>
> (b) Prescribe the nature of the service to be rendered by each class of licensed stations and each station within any class;
>
> * * * * * * *
>
> (f) Make such regulations not inconsistent with law as it may deem necessary to prevent interference between stations and to carry out the provisions of this Act . . .;
>
> (g) Study new uses for radio, provide for experimental uses of frequencies, and generally encourage the larger and more effective use of radio in the public interest;
>
> * * * * * * *
>
> (i) Have authority to make special regulations applicable to radio stations engaged in chain broadcasting;
>
> * * * * * * *
>
> (r) Make such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this Act. . . ."

The criterion governing the exercise of the Commission's licensing power is the "public interest, convenience, or necessity". §§ 307 (a) (d), 309 (a), 310, 312. In addition, § 307 (b) directs the Commission that "In considering applications for licenses and modifications and renewals thereof, when and insofar as there is demand for the same the Commission shall make

[4] See Morecroft, Principles of Radio Communication (3d ed. 1933) 355-402; Terman, Radio Engineering (2d ed. 1937) 593-645.

such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same."

The Act itself establishes that the Commission's powers are not limited to the engineering and technical aspects of regulation of radio communication. Yet we are asked to regard the Commission as a kind of traffic officer, policing the wave lengths to prevent stations from interfering with each other. But the Act does not restrict the Commission merely to supervision of the traffic. It puts upon the Commission the burden of determining the composition of that traffic. The facilities of radio are not large enough to accommodate all who wish to use them. Methods must be devised for choosing from among the many who apply. And since Congress itself could not do this, it committed the task to the Commission.

The Commission was, however, not left at large in performing this duty. The touchstone provided by Congress was the "public interest, convenience, or necessity", a criterion which "is as concrete as the complicated factors for judgment in such a field of delegated authority permit". *Federal Communications Comm'n.* v. *Pottsville Broadcasting Co.*, 309 U. S. 134, 138. "This criterion is not to be interpreted as setting up a standard so indefinite as to confer an unlimited power. Compare *N. Y. Central Securities Co.* v. *United States*, 287 U. S. 12, 24. The requirement is to be interpreted by its context, by the nature of radio transmission and reception, by the scope, character, and quality of services . . . ." *Radio Comm'n.* v. *Nelson Bros. Co.*, 289 U. S. 266, 285.

The "public interest" to be served under the Communications Act is thus the interest of the listening public in"the larger and more effective use of radio". § 303 (g). The facilities of radio are limited and therefore precious; they cannot be left to wasteful use without detriment to the public interest. "An important element of public interest and convenience affecting the issue of a license is the ability of the licensee to render the best practicable service to the community reached by his broadcasts." *Federal Communications Comm'n.* v. *Sanders Radio Station*, 309 U. S. 470, 475. The Commission's licensing function cannot be discharged, therefore, merely by finding that there are no technological objections to the granting of a license. If the criterion of "public interest" were limited to such matters, how could the Commission choose between two applicants for the same facilities, each of whom is financially and technically qualified to operate a station? Since the very inception of federal regulation by radio, comparative considerations as to the services to be rendered have governed the application of the standard of "public interest, convenience, or necessity". See *Federal Communications Comm'n.* v. *Pottsville Broadcasting Co.*, 309 U. S. 134, 138 n. 2.

The avowed aim of the Communications Act of 1934 was to secure the maximum benefits of radio to all the people of the United States. To that end Congress endowed the Communications Commission with comprehensive powers to promote and realize the vast potentialities of radio. Section 303(g) provides that the Commission shall "generally encourage the larger and more effective use of radio in the public interest"; subsection (i) gives the Commission specific "authority to make special regulations applicable to radio stations engaged in chain broadcasting"; and subsection (r) empowers it to adopt "such rules and regulations and prescribe such restrictions and conditions not inconsistent with law as may be necessary to carry out the provisions of this Act".

These provisions, individually and in the aggregate, preclude the notion that the Commission is empowered to deal only with technical and engineering impediments to the "larger and more effective use of radio in the public interest". We cannot find in the Act any such restriction of the Commission's authority. Suppose, for example, that a community can, because of physical limitations, be assigned only two stations. That community might be deprived of effective service in any one of several ways. More powerful stations in nearby cities might blanket out the signals of the local stations so that they could not be heard at all. The stations might interfere with each other so that neither could be clearly heard. One station might dominate the other with the power of its signal. But the community could be deprived of good radio service in ways less crude. One man, financially and technically qualified, might apply for and obtain the licenses of both stations and present a single service over the two stations, thus wasting a frequency otherwise available to the area. The language of the Act does not withdraw such a situation from the licensing and regulatory powers of the Commission, and there is no evidence that Congress did not mean its broad language to carry the authority it expresses.

In essence, the Chain Broadcasting Regulations represent a particularization of the Commission's conception of the "public interest" sought to be safeguarded by Congress in enacting the Communications Act of 1934. The basic consideration of policy underlying the Regulations is succinctly stated in its Report: "With the number of radio channels limited by natural factors, the public interest demands that those who are entrusted with the available channels shall make the fullest and most effective use of them. If a licensee enters into a contract with a network organization which

limits his ability to make the best use of the radio facility assigned him, he is not serving the public interest. . . . The net effect [of the practices disclosed by the investigation] has been that broadcasting service has been maintained at a level below that possible under a system of free competition. Having so found, we would be remiss in our statutory duty of encouraging 'the larger and more effective use of radio in the public interest' if we were to grant licenses to persons who persist in these practices." (Report, pp. 81, 82.)

We would be asserting our personal views regarding the effective utilization of radio were we to deny that the Commission was entitled to find that the large public aims of the Communications Act of 1934 comprehend the considerations which moved the Commission in promulgating the Chain Broadcasting Regulations. True enough, the Act does not explicitly say that the Commission shall have power to deal with network practices found inimical to the public interest. But Congress was acting in a field of regulation which was both new and dynamic. "Congress moved under the spur of a widespread fear that in the absence of governmental control the public interest might be subordinated to monopolistic domination in the broadcasting field." *Federal Communications Comm'n* v. *Pottsville Broadcasting Co.*, 309 U. S. 134, 137. In the context of the developing problems to which it was directed, the Act gave the Commission not niggardly but expansive powers. It was given a comprehensive mandate to "encourage the larger and more effective use of radio in the public interest", if need be, by making "special regulations applicable to radio stations engaged in chain broadcasting". § 303(g) (i).

Generalities unrelated to the living problems of radio communication of course cannot justify exercises of power by the Commission. Equally so, generalities empty of all concrete considerations of the actual bearing of regulations promulgated by the Commission to the subject-matter entrusted to it, cannot strike down exercises of power by the Commission. While Congress did not give the Commission unfettered discretion to regulate all phases of the radio industry, it did not frustrate the purposes for which the Communications Act of 1934 was brought into being by attempting an itemized catalogue of the specific manifestations of the general problems for the solution of which it was establishing a regulatory agency. That would have stereotyped the powers of the Commission to specific details in regulating a field of enterprise the dominant characteristic of which was the rapid pace of its unfolding. And so Congress did what experience had taught it in similar attempts at regulation, even in fields where the subject-matter of regulation was far less fluid and dynamic than radio. The essence of that experience was to define broad areas for regulation and to establish standards for judgment adequately related in their application to the problems to be solved.

For the cramping construction of the Act pressed upon us, support cannot be found in its legislative history. The principal argument is that § 303(i), empowering the Commission "to make special regulations applicable to radio stations engaged in chain broadcasting", intended to restrict the scope of the Commission's powers to the technical and engineering aspects of chain broadcasting. This provision comes from § 4(h) of the Radio Act of 1927. It was introduced into the legislation as a Senate committee amendment to the House bill (H. R. 9971, 69th Cong., 1st Sess.). This amendment originally read as follows:

> "(C) The commission, from time to time, as public convenience, interest, or necessity requires, shall—
>
> * * * * * * *
>
> (j) When stations are connected by wire for chain broadcasting, determine the power each station shall use and the wave lengths to be used during the time stations are so connected and so operated, and make all other regulations necessary in the interest of equitable radio service to the listeners in the communities or areas affected by chain broadcasting."

The report of the Senate Committee on Interstate Commerce, which submitted this amendment, stated that under the bill the Commission was given "complete authority . . . to control chain broadcasting." Sen. Rep. No. 772, 69th Cong., 1st Sess., p. 3. The bill as thus amended was passed by the Senate, and then sent to conference. The bill that emerged from the conference committee, and which became the Radio Act of 1927, phrased the amendment in the general terms now contained in § 303(i) of the 1934 Act; the Commission was authorized "to make special regulations applicable to radio stations engaged in chain broadcasting". The conference reports do not give any explanation of this particular change in phrasing, but they do state that the jurisdiction conferred upon the Commission by the conference bill was substantially identical with that conferred by the bill passed by the Senate. See Sen. Doc. No. 200, 69th Cong., 2d Sess., p. 17; H. Rep. 1886, 69th Cong., 2d Sess., p. 17. We agree with the District Court that in view of this legislative history, § 303(i) cannot be construed as no broader than the first clause of the Senate amendment, which limited the Commission's authority to the technical and engineering phases of chain broadcasting.

There is no basis for assuming that the conference intended to preserve the first clause, which was of limited scope, and abandon the second clause, which was of general scope, by agreeing upon a provision which was broader and more comprehensive than those it supplanted.[5]

A totally different source of attack upon the Regulations is found in § 311 of the Act, which authorizes the Commission to withhold licenses from persons convicted of having violated the anti-trust laws. Two contentions are made—first, that this provision puts considerations relating to competition outside the Commission's concern before an applicant has been convicted of monopoly or other restraints of trade, and second, that in any event, the Commission misconceived the scope of its powers under § 311 in issuing the Regulations. Both of these contentions are unfounded. Section 311 derives from § 13 of the Radio Act of 1927, which expressly commanded, rather than merely authorized, the Commission to refuse a license to any person judicially found guilty of having violated the anti-trust laws. The change in the 1934 Act was made, in the words of Senator Dill, the manager of the legislation in the Senate, because "it seemed fair to the committee to do that". 78 Cong. Rec. 8825. The Commission was thus permitted to exercise its judgment as to whether violation of the anti-trust laws disqualified an applicant from operating a station in the "public interest". We agree with the District Court that "The necessary implication from this [amendment in 1934] was that the Commission might infer from the fact that the applicant had in the past tried to monopolize radio, or had engaged in unfair methods of competition, that the disposition so manifested would continue and that if it did it would make him an unfit licensee." 47 F. Supp. 940, 944.

That the Commission may refuse to grant a license to persons adjudged guilty in a court of law of conduct in violation of the anti-trust laws certainly does not render irrelevant consideration by the Commission of the effect of such conduct upon the "public interest, convenience, or necessity". A licensee charged with practices in contravention of this standard cannot continue to hold his license merely because his conduct is also in violation of the anti-trust laws and he has not yet been proceeded against and convicted. By clarifying in § 311 the scope of the Commission's authority in dealing with persons convicted of violating the anti-trust laws, Congress can hardly be deemed to have limited the concept of "public interest" so as to exclude all considerations relating to monopoly and unreasonable restraints upon commerce. Nothing in the provisions or history of the Act lends support to the inference that the Commission was denied the power to refuse a license to a station not operating in the "public interest", merely because its misconduct happened to be an unconvicted violation of the anti-trust laws.

Alternatively, it is urged that the Regulations constitute an *ultra vires* attempt by the Commission to enforce the anti-trust laws, and that the enforcement of the anti-trust laws is the province not of the Commission but of the Attorney General and the courts. This contention misconceives the basis of the Commission's action. The Commission's Report indicates plainly enough that the Commission was not attempting to administer the anti-trust laws:

"The prohibitions of the Sherman Act apply to broadcasting. This Commission, although not charged with the duty of enforcing that law, should administer its regulatory powers with respect to broadcasting in the light of the purposes which the Sherman Act was designed to achieve. . . . While many of the network practices raise serious questions under the antitrust laws, our jurisdiction does not depend on a showing that they do in fact constitute a violation of the anti-trust laws. It is not our function to apply the antitrust laws as such. It is our duty, however, to refuse licenses or renewals to any person who engages or proposes to engage in practices which will prevent either himself or other licensees or both from making the fullest use of radio facilities. This is the standard of public interest, convenience or necessity which we must apply to all applications for licenses and renewals. . . . We do not predicate our jurisdiction to issue the regulations on the ground that the network practices violate the antitrust laws. We are issuing these regulations because we have found that the network practices prevent the maximum utilization of radio facilities in the public interest." (Report, pp. 46, 83, 83n. 3.)

We conclude, therefore, that the Communications Act of 1934 authorized the Commission to promulgate regulations designed to correct the abuses disclosed by its investigation of chain

[5] In the course of the Senate debates on the conference report upon the bill that became the Radio Act of 1927, Senator Dill, who was in charge of the bill, said: "While the commission would have the power under the general terms of the bill, the bill specifically sets out as one of the special powers of the commission the right to make specific regulations for governing chain broadcasting. As to creating a monopoly of radio in this country, let me say that this bill absolutely protects the public, so far as it can protect them, by giving the commission full power to refuse a license to anyone who it believes will not serve the public interest, convenience, or necessity. It specifically provides that any corporation guilty of monopoly shall not only not receive a license but that its license may be revoked; and if after a corporation has received its license for a period of three years, it is then discovered and found to be guilty of monopoly, its license will be revoked. . . . In addition to that, the bill contains a provision that no license may be transferred from one owner to another without the written consent of the commission, and the commission, of course, having the power to protect against a monopoly, must give such protection. I wish to state further that the only way by which monopolies in the radio business can secure control of radio here, even for a limited period of time, will be by the commission becoming servile to them. Power must be lodged somewhere, and I myself am unwilling to assume in advance that the commission proposed to be created will be servile to the desires and demands of great corporations of this country." 68 Cong. Rec. 2881.

broadcasting. There remains for consideration the claim that the Commission's exercise of such authority was unlawful.

The Regulations are assailed as "arbitrary and capricious". If this contention means that the Regulations are unwise, that they are not likely to succeed in accomplishing what the Commission intended, we can say only that the appellants have selected the wrong forum for such a plea. What was said in *Board of Trade* v. *United States*, 314 U. S. 534, 548, is relevant here: "We certainly have neither technical competence nor legal authority to pronounce upon the wisdom of the course taken by the Commission." Our duty is at an end when we find that the action of the Commission was based upon findings supported by evidence, and was made pursuant to authority granted by Congress. It is not for us to say that the "public interest" will be furthered or retarded by the Chain Broadcasting Regulations. The responsibility belongs to the Congress for the grant of valid legislative authority, and to the Commission for its exercise.

It would be sheer dogmatism to say that the Commission made out no case for its allowable discretion in formulating these Regulations. Its long investigation disclosed the existences of practices which it regarded as contrary to the "public interest". The Commission knew that the wisdom of any action it took would have to be tested by experience: "We are under no illusion that the regulations we are adopting will solve all questions of public interest with respect to the network system of program distribution. . . . The problems in the network field are inter-dependent, and the steps now taken may perhaps operate as a partial solution of problems not directly dealt with at this time. Such problems may be examined again at some future time after the regulations here adopted have been given a fair trial." (Report, p. 88.) The problems with which the Commission attempted to deal could not be solved at once and for all time by rigid rules-of-thumb. The Commission therefore did not bind itself inflexibly to the licensing policies expressed in the Regulations. In each case that comes before it the Commission must still exercise an ultimate judgment whether the grant of a license would serve the "public interest, convenience, or necessity." If time and changing circumstances reveal that the "public interest" is not served by application of the Regulations, it must be assumed that the Commission will act in accordance with its statutory obligations.

Since there is no basis for any claim that the Commission did not fail to observe procedural safeguards required by law, we reach the contention that the Regulations should be denied enforcement on constitutional grounds. Here, as in *N. Y. Central Securities Co.* v. *United States*, 287 U. S. 12, 24-25, the claim is made that the standard of "public interest" governing the exercise of the powers delegated to the Commission by Congress is so vague and indefinite that, if it be construed as comprehensively as the words alone permit, the delegation of legislative authority is unconstitutional. But, as we held in that case, "It is a mistaken assumption that this is a mere general reference to public welfare without any standard to guide determinations. The purpose of the Act, the requirements it imposes, and the context of the provision in question show the contrary." *Ibid.* See *Radio Comm'n* v. *Nelson Bros. Co.*, 289 U. S. 266, 285; *Federal Communications Comm'n* v. *Pottsville Broadcasting Co.*, 309 U. S. 134, 137-38. Compare *Panama Refining Co.* v. *Ryan*, 293 U. S. 388, 428; *Intermountain Rate Cases*, 234 U. S. 476, 486-89; *United States* v. *Lowden*, 308 U. S. 225.

We come, finally, to an appeal to the First Amendment. The Regulations, even if valid in all other respects, must fall because they abridge, say the appellants, their right of free speech. If that be so, it would follow that every person whose application for a license to operate a station is denied by the Commission is thereby denied his constitutional right of free speech. Freedom of utterance is abridged to many who wish to use the limited facilities of radio. Unlike other modes of expression, radio inherently is not available to all. That is its unique characteristic, and that is why, unlike other modes of expression, it is subject to governmental regulation. Because it cannot be used by all, some who wish to use it must be denied. But Congress did not authorize the Commission to choose among applicants upon the basis of their political, economic, or social views, or upon any other capricious basis. If it did, or if the Commission by these Regulations proposed a choice among applicants upon some such basis, the issue before us would be wholly different. The question here is simply whether the Commission, by announcing that it will refuse licenses to persons who engage in specified network practices (a basis for choice which we hold is comprehended within the statutory criterion of "public interest"), is thereby denying such persons the constitutional right of free speech. The right of free speech does not include, however, the right to use the facilities of radio without a license. The licensing system established by Congress in the communications Act of 1934 was a proper exercise of its power over commerce. The standard it provided for the licensing of stations was the "public interest, convenience, or necessity." Denial of a station license on that ground, if valid under the Act, is not a denial of free speech.

A procedural point calls for just a word. The

District Court, by granting the Government's motion for summary judgment, disposed of the case upon the pleadings and upon the record made before the Commission. The court below correctly held that its inquiry was limited to review of the evidence before the Commission. Trial *de novo* of the matters heard by the Commission and dealt with its Report would have been improper. See *Tagg Bros.* v. *United States*, 280 U. S. 420; *Acker* v. *United States*, 298 U. S. 426.

Affirmed.

Mr. Justice BLACK and Mr. Justice RUTLEDGE took no part in the consideration or decision of these cases.

Mr. Justice MURPHY, dissenting.

I do not question the objectives of the proposed regulations, and it is not my desire by narrow statutory interpretation to weaken the authority of government agencies to deal efficiently with matters committed to their jurisdiction by the Congress. Statutes of this kind should be construed so that the agency concerned may be able to cope effectively with problems which the Congress intended to correct, or may otherwise perform the functions given to it. But we exceed our competence when we gratuitously bestow upon an agency power which the Congress has not granted. Since that is what the Court in substance says today, I dissent.

In the present case we are dealing with a subject of extreme importance in the life of the nation. Although radio broadcasting, like the press, is generally conducted on a commercial basis, it is not an ordinary business activity, like the selling of securities or the marketing of electrical power. In the dissemination of information and opinion radio has assumed a position of commanding importance, rivalling the press and the pulpit owing to its physical characteristics radio, unlike the other methods of conveying information must be regulated and rationed by the government. Otherwise there would be chaos, and radio's usefulness would be largely destroyed. But because of its vast potentialities as a medium of communication, discussion and propaganda, the character and extent of control that should be exercised over it by the government is a matter of deep and vital concern. Events in Europe show that radio may readily be a weapon of authority and misrepresentation, instead of a means of entertainment and enlightenment. It may even be an instrument of oppression. In pointing out these possibilities I do not mean to intimate in the slightest that they are imminent or probable in this country, but they do suggest that the construction of the instant statute should be approached with more than ordinary restraint and caution, to avoid an interpretation that is not clearly justified by the conditions that brought about its enactment, or that would give the Commission greater powers than the Congress intended to confer.

The Communications Act of 1934 does not in terms give the Commission power to regulate the contractual relations between the stations and the networks. *Columbia System* v. *United States*, 316 U. S. 407, 416. It is only as an incident of the power to grant or withhold licenses to individual stations under §§ 307, 308, 309 and 310 that this authority is claimed,[1] except as it may have been provided by subdivisions (g), (i) and (r) of § 303, and by §§ 311 and 313. But nowhere in these sections, taken singly or collectively, is there to be found by reasonable construction or necessary inference, authority to regulate the broadcasting industry as such, or to control the complex operations of the national networks.

In providing for regulation of the radio the Congress was under the necessity of vesting a considerable amount of discretionary authority in the Commission. The task of choosing between various claimants for the privilege of using the air waves is essentially an administrative one. Nevertheless, in specifying with some degree of particularity the kind of information to be included in an application for a license, the Congress has indicated what general conditions and considerations are to govern the granting and withholding of station licenses. Thus an applicant is required by § 308(b) to submit information bearing upon his citizenship, character, and technical, financial and other qualifications to operate the proposed station, as well as data relating to the ownership and location of the proposed station, the power and frequencies desired, operating periods, intended use, and such other information as the Commission may require. Licenses, frequencies, hours of operation and power are to be fairly distributed among the several States and communities to provide efficient service to each. § 307(b). Explicit provision is made for dealing with applicants and licensees who are found guilty, or who are under the control of persons found guilty of violating the federal anti-trust laws. §§ 311 and 313. Subject to the limitations defined in the Act, the Commission is required to grant a station license to any applicant "if public convenience, interest or necessity will be served thereby." § 307(a). Nothing is said, in any of these sections, about network contracts, affiliations, or business arrangements.

[1] The regulations as first proposed were not connected with denial of applications for initial or renewal station licenses but provided instead that: "No licensee of a standard broadcast station shall enter into any contractual arrangement, express or implied, with a network organization," which contained any of the disapproved provisions. After a short time, however, the regulations were cast in their present form, making station licensing depend upon conformity with the regulations.

The power to control network contracts and affiliations by means of the Commission's licensing power cannot be derived from implication out of the standard of "public convenience, interest or necessity." We have held that: "the Act does not essay to regulate the business of the licensee. The Commission is given no supervisory control of the programs, of business management or of policy. In short, the broadcasting field is open to anyone, provided there be an available frequency over which he can broadcast without interference to others, if he shows his competency, the adequacy of his equipment, and financial ability to make good use of the assigned channel." *Commission* v. *Sanders Radio Station*, 309 U. S. 470, 475. The criterion of "public convenience, interest or necessity is not an indefinite standard, but one to be "interpreted by its context, by the nature of radio transmission and reception, by the scope, character and quality of services," . . . *Radio Comm'n* v. *Nelson Bros. Co.*, 289 U. S. 266, 285. Nothing in the context of which the standard is a part refers to network contracts. It is evident from the record that the Commission is making its determination of whether the public interest would be served by renewal of an existing license or licenses, not upon an examination of written applications presented to it, as required by §§ 308 and 309, but upon an investigation of the broadcasting industry as a whole, and general findings made in pursuance thereof which relate to the business methods of the network companies rather than the characteristics of the individual stations and the peculiar needs of the areas served by them. If it had been the intention of the Congress to invest the Commission with the responsibility, through its licensing authority, of exercising far-reaching control—as exemplified by the proposed regulations—over the business operations of chain broadcasting and radio networks as they were then or are now organized and established, it is not likely that the Congress would have left it to mere inference or implication from the test of "public convenience, interest or necessity," or that Congress would have neglected to include it among the considerations expressly made relevant to license applications by § 308(b). The subject is one of such scope and importance as to warrant explicit mention. To construe the licensing sections (§§ 307, 308, 309, 310) as granting authority to require fundamental and revolutionary changes in the business methods of the broadcasting networks—methods which have been in existence for several years and which have not been adjudged unlawful—would inflate and distort their true meaning and extend them beyond the limited purposes which they were intended to serve.

It is quite possible, of course, that maximum utilization of the radio as an instrument of culture, entertainment, and the diffusion of ideas is inhibited by existing network arrangements. Some of the conditions imposed by the broadcasting chains are possibly not conducive to a freer use of radio facilities, however essential they may be to the maintenance of sustaining programs and the operation of the chain broadcasting business as it is now conducted. But I am unable to agree that it is within the present authority of the Commission to prescribe the remedy for such conditions. It is evident that a correction of these conditions in the manner proposed by the regulations will involve drastic changes in the business of radio broadcasting which the Congress has not clearly and definitely empowered the Commission to undertake.

If this were a case in which a station license had been withheld from an individual applicant or licensee because of special relations or commitments that would seriously compromise or limit his ability to provide adequate service to the listening public, I should be less inclined to make any objection. As an incident of its authority to determine the eligibility of an individual applicant in an isolated case, the Commission might possibly consider such factors. In the present case, however, the Commission has reversed the order of things. Its real objective is to regulate the business practices of the major networks, thus bringing within the range of its regulatory power the chain broadcasting industry as a whole. By means of these regulatoins and the enforcement program, the Commission would not only extend its authority over business activities which represent interests and investments of a very substantial character, which have not been put under its jurisdiction by the Act, but would greatly enlarge its control over an institution that has now become a rival of the press and pulpit as a purveyor of news and entertainment and a medium of public discussion. To assume a function and responsibility of such wide reach and importance in the life of the nation, as a mere incident of its duty to pass on individual applications for permission to operate a radio station and use a specific wave length, is an assumption of authority to which I am not willing to lend my assent.

Again I do not question the need of regulation in this field, or the authority of the Congress to enact legislation that would vest in the Commission such power as it requires to deal with the problem, which is has defined and analyzed in its report with admirable lucidity. It is possible that the remedy indicated by the proposed regulations is the appropriate one, whatever its effect may be on the sustaining programs, advertising contracts, and other characteristics of chain broadcasting as it is now conducted in this coun-

try. I do not believe, however, that the Commission was justified in claiming the responsibility and authority it has assumed to exercise without a clear mandate from the Congress.

An examination of the history of this legislation convinces me that the Congress did not intend by anything in § 303, or any other provision of the Act to confer on the Commission the authority it has assumed to exercise by the issuance of these regulations. Section 303 is concerned primarily with technical matters, and the subjects of regulation authorized by most of its subdivisions are exceedingly specific—so specific in fact that it is reasonable to infer that, if Congress had intended to cover the subject of network contracts and affiliations, it would not have left it to dubious implications from general clauses, lifted out of context, in subdivisions (g), (i) and (r). I am unable to agree that in authorizing the Commission in § 303(g) to study new uses for radio, provide for experimental use of frequencies, and "generally encourage the larger and more effective use of radio in the public interest," it was the intention or the purpose of the Congress to confer on the Commission the regulatory powers now being asserted. Manifestly that subdivision dealt with experimental and development work—technical and scientific matters, and the construction of its concluding clause should be accordingly limited to those considerations. Nothing in its legislative history suggests that it had any broader purpose.

It was clearly not the intention of the Congress by the enactment of § 303(i), authorizing the Commission "to make special regulations applicable to radio stations engaged in chain broadcasting," to invest the Commission with the authority now claimed over network contracts. This section is a verbatim re-enactment of § 4(h) of the Radio Act of 1927, and had its origin in a Senate amendment to the bill which became that Act. In its original form it provided that the Commission, from time to time, as public convenience, interest, or necessity required, should:

"When stations are connected by wire for chain broadcasting, [the Commission should] determine the power each station shall use and the wave lengths to be used during the time stations are so connected and so operated, and make all other regulations necessary in the interest of equitable radio service to the listeners in the communities or areas affected by chain broadcasting."

It was evidently the purpose of this provision to remedy a situation that was described as follows by Senator Dill (who was in charge of the bill in the Senate) in questioning a witness at the hearings of the Senate Committee on Interstate Commerce:

". . . During the past few months there has grown up a system of chain broadcasting, extending over the United States a great deal of the time. I say a great deal of the time—many nights a month—and the stations that are connected are of such widely varying meter lengths that the ordinary radio set that reaches out any distance is unable to get anything but that one program, and so, in effect, that one program monopolizes the air. I realize it is somewhat of a technical engineering problem, but it has seemed to many people, at least many who have written to me, that when stations are carrying on chain programs that they might be limited to the use of wave lengths adjoining or near enough to one another that they would not cover the entire dial. I do not know whether legislation ought to restrict that or whether it had better be done by regulations of the department. I want to get your opinion as to the advisability in some way protecting people who want to hear some other program than the one being broadcasted by chain broadcast." (Report of Hearings Before Senate Committee on Interstate Commerce on S. 1 and S. 1754, 69th Cong., 1st Sess. (1926), p. 123.

In other words, when the same program was simultaneously broadcast by chain stations, the weaker independent stations were drowned out because of the high power of the chain stations. With the receiving sets then commonly in use, listeners were unable to get any program except the chain program. It was essentially an interference problem. In addition to determining power and wave length for chain stations, it would have been the duty of the Commission, under the amendment, to make other regulations necessary for "equitable radio service to the listeners in the communities or areas affected by chain broadcasting." The last clause should not be interpreted out of context and without relation to the problem at which the amendment was aimed. It is reasonably construed as simply as authorizing the Commission to remedy other technical problems of interference involved in chain broadcasting in addition to power and wave length by requiring special types of equipment, controlling locations, etc. The statement in the Senate Committee Report that this provision gave the Commission "complete authority . . . to control chain broadcasting" (R. Rep. No. 772, 69th Cong., 1st Sess., p. 3) must be taken as meaning that the provision gave complete authority with respect to the specific problem which the Senate intended to meet, a problem of technical interference.

While the form of the amendment was simplified in the Conference Committee so as to authorize the Commission "to make special regulations applicable to radio stations engaged in chain broadcasting", both Houses were assured in the report of the Conference Committee that "the jurisdiction conferred in this paragraph is substantially

the same as the jurisdiction conferred upon the Commission by . . . the Senate amendment." (Sen. Doc. No. 200, 69th Cong., 2d Sess., p. 17; H. Rep. No. 1886, 69th Cong., 2d Sess., p. 17). This is further borne out by a statement of Senator Dill in discussing the conference report on the Senate floor:

"What is happening to-day is that the National Broadcasting Co., which is a part of the great Radio Trust, to say the least, if not a monopoly, is hooking up stations in every community on their various wave lengths with high powered stations and sending one program out, and they are forcing the little stations off the board so that the people cannot hear anything except the one program.

"There is no power to-day in the hands of the Department of Commerce to stop that practice. The radio commission will have the power to regulate and prevent it and give the independents a chance." (68 Cong. Rec. 3031.)

Section 303(r) is certainly no basis for inferring that the Commission is empowered to issue the challenged regulations. This subdivision is not an independent grant of power, but only an authorization to: "Make such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this Act." There is no provision in the Act for the control of network contractual arrangements by the Commission, and consequently § 303(r) is of no consequence here.

To the extent that existing network practices may have run counter to the anti-trust laws, the Congress has expressly provided the means of dealing with the problem. The enforcement of those laws has been committed to the courts and other law enforcement agencies. In addition to the usual penalties prescribed by statute for their violation, however, the Commission has been expressly authorized by § 311 to refuse a station license to any person "finally adjudged guilty by a Federal court" of attempting unlawfully to monopolize radio communication. Anyone under the control of such a person may also be refused a license. And whenever a court has ordered the revocation of an existing license, as expressly provided in § 313, a new license may not be granted by the Commission to the guilty party or to any person under his control. In my opinion these provisions (§§ 311 and 313) clearly do not and were not intended to confer independent authority on the Commission to supervise network contracts or to enforce competition between radio networks by withholding licenses from stations, and do not justify the Commission in refusing a license to an applicant otherwise qualified, because of business arrangements that may constitute an unlawful restraint of trade, when the applicant has not been finally adjudged guilty of violating the anti-trust laws, and is not controlled by one so adjudged.

The conditions disclosed by the Commission's investigation, if they require correction, should be met, not by the invention of authority where none is available or by diverting existing powers out of their true channels and using them for purposes to which they were not addressed, but by invoking the aid of the Congress or the services of agencies that have been entrusted with the enforcement of the anti-trust laws. In other fields of regulation the Congress has made clear its intentions. It has not left to mere inference and guess-work the existence of authority to order broad changes and reforms in the national economy or the structure of business arrangements in the Public Utility Holding Company Act, 49 Stat. 803, the Securities Act of 1933, 48 Stat. 74, the Federal Power Act, 49 Stat. 838, and other measures of similar character. Indeed the Communications Act itself contains cogent internal evidence that Congress did not intend to grant power over network contractual arrangements to the Commission. In § 215(e) of Title II, dealing with common carriers by wire and radio, Congress provided:

"The Commission shall examine all contracts of common carriers subject to this Act which prevent the other party thereto from dealing with another common carrier subject to this Act, and shall report its findings to Congress, together with its recommendations as to whether additional legislation on this subject is desirable."

Congress had no difficulty here in expressing the possible desirability of regulating a type of contract roughly similiar to the ones with which we are now concerned, and in reserving to itself the ultimate decision upon the matters of policy involved. Insofar as the Congress deemd it necessary in this legislation to safeguard radio broadcasting against arrangements that are offensive to the anti-trust laws or monopolistic in nature, it made specific provision in §§ 311 and 313. If the existing network contracts are deemed objectionable because of monopolistic or other features, and no remedy is presently available under these provisions, the proper course is to seek amendatory legislation from the Congress, not to fabricate authority by ingenious reasoning based upon provisions that have no true relations to the specific problem.

Mr. Justice ROBERTS agrees with these views.

JOHN T. CAHILL (JAMES D. WISE, A. L. ASHBY, HAROLD S. GLENDENNING, and JOHN W. NIELDS with him on the brief) for appellant, National Broadcasting Co., Inc.; E. WILLOUGHBY MIDDLETON (THOMAS H.

MIDDLETON with him on the brief) for appellant Stromberg-Carlson Telephone Mfg. Co.; CHARLES E. HUGHES, Jr. (ALLEN S. HUBBARD, HAROLD L. SMITH, and WRIGHT TISDALE with him on the brief) for appellant, Columbia Broadcasting System, Inc.; CHARLES FAHY, Solicitor General (VICTOR BRUDNEY, RICHARD S. SALANT, CHARLES R. DENNY, General Counsel, Federation Communications Commission, HARRY M. PLOTKIN, DANIEL W. MEYER, and MAX GOLDMAN with him on the brief) for appellees, United States and Federal Communications Commission; LOUIS G. CALDWELL (LEON LAUTERSTEIN, EMANUEL DANNETT, and PERCY H. RUSSELL, JR. with him on the brief) for appellee, Mutual Broadcasting System, Inc.; ISAAC W. DIGGES filed brief of behalf of Association of National Advertisers, Inc., as amicus curiae; GEORGE LINK, JR., filed brief on behalf of American Association of Advertising Agencies as amicus curiae; HOMER S. CUMMINGS, MORRIS L. ERNST, BENJAMIN S. KIRSH, WILLIAM DRAPER LEWIS, and HARRIET F. PILFEL filed brief on behalf of American Civil Liberties Union as amicus curiae.

National Association of Broadcasters
1760 N STREET, N. W. * * * * * * * WASHINGTON 6, D. C.
June 4, 1943 SPECIAL LEGISLATIVE BULLETIN No. 3

BOARD MEETING

Washington, D. C., June 3-4, 1943

The following stories, released to radio and press by the NAB News Bureau, relate in full the proceedings of the NAB Board Meeting, called especially to analyze the import of the Supreme Court decision of May 10 upon the radio industry and to consider means of restoring "free radio" through new legislation.

CONFERENCES WITH WHITE AND WHEELER

Washington, D. C., June 4—"Absolute government control of radio is the worst thing that could happen to this country," Senator Burton K. Wheeler, Chairman of the Interstate Commerce Committee, told Directors of the National Association of Broadcasters, assembled from all sections of the United States, here today. "I will give serious and careful consideration to your problem," Wheeler promised the broadcasters, who called on him regarding hearings on the White-Wheeler Bill, now before Congress, which separates broadcasting from utilities such as telephone and telegraph and redefines the liberties and limitations of radio.

Wheeler, as co-author of the bill with Senator Wallace H. White, Jr. of Maine, and also Chairman of the Interstate Commerce Committee, before which the hearings will be conducted, is a major factor in the progress of new legislation.

After conferring with Senator White earlier in the day regarding various provisions of the bill, the NAB Directors issued a statement concerning the Supreme Court decision of May 10 which they say "gravely jeopardizes the maintenance of a free radio in America."

"The success of any broadcasting station has depended upon the degree to which it served the will and wishes of its listening public in the character and content of its programs," the resolution stated. "Management has therefore been extemely sensitive to the expressed wishes of its public.

"The Supreme Court decision says, 'It (the law) puts upon the Commission the burden of determining the composition of that traffic.' Thus the determination of the character and content of programs is transferred to a single federal appointed agency, remote from the people. This power to determine what shall be the character and content of radio programs, by its mere existence and not necessarily by its exercise, constitutes an abridgement of the right of free speech guaranteed under the First Amendment."

The Conference with Senator Wheeler closed a two-day session of the NAB Board called especially to consider the import of the Supreme Court decision of May 10 on the radio industry and means of restoring "free radio" through new legislation, Neville Miller, President, said.

BANKHEAD BILL

Washington, D. C., June 4—Maintaining the position of the radio industry against "acceptance of government funds for advertising or government loans or subsidy in any form," the Board of Directors of the National Association of Broadcasters here today resolved nevertheless that "if Congress contemplates such legislation every effort should be made to see that there be no discrimination as between the press and radio or any other media of communication."

The industry's Small Station Committee was instructed to determine what class or classes of stations should receive advertising under the Bankhead Bill, now before Congress, which calls for the government's expenditure of $25,000,000 to $30,000,000 in advertising.

The full resolution was as follows:

"WHEREAS, the broadcasting industry through the National Association of Broadcasters has opposed the acceptance of government funds for advertising or the acceptance of government loans or subsidy in any form, and;

WHEREAS, there is before Congress today proposed legislation which provides for the expenditure of government funds for advertising in newspapers,

Now, therefore, be it resolved, that the Board of Directors of the National Association of Broadcasters reaffirms its former actions but does now take the position that if Congress contemplates such legislation every effort should be made to see that there be no discrimination as between the press and radio or any other media of communications and,

Be it further resolved that the Board of Directors direct its small stations committee to determine what class or classes of stations should receive such advertising and take such other action as may be necessary to carry out the provisions of this resolution.

ENLARGE SPECIAL LEGISLATIVE COMMITTEE

Washington, D. C., June 4—Enlargement of the Special Legislative Committee of the National Association of Broadcasters was voted today by the Board of Directors, to handle growing problems of legislation in light of the Supreme Court decision of May 10, Neville Miller, President and Chairman of the Committee, announced today.

Members added were James W. Woodruff, WRBL, Columbus, Ga.; Richard Shafto, WIS, Columbia, S. C.; Nathan Lord, WAVE, Louisville, Ky.; and Ed Yocum, KGHL, Billings, Montana.

The original committee consisted of Don S. Elias, WWNC, Asheville, N. C.; Clair R. McCullough, WGAL, Lancaster, Pa.; James D. Shouse, WLW, Cincinnati, O.; Frank M. Russell, NBC, Washington, D. C., and Joseph H. Ream, CBS, New York.

The Board of Directors also gave the committee authority to dispense funds and engage counsel consistent with its objectives.

FULL TEXT OF RESOLUTION

June 4, 1943—The Board of Directors of the National Association of Broadcasters, unanimously endorses the statement issued by its special committee in Washington, D. C. on May 19, 1943, especially the conclusion therein stated that the Supreme Court decision of May 10 gravely jeopardizes the maintenance of a free radio in America.

In furtherance of its position, the Board points out that the success of any broadcasting station has depended upon the degree to which it served the will and wishes of its listening public in the character and content of its programs. Management has therefore been extremely sensitive to the expressed wishes of its public.

The Supreme Court decision says "It (the law) puts upon the Commission the burden of determining the composition of that traffic." Thus the determination of the character and content of programs is transferred to a single federal appointed agency, remote from the people.

This power to determine what shall be the character and content of radio programs, by its mere existence and not necessarily by its exercise, constitutes an abridgement of the right of free speech guaranteed under the First Amendment.

It is obviously the responsibility of the Congress to review the present law in the light of the Supreme Court decision and to enact legislation under which the functions and powers of the government regulatory agency are delimited and clear; and the right of the American people to collaborate with stations in determining the broadcast needs of their community, state and nation is restored.

The National Association of Broadcasters
1760 N STREET, N. W. ★ ★ ★ ★ ★ ★ ★ WASHINGTON 6, D. C.
June 18, 1943 SPECIAL LEGISLATIVE BULLETIN No. 4

Freedom of Speech

Address of Congressman F. Edward Hebert (Dem. La.) on the floor of the House of Representatives, June 9, 1943

Mr. Speaker, it seems to me that when we entered this war, one of the major rights for which we were fighting was freedom of speech. Can it be that we are winning the war on foreign fronts but losing it right here at home? On May 10, 1942, the United States Supreme Court handed down a decision which seriously threatens the constitutional rights of freedom of speech in the United States. That decision, with the majority opinion written by Justice Frankfurter, gave the Federal Communications Commission absolute authority to tell any radio station in the United States what it may and may not put on the air. From now on, the Federal Communications Commission holds a power over the broadcasting stations of the United States equal to that of any totalitarian government. No bureau in Washington has ever been given such unlimited powers as prescribed in this decision. From now on, the licensee of any broadcasting station, whether he operates a 100-watter or a 50,000-watter, had better make sure that the Commission can find nothing about his operation, his personal life, or, possibly, even his wife's hats, that they might criticize.

In 1934 Congress enacted laws which provided for the Federal licensing of radio stations. The purpose of the law, according to those who were instrumental in writing it, was to provide traffic regulations in the field of radio, and nothing else. In order that a standard of regulation might be established, Congress provided that licenses should be issued on the basis of public interest, convenience, and necessity. In 1941 the Federal Communications Commission issued a set of rules generally known as chain broadcasting regulations. These rules went far beyond the regulation of frequencies and very definitely inserted the Government as a third party in the financial and program arrangements between stations and networks. Two of the networks asked for injunctions and the matter was argued in the lower courts and then taken to the Supreme Court. On May 10 the Supreme Court, by a 5-to-2 decision, with Justice Frankfurter writing the majority decision, not only upheld the right of the Commission to put these rules into effect, but went so much further in outlining the Commission's power that the question of the rules themselves has become a very minor matter and instead today the entire right of freedom of speech is threatened on every radio station in this country, whether or not it is affiliated with any network. In the decision Justice Frankfurter said:

> But the act does not restrict the Commission merely to supervision of the traffic. It puts upon the Commission the burden of determining the composition of that traffic.

In other words, the administration, through the Commission, can tell any radio station what its programs shall or shall not be. Further, in his opinion, Justice Frankfurter stated, in discussing the argument that the Commission is empowered to deal only with the technical and engineering impediments of radio:

> We cannot find in the act any such restriction of the Commission's authority.

And he added further:

> In the control of the developing problems to which it was directed, the act gave the Commission not niggardly but expansive powers.

One editorial states that the Supreme Court accepts Webster's Unabridged Dictionary as an authority on the definition of words, and in Webster the word "expansive" is defined as "unrestrained." I leave it to you, gentlemen, if this is not the most startling, shocking definition of the rights of our Government to dictate to private industry and private life that has ever been granted in the history of this Nation. Leading members of the bar who have studied the decision of the Supreme Court declare it one of the most dangerous precedents ever established in this country.

As I said before, the great controversy for the past 2 years has been whether or not the so-called chain broadcasting regulations were wise. But today as broad-

casters throughout the country study the decision of the Supreme Court, they are horror stricken. The chain rules are forgotten. Today it is a question as to whether or not the Government shall dictate what kind of program we shall have, who shall speak, and on what subjects he shall speak over the broadcasting stations of the United States.

Chairman Fly, of the F. C. C., in a recent press conference, reacted to the anxiety of the radio broadcasting industry much as any other totalitarian leader would. He says that their fears are groundless, and brings up the customary cry of the monopolies. He says that any suggestion that the Government now controls radio is "hooey." He asserts that he aims to free radio stations to conduct their business in a manner in which he, Mr. Fly, thinks best for them. If the stations accept Mr. Fly's protection—if, in other words, they are good children—he assures them that stations certainly have nothing to be afraid of. Is there not a very broad hint there that if they do not play his game there may be something to fear? It is strange that station owners have never sought this freedom that Mr. Fly insists on their accepting, and that they have in the past thrived and improved on their own simple brand of free enterprise.

Broadcasters' fear of imminent Government ownership, control, or domination is the fear of a reality and not the "hooey" Mr. Fly so lightly calls it. What Hitler did to German radio is a cause for fear in any language, and, according to the Supreme Court, Mr. Fly now has the power to do it even here. Mussolini took the same parental attitude toward his children of the broadcasting industry in Italy. He gave them their instructions just the same as he gave castor oil to some of his less tractable party members. Chairman Fly now has the power to measure out to stations the exact amount of freedom he or the administration wants them to have, either with an eye dropper or a tankard, depending on how he feels at the moment. Perhaps he will choose a carefully measured bottle with a rubber nipple feeding 912 radio stations in the United States the way the Dionne quintuplets were fed, while the stations remain in an infantile relationship to Father Fly.

I hope that every Member of this body will study this decision of the Supreme Court and reflect seriously upon its possibilities. I think that you will agree with me that there is only one way to prevent this serious threat to the freedom of speech and our way of living—that is for Congress to rewrite the Radio Act in such definite terms that it cannot be seized upon by the party in power, no matter what it may be, for the chief purpose of directing its propaganda and maintaining itself in office.

A year ago the Interstate Commerce Committee of this body studied a new radio act known as the Sanders bill. No action was taken, but when the new Congress assembled last January the bill was resubmitted in practically the same form by Representative Holmes. To date, further hearings have not been held. In the Senate, the White-Wheeler bill, a revision of the 1934 Radio Act, has been introduced by Senator Wallace White of Maine and Senator Burton Wheeler of Montana. Hearings on this bill are scheduled to start in the very near future. The bill is of such a nature that it would definitely prescribe the powers of the F. C. C. and free the industry of this life and death threat from the Government which now hangs over it. I feel that this is a matter in which Congress should act at once. We will be derelict in our duty if we continue to let any bureau of the Government assume the powers of Congress—in fact, not only the powers of Congress, but a supreme dictatorship in a matter which so closely affects the lives of every man, woman, and child in this country.

The National Association of Broadcasters
1760 N STREET, N. W. ★ ★ ★ ★ ★ ★ ★ WASHINGTON 6, D. C.
July 3, 1943 SPECIAL LEGISLATIVE BULLETIN No. 5

F. C. C. Investigation Under Way

House Committee Convened July 2

Herewith are charges and statements presented at opening session. Committee adjourned to re-convene Friday, July 9

STATEMENT OF EUGENE L. GAREY, GENERAL COUNSEL TO THE SELECT COMMITTEE OF THE HOUSE OF REPRESENTATIVES TO INVESTIGATE THE FEDERAL COMMUNICATIONS COMMISSION, MADE AT THE OPENING OF THE PUBLIC HEARINGS ON JULY 2, 1943.

Mr. Chairman and Members of the Committee:

The House, by practically a unanimous vote, on January 19, 1943, passed Resolution No. 21, pursuant to which your Committee was appointed by the Speaker "to conduct a study and investigation of the organization, personnel and activities of the Federal Communications Commission with a view to determining whether or not such Commission in its organization, in the selection of personnel, and in the conduct of its activities, has been, and is, acting in accordance with law and the public interest."

For sometime past, at your direction, your staff has been engaged in an investigation of the functioning of the Federal Communications Commission, and is now prepared to submit to the Committee, for its consideration, evidence of certain phases of the Commission's activities which has come to the staff's attention during the progress of its work.

Since these particular matters relate primarily to the radio activities of the Commission under Title III of the Communications Act of 1934, it may not be inappropriate at the outset of these public hearings to make a brief reference to the recorded background and legislative history of federal regulation of radio communications.

Radio broadcasting is the transmission of electrical energy from a station using a specific frequency to receivers attuned to the same frequency without the aid of physical connection by wire.

The radio art emerged from its development stage to one of practical utility by the year 1910. The many advantages to mankind resulting from the steady progress made in this field received early recognition by the Congress. The first exercise of the power of the Congress in the radio field is found in the passage of the Wireless Ship Act on June 24, 1910 (36 Stat. 629). By this Act, any steamer authorized to carry fifty or more persons was forbidden to leave American shores unless equipped with radio communication apparatus in charge of a competent operator.

Since the Secretary of Commerce and Labor was administering the marine navigation laws, the administration of the Wireless Ship Act was delegated to that cabinet officer.

In 1912 the United States ratified the first international radio treaty (37 Stat. 1565). Radio was then used primarily for radio telegraphic communication, since radio broadcasting, as we now understand that term, had not then been developed. Nevertheless, the requirement for more comprehensive regulatory legislation had at this early date become imperative.

In obedience to our treaty obligations, the Congress, on August 13, 1912, enacted the Radio Act of 1912 (37 Stat. 302). This Act provided for the federal licensing of radio transmitters and prohibited the use of any apparatus not so authorized. By this legislation certain frequencies in the radio spectrum were allocated for use by the Government and restrictions were imposed upon the character of wave emissions, the transmission of distress signals, and the like. The administration of this Act was likewise entrusted to the Secretary of Commerce and Labor.

For a period of years no serious enforcement problems arose. Meanwhile, however, the radio art had developed to the point that standard broadcasting had become practical. The first World War had rapidly accelerated the development of the art, and in 1921 the first standard broadcasting stations were established. They grew rapidly in number, and by 1923 there were several hundred such stations operating throughout the United States. As a direct and immediate result of this rapid growth, a grave problem was presented. Two radio stations broadcasting simultaneously upon the same frequency

cannot be intelligibly heard over reseiving sets within the range of both stations. The chaos thereby resulting in the ether is characterized in radio as interference. With the expansion of standard broadcasting, this problem of interference threatened ultimately to destroy the usefulness of radio.

The problem of interference, which rarely arose prior to the first World War as there were more than sufficient frequencies for all the stations then operating, became a problem of the first magnitude.

The development in radio broadcasting, resulting as it did in a tremendous increase in the number of stations, made the 1912 Act obsolete, because under it the Secretary of Commerce and Labor was required to grant a license to any applicant, and licensees were not required to confine themselves to their allotted frequencies. A factor further contributing to this obsolescence was that the 1912 Act did not set aside any portion of the useful radio spectrum for the exclusive use of commercial broadcasting stations. The Secretary sought to remedy this condition by allocating two frequencies to the standard broadcasting stations, and licensing them to use either of these channels. This attempted solution, however, proved entirely unworkable.

The spectrum was then divided among the various users and allocations were made to each particular type of service. Frequencies were provided for the standard broadcast stations, and resort was had to the policy of assigning a specific frequency to each station. However, the continuous increase in the number of stations soon rendered this solution likewise impracticable. Despite the increased number of frequencies allocated for standard broadcasting, there still were more stations than there were frequencies available.

The then known useful radio spectrum was inadequate to accommodate everybody, because there is a fixed natural limitation upon the number of stations that can operate without interference by one with another. Every channel in the standard broadcast band soon became occupied by at least one, and in many instances by several, stations. The standard broadcast band could only be extended (considering the then known practical limits of the spectrum) at the expense of other types of radio service, by withdrawing channels from them and assigning such frequencies to the broadcast stations, or by compelling existing broadcast stations to divide time with each other on the same channel and imposing severe limitations on the power of such stations so as to permit a number of them to use the same channel simultaneously, without causing too much interference.

Vigorous opposition to both of these methods was voiced, and the Secretary was powerless to remedy the situation under the law then existing. The problem of interference had become so acute by that time that it became all too apparent that, if radio was to survive, it was imperative that more comprehensive regulation be speedily procured. The Congress was therefore asked to enact legislation then deemed adequate to remedy the existing chaos in the radio field.

Recognizing that prompt action was essential if the potentialities and usefulness of radio were not to be lost to the nation, the Congress, to meet the national need, enacted the Radio Act of 1927 (44 Stat. 1162). There was thus placed on the statute books the first real comprehensive legislation for the control of radio communications. By this Act the Federal Radio Commission, composed of five members, was created and granted licensing and regulatory powers in the radio field.

The powers of that Commission were subsequently transferred to the Federal Communications Commission by the Communications Act of 1934 (48 Stat. 1064) which not only created a new commission comprised of seven members, but also mapped out a broader regulatory system for the entire communications industry.

While the powers of the Federal Radio Commission under the Radio Act of 1927 were transferred to the Federal Communications Commission, the substantial objectives of that Act remained the same. Title III of the Communications Act of 1934, which deals with radio broadcasting, reenacted, without substantial change, the provisions of the Radio Act of 1927.

By Section 303 of the 1934 Act, the Federal Communications Commission was granted these powers:

"Except as otherwise provided in this Act, the Commission from time to time, as public convenience, interest, or necessity requires, shall—

(a) Classify radio stations;

(b) Prescribe the nature of the service to be rendered by each class of licensed stations and each station within any class;

(c) Assign bands of frequencies to the various classes of stations, and assign frequencies for each individual station and determine the power which each station shall use and the time during which it may operate;

(d) Determine the location of classes of stations or individual stations;

(e) Regulate the kind of apparatus to be used with respect to its external effects and the purity and sharpness of the emissions from each station and from the apparatus therein;

(f) Make such regulations not inconsistent with law as it may deem necessary to prevent interference between stations and to carry out the provisions of this Act: PROVIDED, HOWEVER, That changes in the frequencies, authorized power, or in the times of operation of any station shall not be made without the consent of the station licensee unless, after a public hearing, the Commission shall determine that such changes will promote public convenience or interest or will serve public necessity, or the provisions of this Act will be more fully complied with;

(g) Study new uses for radio, provide for experimental uses of frequencies, and generally encourage the larger and more effective use of radio in the public interest;

(h) Have authority to establish areas or zones to be served by any station;

(i) Have authority to make special regulations applicable to radio stations engaged in chain broadcasting;

(j) Have authority to make general rules and regulations requiring stations to keep such records of programs, transmissions of energy, communications, or signals as it may deem desirable;

(k) Have authority to exclude from the requirements of any regulations in whole or in part

any radio station upon railroad rolling stock, or to modify such regulations in its discretion;

(l) Have authority to prescribe the qualifications of station operators, to classify them according to the duties to be performed, to fix the forms of such licenses, and to issue them to such citizens of the United States as the Commission finds qualified;

(m) (1) Have authority to suspend the license of any operator upon proof sufficient to satisfy the Commission that the licensee—

(A) Has violated any provision of any Act, treaty, or convention binding on the United States, which the Commission is authorized to administer, or any regulation made by the Commission under any such Act, treaty, or convention; or

(B) Has failed to carry out a lawful order of the master or person lawfully in charge of the ship or aircraft on which he is employed; or

(C) Has willfully damaged or permitted radio apparatus or installations to be damaged; or

(D) Has transmitted superfluous radio communications or signals or communications containing profane or obscene words, language, or meaning, or has knowingly transmitted—

(1) False or deceptive signals or communications, or

(2) A call signal or letter which has not been assigned by proper authority to the station he is operating; or

(E) Has willfully or maliciously interfered with any other radio communications or signals; or

(F) Has obtained or attempted to obtain, or has assisted another to obtain or attempt to obtain, an operator's license by fraudulent means.

(2) No order of suspension of any operator's license shall take effect until fifteen days' notice in writing thereof, stating the cause for the proposed suspension, has been given to the operator licensee who may make written application to the Commission at any time within said fifteen days for a hearing upon such order. The notice to the operator licensee shall not be effective until actually received by him, and from that time he shall have fifteen days in which to mail the said application. In the event that physical conditions prevent mailing of the application at the expiration of the fifteen-day period, the application shall then be mailed as soon as possible thereafter, accompanied by a satisfactory explanation of the delay. Upon receipt by the Commission of such application for hearing, said order of suspension shall be held in abeyance until the conclusion of the hearing which shall be conducted under such rules as the Commission may prescribe. Upon the conclusion of said hearing the Commission may affirm, modify, or revoke said order of suspension.

(n) Have authority to inspect all radio installations associated with stations required to be licensed by any Act or which are subject to the provisions of any Act, treaty, or convention binding on the United States, to ascertain whether in construction, installation, and operation they conform to the requirements of the rules and regulations of the Commission, the provisions of any Act, the terms of any treaty or convention binding on the United States, and the conditions of the license or other instrument of authorization under which they are constructed, installed, or operated;

(o) Have authority to designate call letters of all stations;

(p) Have authority to cause to be published such call letters and such other announcements and data as in the judgment of the Commission may be required for the efficient operation of radio stations subject to the jurisdiction of the United States and for the proper enforcement of this Act;

(q) Have authority to require the painting and/or illumination of radio towers if and when in its judgment such towers constitute, or there is a reasonable possibility that they may constitute, a menace to air navigation;

(r) Make such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this Act, or any international radio or wire communications treaty or convention, or regulations annexed thereto, including any treaty or convention insofar as it relates to the use of radio, to which the United States is or may hereafter become a party."

In this language we find undisputed statutory authority in the Commission to regulate the physical aspects of the use of the radio spectrum. Such authority was to be exercised within the lawful scope of the phrase "public interest, convenience or necessity" as such terminology is employed in the Act. Thus, there was delegated to the Commission the broad visitorial powers of the Congress in this field. Many of the acrimonious disputes which have subsequently arisen respecting the lawful extent and scope of the Commission's powers may be directly traced to the employment of this phrase in the statute.

It is clear that the practically unrestricted delegation of power made by the phrase "public interest, convenience or necessity", without guiding standards and without the check and balance which a full judicial review might have provided, created ample and unlimited opportunity for the Commission, if so minded, to distribute unchecked Government favor and largesse among the politically faithful and subservient; and ample power with which to whip and cow all political opponents possessing the temerity and courage to protest or challenge the actions or policies of the Commission.

And it is claimed that the Commission has not altogether failed to take full advantage of the opportunities presented to establish its own purposes and policies and advance its own ends. It is said that the Commission has neither been slow nor loath to utilize its asserted

powers so to entrench itself that on occasion it has even defied the Congress. Power always seeks and thrives on more power. It has been ever thus in Government. The phrase "public interest, convenience or necessity" needs only the proverbial "man on horseback" to bring about a situation such as is said presently to obtain.

Much bitter controversy has raged—and still rages—over the extent and meaning of the statutory words "public interest, convenience or necessity" employed in this legislation. The Commission contends, and the Supreme Court has quite recently agreed, that its powers under Section 303 are much broader and more extensive than those herein suggested as indisputably granted.

Since the Committee will, in the due progress of its labors, enter upon a detailed study of the merits of this controversy and come to its own conclusions on these matters, I now leave that subject for later consideration and pass to other provisions of the Communications Act of 1934 under Title III.

The Commission is required by Sections 307(a) and 309(a) of the Act to license applicants for radio facilities upon a finding of "public interest, convenience or necessity," and the operation of a radio station without a license from the Commission is made illegal. Section 307(a) of the Act directs the Commission to distribute licenses, frequencies, time and power among the several states and communities so as to provide a fair, efficient and equitable distribution of radio service to each.

Evidence gathered by the staff will be presented clearly indicating that at least in this latter statutory direction, the Commission has wholly failed to observe the express intent of the Congress as laid down in the 1934 Act.

Mr. Chairman, I now offer in evidence as Exhibit 1, the Communications Act of 1934, as amended, and ask that it be marked and received in evidence accordingly.

I also offer in evidence, as Exhibit 2, a list of the persons who have served as Commissioners under the 1934 Act and the respective tenures of such persons, and ask that such exhibit be received and marked accordingly.

The administration of this Act by the Commission has been widely and bitterly criticized and condemned—to an extent, perhaps, to which no other federal administrative agency ever has been subjected. These complaints began with the inception of the Commission and have constantly continued to grow in intensity and bitterness.

In order intelligently to find and apply a remedy, a careful examination must first be made of the prevailing evils and abuses and of the basic causes underlying them. A determination should be made as to the extent to which relief by appropriate legislative action can be accorded against proven and conceded abuses. To this end much evidence will be submitted for the Committee's consideration. Some of this material has already been studied and sifted by the staff and more is in the course of examination.

What is charged against the Commission regarding the manner in which it has fulfilled its stewardship?

Broadly stated, among the widespread accusations leveled against the Commission and brought to the attention of the Committee for its investigation, are:

(1) That it has been and is so completely dominated by its Chairman that, for most purposes, it has become and is a one-man Commission;

(2) That it is entirely motivated by political partiality and favoritism in the performance of its duties;

(3) That its powers are unlawfully exercised for the purpose of furthering its own political ideologies and philosophies;

(4) That its powers are employed to reward its political friends and punish its political enemies;

(5) That the radio industry has been so purposefully terrorized by the Commission that it is enslaved and lives in an unremitting state of fear, as a result of which it acquiesces in every whim and caprice of the Commission;

(6) That the fear engendered in the industry is so great that licensees refrain from challenging unlawful and excessive acts of the Commission or from asserting their legal rights;

(7) That it acts arbitrarily, capriciously and without warrant of law;

(8) That in its quest for power it has incurred the antagonism and distrust of other Government departments and agencies;

(9) That it has sought to dominate and control the entire communications field, private and governmental, without lawful authority and contrary to the express intent of the Congress;

(10) That in its lust for power it has usurped the functions of the Congress by arrogating to itself the determination of matters of legislative policy resting solely within the competency of the Congress;

(11) That in pursuing this course it has adopted and followed the reputed communistic technique of "cessation and gradualism";

(12) That it has deliberately abstained from seeking from the Congress powers exercised but not possessed by it because of the fear that the grant of such powers would be denied;

(13) That it has made misrepresentations to the Congress for the purpose of procuring appropriations, and has expended appropriated funds contrary to the purpose for which they were granted;

(14) That it has unlawfully augmented its appropropriated funds by procuring the transfer to it of funds appropriated to other departments and agencies;

(15) That it has violated laws of the United States and defied the will of the Congress;

(16) That it has wilfully evaded and procured the evasion and violation of laws affecting the civil service;

(17) That it has sought to cloak itself as an essential war agency making a vital contribution to the war effort, whereas in truth its alleged war activities constitute a danger and menace to national security;

(18) That in furtherance of its alleged war activities, it has drawn to its use manpower and critical materials from the limited sources available and needed by the armed forces of the United States, and has procured the exemption from military service of a large number of persons not entitled thereto;

(19) That it has set up a group commonly called "the Gestapo" for the purpose of unlawfully dominating the radio industry and rendering it subservient to its will;

(20) That "the Gestapo," under the guise of lawful and proper investigation, is violating constitutional rights of individuals;

(21) That it has been guilty of reprisals against

individuals who have attempted to challenge its asserted powers;

(22) That in its pursuit of power and dominance over broadcasting it has neglected its functions, duties and responsibilities in other fields of communication;

(23) That it is so much interested in obtaining publicity that the possibilities of publicity affect and govern its judgments and determinations; and

(24) That, notwithstanding the express statutory prohibition to the contrary, it has sought to exercise the power of censorship over radio broadcasts and has interfered with the right of free spech over the radio.

The investigation of these and many other matters has been occupying the time of your staff. In due course evidence bearing on the truth or falsity of these charges will be presented to you. In many respects the investigation is yet in a preliminary stage. It is clearly recognized that the inquiry into every phase of the Commission's activities must be thorough, searching and complete.

Without now attempting to specify with exactness, or to outline in detail, the entire program for the inquiry, it should be noted that testimony bearing on important questions of policy, such as network broadcasting, multiple station ownership, newspaper ownership, judicial decisions, practice and procedure, judicial review, personnel, and needed amendatory legislation will in due course be presented for your study.

The investigation will proceed always mindful that the Committee's primary desire is to achieve a constructive result. All inquiries will be made with that objective in view. The full benefits to be obtained from this investigation will not be satisfied by the mere portrayal of evils, since surely more is required. The elimination of the opportunity for the recurrence of abuses by wise and carefully considered corrective legislation must be the ultimate goal.

With the entry of this country into the war, there was a frantic rush by numerous governmental agencies, both old and new, to establish themselves as indispensable units in the conduct and winning of the war. In many instances the war activities of such agencies have been magnified, through one means or another, far and beyond all recognition that may properly be accorded them as true war agencies.

One cannot be unmindful of the fact that when alleged war activities are challenged, either on the floor of the Congress, in committee hearings, or otherwise, as wasteful, extravagant, or as unauthorized by law, the agencies attempting to enhance their importance to the war effort, and their friends, inevitably raise the hue and cry that the war effort is being impeded, and that an inquiry into their war functions will call for a disclosure of secret military information.

This investigation can and will be conducted without the disclosure of any such military information. The responsibility of nondisclosure rests quite as much on this Committee as upon any other part of Government.

It must be recognized that the existence of a state of war constitutes no license to raid the Treasury, either through waste and extravagance by lawfully constituted war agencies, through the operation of worthless activities under the guise of the furtherance of the war effort, or otherwise. Hence this investigation has thus far proceeded in such matters in the belief that this Committee, the Congress, and the public are entitled to know the facts surrounding the Commission's so-called war activities and functions, to the end that such activities and functions may be abolished, curtailed or extended as the Congress shall see fit.

(Joint letter of the Secretaries of War and Navy to the President of the United States.)

WAR DEPARTMENT
WASHINGTON

February 8, 1943.

DEAR MR. PRESIDENT:

We join with the United States Chiefs of Staff in recommending that you promulgate the attached executive order transferring from the Federal Communications Commission to the Department of War certain radio intelligence functions.

Through radio intelligence activities, the military forces of the United States and our Allies obtain military information of the utmost importance. Radio intelligence is an important military weapon.

Participation by the Federal Communications Commission in radio intelligence should be discontinued, because:

Since radio intelligence develops information as to the movements and dispositions of the enemy, it is essential, for reasons of coordination and security, that there be full military control;

Since the responsibility for military action rests with the armed forces, the responsibility for obtaining the technical information governing that action, must also be in the armed forces;

Military activities have been hampered by severe shortages of trained personnel and critical equipment essential to radio intelligence.

The Secretary of the Navy, on September 11, 1942, requested the Joint Chiefs of Staff to study the problem of responsibility and security of radio intelligence. The Joint Chiefs of Staff have made a thorough and comprehensive study, and their response (based on that study) is attached hereto. They, as well as the responsible military commanders in the field, are of the belief that radio intelligence, the location of clandestine stations, the supervision of military communications security and related activities must, in their very nature, be under the sole control of the military forces.

Enclosed herewith is a copy of a letter from Admiral Leahy recommending this action.

Yours respectfully,

/s/ HENRY L. STIMSON,
Secretary of War.

/s/ FRANK KNOX,
Secretary of the Navy.

The President,
The White House
Washington, D. C.

THE JOINT CHIEFS OF STAFF
WASHINGTON

The Honorable,
The Secretary of the Navy,
Washington, D. C.

February 1, 1943.

MY DEAR MR. SECRETARY:

In response to your memorandum to the Joint Chiefs of Staff, dated September 11, 1942, on the subject of

responsibility for the conduct of security of military communications activities, the Joint Chiefs of Staff have had made a thorough and comprehensive study of the problems referred to therein in which full consideration has been given to the views of the military and naval commanders in the field who are charged with responsibility for military action based on radio intelligence. A summary of the findings is given in the following paragraphs.

In general, radio intelligence is the method of determining the enemy's plans and dispositions through observation of his radio communications. The facilities used for this are also used to assist our own forces through monitoring of communications channels to enforce security standards and to render assistance to our own craft.

Both the Army and Navy are engaged in radio intelligence and related activities. In addition, the Federal Communications Commission has set up an elaborate system of its own which is engaged in:

(a) the location of enemy units at sea and abroad;
(b) the interception of enemy army, navy, and diplomatic traffic;
(c) the location of clandestine stations;
(d) the giving of bearing aids to lost planes;
(e) the maintenance of a "marine watch" at distress frequencies; and
(f) the monitoring of military radio circuits.

These activities of the F.C.C. are constantly expanding and are a substantial drain upon available material and personnel.

Radio intelligence activities of the F.C.C. tend to be less and less useful as the art progresses. This is due to integration into proper radio-intelligence systems of large quantities of secret military information accumulated through special processes by the armed forces, including exchanges of military information with our allies, knowledge of present and proposed disposition of forces, and other special information which for obvious reasons cannot be disseminated to an agency such as the F.C.C. Moreover, information obtained by the F.C.C. through its own radio-intelligence activities is not, in the military sense, secure, due to inherent tendencies toward publicity of F.C.C. activities, use of non-secure methods of reporting and correlation, and the necessarily close relationship of F.C.C. military-intelligence activity with other phases of the agency's work.

Because of the essential differences between military and F.C.C. standards and methods it has not been possible to integrate their information, with the result that the attempted duplication by the F.C.C. of work that is being more effecively done by the military has in fact endangered the effectiveness and security of military radio intelligence.

In view of the foregoing it is concluded that the better prosecution of the war will be served by terminating all military and quasi-military radio intelligence activities of the Federal Communications Commission and confining such activities to the Army and Navy.

Since the Army's present need for personnel and equipment in the field of radio intelligence is greater than that of the Navy, all of the radio-intelligence facilities of the F.C.C. should forthwith be transferred to the Army entirely. The personnel of the F.C.C. heretofore engaged in radio intelligence should be made available initially as civilian employees of the Army, pending decision by the Army as to which shall be placed in military status, which replaced by military personnel, and which would be best retained in the Army as civilian employees.

The foregoing conclusions are supported by the views of the Army and Navy commanders in the field who are charged with responsibility for military action based on radio intelligence.

The Joint Chiefs of Staff therefore request the Secretaries of War and Navy to join in a recommendation to the President that he transfer to the Army personnel and equipment now used by the F.C.C. in the field of radio intelligence. A proposed executive order is enclosed.

From the standpoint of the present problem, the promulgation of this Executive Order would leave the F.C.C. in the radio field, with the responsibility for monitoring, processing and disseminating foreign voice, news, and propaganda broadcasts (its Foreign Broadcast Intelligence Service), the monitoring and inspection of stations licensed under the Communications Act of 1934, all necessary licensing procedures, including revocation and suspension, and the institution of prosecutions of *licensed* stations and operators for violations of treaty, statute, or regulations.

The Army and Navy (in accordance with divisions of function between themselves) would have full and exclusive responsibility for the conduct of military radio intelligence as described in the present report.

Sincerely yours,

For the Joint Chiefs of Staff:

/s/ WILLIAM D. LEAHY,
Admiral, U. S. Navy,
Chief of Staff to the
Commander in Chief
of the Army and Navy.

EXECUTIVE ORDER

Transferring Radio Intelligence Functions to the War and Navy Departments

By virtue of the authority vested in me by Title I of the First War Powers Act, 1941, approved December 18, 1941, as President of the United States and Commander in Chief of the Army and Navy, it is hereby ordered as follows:

1. All functions, powers, and duties of the Federal Communications Commission in the field of radio intelligence and, particularly: in the conduct of direction-finding activities; the location of enemy radio transmissions abroad and at sea; the interception of radio traffic of foreign countries (excluding voice broadcasting); the detection, location and suppression of clandestine or illegal stations both abroad and within the limits of the United States, its territories and possessions and the areas occupied by its armed forces; the giving of radio and direction-finding navigational aids to vessels and aircraft; the monitoring of United States Army and Navy communications circuits and the maintenance of distress frequency watches, are transferred to the Departments of War and Navy in accordance with distribution of functions established between them.

2. All records and property (including radio transmitting and receiving equipment) and all personnel of

the Federal Communications Commission used primarily in the performance and administration of the functions transferred by this Order are transferred to the War Department for use in the performance and administration of functions transferred by this Order; but any personnel so transferred who are found by the War Department to be in excess of the personnel necessary for the performance and administration of such functions, powers, and duties shall be retransferred under existing law to other positions in the Government or separated from the service. So far as possible, personnel transferred who are found qualified therefor shall be placed in a military status.

3. So much of the unexpended balance of the appropriations or other funds available, including those available for the fiscal year ending June 30, 1943, to the Federal Communications Commission in the exercise of functions transferred by this Order as the Director of the Bureau of the Budget, with the approval of the President, shall determine, shall be transferred to the War Department for use in connection with the exercise of functions so transferred. In determining the amount to be transferred the Director of the Bureau of the Budget may include an amount to provide for the liquidations of obligations incurred against such appropriations or other funds prior to the transfer.

THE WHITE HOUSE,
February, 1943.

(Letter from Eugene L. Garey, General Counsel to the Select Committee of the House of Representatives to Investigate the Federal Communications Commission, addressed to The Secretary of War.)

June
Twenty-fifth
1943.

The Honorable,
The Secretary of War,
Washington, D. C.

SIR:

The Committee has now completed certain phases of its preliminary investigation into the activities of the Federal Communications Commission, and intends to hold formal public hearings and take testimony on such matters within a short day.

In its public consideration of these matters the Committee will require at such hearings (1) the presence of certain officers of the military and naval forces of the United States as witnesses and (2) the production of certain documents and papers from the files of your Department.

The military personnel whose attendance at such hearings as witnesses will be required by the Committee are:

The Secretary of War.
Col. Howard F. Bresee, U.S.A.
Lt. Col. Armand Durant, U.S.A., Military Intelligence Service.
Col. Wesley T. Guest, U.S.A., Director of Planning, Signal Corps.
Major General Dawson Olmstead, U.S.A., Chief Signal Officer.
Col. Conrad E. Snow, U.S.A., Chief, Legal Branch, Office of the Chief Signal Officer.
Major General Frank Stoner, U.S.A., Army Communications Service.
Major General George V. Strong, U.S.A., Assistant Chief of Staff (Military Intelligence).
Captain E. M. Webster, U.S.A.

The Committee will require the attendance of Major General Joseph O. Mauborgne, U.S.A. (Retired), but since he is not now on active duty the Committee presumably will be compelled to require his presence by subpoena, and I will arrange accordingly.

The documents, reports, memoranda and the like which your Department will be required to produce at such hearings are:

1. All Department files and correspondence pertaining to the Army's efforts to obtain approval of the use of ultra-high frequencies, and the difficulty encountered by the Army in getting the Federal Communications Commission to make a study of the subject.
2. All files and correspondence pertaining to the Army's position favoring the passage of a bill to permit wire-tapping, and Chairman Fly's opposition to such bill. -
3. All files and correspondence pertaining to the Army's efforts to stop Japanese language radio broadcasts from Hawaii prior to Pearl Harbor and the reports of the Army officers of their activities in negotiating voluntary agreements to that end; and Chairman Fly's opposition to such action and his subsequent actions which are alleged to have caused such voluntary agreements to be abandoned.
4. All files, memoranda, correspondence and the like concerning the mergers (both international and domestic) of telegraph, telephone, and cable companies; the position of the Army in respect thereof and Chairman Fly's unwillingness to hear or consider the military services' position in respect thereto.
5. The letter dated June 12, 1940, from Chairman Fly of the Federal Communications Commission, addressed to the Chief Signal Officer, U.S.A., and to the Director of Naval Communications, stating, in substance, that the Federal Communications Commission had determined that its Chairman should be the Commission's representative on and Chairman of the Defense Communications Board.
6. All files, documents, memoranda and correspondence relating to or bearing on various questions arising between the War Department and Federal Communications Commission, or any of its staff or divisions, or between the Army and the Board of War Communications or its predecessor, the Defense Communications Board, not called for in Item 5 above.
7. All Department files, letters, papers and documents pertaining to the proposed transfer to the military establishments of the Government of the activities of the Federal Communications Commission's Radio Intelligence Division, particularly a copy of the letter dated February 1, 1943, to the Secretary of the Navy, from William D. Leahy, Admiral, U.S.N., Chief of Staff to the Commander

in Chief of the Army and Navy, a copy of the proposed Executive Order therein referred to, a copy of the joint letter dated February 8, 1943, addressed to the President by the Secretary of War and the Secretary of the Navy, and all subsequent memoranda and letters on the same subject matter, including the studies and reports made prior to the letter dated February 1, 1943, and referred to in such letter.

8. Copies of all requests, if any, by the Department to Federal Communications Commission requesting Federal Communications Commission to monitor, intercept, listen to or record, either specifically or generally, domestic foreign languagé or foreign broadcasts.
9. Copies of all requests, if any, by the Department to Federal Communications Commission to locate clandestine radio stations, either domestic or foreign.
10. Copies of all memoranda, reports or letters to the White House and others respecting the creation of the Defense Communications Board, now known as the Board of War Communications, and pertaining to Executive Order dated September 24, 1940, creating such Board.
11. Copies of any and all reports and correspondence between the Army or the Navy, the Interdepartment Radio Advisory Committee, and Chairman Fly with reference to the application of the U. S. Army for frequencies to broadcast in Alaska and elsewhere for the purpose of maintaining morale among the United States armed forces stationed there, and the opposition of Chairman Fly to such broadcasting by the Army for such purposes, and his insistence that such broadcasting be done by the Office of War Information.
12. All correspondence, files and memoranda relating to the difficulties of the Army and Navy in having their views properly presented by Federal Communications Commission representatives to the International Conference in Madrid.
13. Copies of reports from the Federal Communications Commission to the Army as to the alleged direction finding and location by it of certain enemy ships, particularly those which developed upon investigation by the Navy to be enemy stations located in Japan.
14. Any and all correspondence between the Army and the Federal Communications Commission with reference to Chairman Fly's proposal to establish East and West Coast Central Intelligence services and requesting the Army to contribute to the cost thereof.
15. All memoranda and correspondence with reference to the passage of the resolution (and a copy thereof) forbidding the release of any information unless authorized by the Board of War Communications, which was adopted by such Board for the purpose of curbing Chairman Fly's unauthorized disclosure of the Board's activities.
16. Copies of all correspondence between the Army and the Federal Communications Commission respecting the material compiled by Foreign Broadcast Intelligence Service.
17. Copies of reports received by the Army with reference to certain information improperly evaluated, edited and distributed by the Federal Communications Commission pertaining to the war in Alaskan waters.
18. Proposed constitution of the Interdepartment Radio Advisory Committee proposed by the representatives of the Army, which Chairman Fly opposed and which therefore never became effective.
19. All memoranda, reports and correspondence relating to charges filed (and as changed from time to time during the hearing) before the Board of War Communications, against Neville Miller, President of the National Association of Broadcasters, the Army and Navy's opposition thereto, the transcript of testimony taken at the hearing on such charges, and the findings exonerating Mr. Miller.
20. All reports, memoranda and correspondence in the Department relating to, or dealing or connected with, any of the subjects hereinafter outlined.

(Remainder of letter virtually duplicates letter to Secretary of Navy.)

(Letter from Eugene L. Garey, General Counsel to the Select Committee of the House of Representatives to Investigate the Federal Communications Commission, addressed to the Secretary of the Navy.)

June
Twenty-fifth
1943

The Honorable,
The Secretary of the Navy,
Washington, D. C.

Sir:

The committee has now completed certain phases of its preliminary investigation into the activities of the Federal Communications Commission and intends to hold formal public hearings and take testimony on such matters within a short day.

In its public consideration of these matters the Committee will require at such hearings (1) the presence of certain officers of the military and naval forces of the United States as witnesses and (2) the production of certain documents and papers from the files of your Department.

The naval personnel whose attendance at such hearings as witnesses will be required by the Committee are:

The Secretary of the Navy.
Captain Andrew H. Addons, U.S.N., Communications Officer, Eastern Sea Frontier.
Captain Jerome L. Allen, U.S.N., former Communications Officer, Eastern Sea Frontier.
Lieutenant Commander Cecil H. Coggins, U.S.N.
Lieutenant (j.g.) Edward Cooper, U.S.N.
Captain John Lawrason Driscoll, U.S.M.C., Air Station at Cherry Point, N. C.
Captain Chas. F. Fielding, U.S.N.
Captain Carl F. Holden, U.S.N., former Director of Naval Communications.
Rear Admiral R. E. Ingersoll, U.S.N.

Lieutenant Vanner T. Larson, U.S.N.R., Office of Naval Intelligence.
Rear Admiral Leigh Noyes, U.S.N.
Lieutenant Commander Duke M. Patrick, U.S.N.R.
Rear Admiral Joseph R. Redman, U.S.N., Director of Naval Communications.
Lieutenant Commander Paul Segal, U.S.N.R.
Rear Admiral Harold C. Train, U.S.N., Director of Naval Intelligence.
Rear Admiral Theodore S. Wilkinson, U.S.N.
Commander F. O. Willenbucher, U.S.N. (Retired), Chief of the Legal Section, in the Office of the Director of Naval Communications.
Captain Ellis M. Zacharias, U.S.N., Assistant Director, Office of Naval Intelligence.

The Committee will require the attendance of Rear Admiral Adolphus R. Staton, U.S.N. (Retired) and Rear Admiral Stanford C. Hooper, U.S.N. (Retired), former Director of Naval Communications, but since these Admirals are not now on active duty the Committee presumably will be compelled to require their presence by subpoena, and I will arrange accordingly.

The documents, reports, memoranda and the like which your Department will be required to produce at such hearings are:

1. Report of Admiral Hooper recommending that all persons doing monitoring work in wartime should be under complete supervision of the armed forces and should not be under civilian control.
2. Memorandum to the Secretary of the Navy, dated May 14, 1942, regarding the undesirability of chairmanship of Defense Communications Board being vested ex officio in Chairman of Federal Communications Commission, especially during wartime.
3. Memoranda made by Admiral Hooper (from the Department's "Policy Files") concerning disputes with Federal Communications Commission with respect to the assignment of frequencies to the Navy and other governmental departments and agencies.
4. All Department files concerning the establishment on the Fleet of a new type of radio, and the Navy's consequent necessity of promptly ascertaining the frequencies that would be allocated to it to enable the purchase by it of the essential equipment necessary to carry out such purpose, the delay in allocating such frequencies and subsequent change in the frequencies allocated, due to Federal Communications Commission's activities and inactivities, in consequence of which it was necessary for the Navy to purchase new equipment to replace the new equipment already purchased for such purpose and rendered useless as a result.
5. All Department files and correspondence pertaining to the Navy's efforts to obtain approval of the use of ultra-high frequencies, and the difficulty encountered by the Navy in getting the Federal Communications Commission to make a study of the subject.
6. All files and correspondence pertaining to the Navy's position favoring the passage of a bill to permit wire-tapping, and Chairman Fly's opposition to such bill.
7. All files and correspondence pertaining to the Navy's efforts to stop Japanese language radio broadcasts from Hawaii prior to Pearl Harbor and the reports of the naval commanders of their activities in negotiating voluntary agreements to that end; and Chairman Fly's opposition to such action and his subsequent actions which are alleged to have caused such voluntary agreements to be abandoned.
8. All files, memoranda, correspondence and the like concerning the mergers (both international and domestic) of telegraph, telephone, and cable companies; the position of the Navy in respect thereof and Chairman Fly's unwillingness to hear or consider the military services' position in respect thereto.
9. The letter dated June 12, 1940, from Chairman Fly of the Federal Communications Commission, addressed to the Chief Signal Officer, U.S.A., and to the Director of Naval Communications, stating, in substance, that the Federal Communications Commission had determined that its Chairman should be the Commission's representative on and Chairman of the Defense Communications Board.
10. All Department files, letters, papers and documents pertaining to the proposed transfer to the military establishment of the Government of the activities of the Federal Communications Commission's Radio Intelligence Division, particularly a copy of the letter dated February 1, 1943, to the Secretary of the Navy, from William D. Leahy, Admiral, U.S.N., Chief of Staff, to the Commander-in-Chief of the Army and Navy, a copy of the proposed Executive Order therein referred to, a copy of the joint letter dated February 8, 1943, addressed to the President by the Secretary of War and the Secretary of the Navy and all subsequent memoranda and letters on the same subject matter, including the studies and reports made prior to the letter dated February 1, 1943, and referred to in such letter.
11. All other files, letters, papers, and documents of the Navy Department, in the form of letters from naval commanders, giving their estimate that work being done by the Federal Communications Commission's Radio Intelligence Division was of no value to the Navy and constituted a danger to the national defense, not submitted in response to Item 10 above.
12. Copies of all correspondence between the Navy and the Federal Communications Commission with respect to the opposition of the Navy to the proposal of the Federal Communications Commission to establish stations overseas.
13. Copies of all requests, if any, by the Department to Federal Communications Commission to locate clandestine radio stations, either domestic or foreign.
14. Copies of all reports, memoranda or letters to the White House and others respecting the creation of the Defense Communications Board, now known as the Board of War Communications, and pertaining to Executive Order dated September 24, 1940, creating such Board.
15. Copies of any and all reports and correspondence between the Army or the Navy, the interdepart-

ment Radio Advisory Committee, and Chairman Fly with reference to the application of the U. S. Army for frequencies to broadcast in Alaska and elsewhere for the purpose of maintaining morale among the United States armed forces stationed there and the opposition of Chairman Fly to such broadcasting by the Army for such purposes and his insistence that such broadcasting be done by the Office of War Information.

16. All correspondence, files and memoranda relating to the difficulties of the Army and Navy in having their views properly presented by the Federal Communications Commission representatives to the International Conference in Madrid.
17. Copies of reports from the Federal Communications Commission to the Navy as to the alleged direction finding and location by it of certain enemy ships, particularly those which developed upon investigation by the Navy to be enemy stations located in Japan.
18. Any and all correspondence between the Navy and the Federal Communications Commission with reference to Chairman Fly's proposal to establish East and West Coast Central Intelligence services and requesting the Navy to contribute to the cost thereof and the basis or reasons for the Navy's refusal to do so.
19. All memoranda and correspondence with reference to the passage of the resolution (and a copy thereof) forbidding the release of any information unless authorized by the Board of War Communications, which was adopted by such Board for the purpose of curbing Chairman Fly's unauthorized disclosure of the Board's activities.
20. Copies of all correspondence between the Navy and the Federal Communications Commission stopping the transmission to the Navy of the material compiled by Foreign Broadcast Intelligence Service because it was of no value.
21. Copies of reports received by the Navy with reference to certain information improperly evaluated, edited and distributed by the Federal Communications Commission pertaining to the war in Alaskan waters.
22. The report to Admiral Noyes with respect to the fitness of the persons proposed to be appointed to the various Committees of the Board of War Communications and the letter requests of the Secretary of the Navy to the Chairman of the Federal Communications Commission for such an investigation of such persons before they were so appointed, including all reports of the Office of Naval Intelligence regarding the importance of and delay of the Federal Communications Commission to investigate and fingerprint the radio operators on board ships in the merchant marine.
23. Proposed constitution of the Interdepartment Radio Advisory Committee proposed by the representatives of the Navy which Chairman Fly opposed and which therefore never became effective.
24. Memoranda and reports of Admiral Hooper with reference to the failure of Chairman Fly to cooperate with the Interdepartment Radio Advisory Committee and the tactics employed by him to defeat its recommendations.
25. Reports of Stanford C. Hooper, as a member of the Naval Districts Readiness Inspection Board, relating to the danger arising out of the activities of the Federal Communications Commission in its clandestine station location work outside of the United States beyond the purview of its authority and an encroachment in fields in which the Army and Navy were better qualified to function.

For your information and guidance, the testimony of the officers above named, to be presented to the Committee at such public hearings, will not call for the disclosure of any secret military information. Inquiries to the officers of the armed forces will be directed to the establishment of the subjects hereinbelow broadly noted. The existence of these facts has been heretofore substantially established through investigation by this Committee.

A brief outline of the subjects of inquiries to be made of such officers is as follows:

The personal history, training and experience of such officers, particularly in the communications field and generally in respect of the personnel, activities, actions and non-actions of the Federal Communications Commission and its related or affiliated agencies.

The participation of such officers in the preparation of the reports, memoranda and papers enumerated hereinabove and generally with respect to their knowledge of the subject matter, facts, opinions and circumstances which are referred to therein.

The composition, functions and duties of the Interdepartment Radio Advisory Committee.

The refusal of Mr. Fly to transmit to the President without comment, for his approval, the constitution of the Interdepartment Radio Advisory Committee as drafted and proposed by the Army and Navy for the express purpose of eliminating Mr. Fly's control of such Committee; the resulting failure to have such constitution adopted and the consequences flowing therefrom.

The conclusion of the Army-Navy Joint Board, reached after a long study by that Board and approved by the Secretaries of War and Navy, that a board or committee should be formed solely to assist the military services in planning the control of non-military communications for war uses in such a manner as to bring them into coordination with the military communications; and that such a board should have no authority whatsoever over military communications.

That the Defense Communications Board, now known as the Board of War Communications, was created by Executive Order pursuant to the approved conclusion reached as stated aforesaid.

The letter dated June 12, 1940, from Mr. Fly to the Chief Signal Officer and Director of Naval Communications, stating that the Commission had determined that its Chairman should be the representative of the Commission on the Defense Communications Board, and had also decided that its Chairman should act as Chairman of such Board.

The memorandum to the Secretary of the Navy dated May 14, 1942, "regarding the undesirability of chairmanship of Defense Communications Board (now known as Board of War Communications) being vested ex-officio in Chairman of Federal Communications Commission, especially during wartime" and the facts, circumstances

and reasons underlying each of such objections which were made.

The insidious steps by which Mr. Fly injected himself into the control of the Board of War Communications which he and his organization dominate, and the methods and manner in which he brought about and has since maintained that domination and control.

Mr. Fly's successful efforts in defeating the recommendations of the Army and Navy representatives to keep off the technical committees of the Defense Communications Board which handled secret and confidential matters, certain proposed members who had no proper place thereon.

Mr. Fly's assumption, through the Board of War Communications, of power over the communications facilities of all Government departments, including the Army and Navy, contrary to the powers of such Board and over the vigorous protests of the Army and Navy and other Government departments.

The difficulties encountered by the military services in making wartime arrangements for military communications facilities through the Board of War Communications, as opposed to direct action by them, due to the domination of such Board by Mr. Fly.

Mr. Fly's refusal to collaborate with interested Government departments in preparing recommendations to the Congress on the subject of international merger of communications.

Mr. Fly's disposition to speak for the Army and Navy due to his Board of War Communications connection; his testimony before Committees of the Congress on national defense matters contrary to the views of the Army and Navy and without authority from them; the resolution adopted by the Board of War Communications for the purpose of preventing Mr. Fly from making public utterances on matters relating to such Board affecting national defense.

Mr. Fly's insistence on reopening the consent decree and refusing to renew RCAC licenses despite the protests of the Army and Navy.

Mr. Fly's refusal to approve the operation of miniature broadcast stations at isolated combat outposts if the stations are to be soldier operated.

Mr. Fly's insistence that the broadcasting stations operated by the Army in Alaska and elsewhere abroad for the purpose of maintaining morale in the armed forces should be operated by the Office of War Information.

The Federal Communications Commission's consistent effort through the years to exercise jurisdiction, domination and control over the useful radio spectrum, not only in respect of the allocation of standard commercial broadcasting frequencies as provided by law, but also over the allocation of frequencies for use by Government departments and agencies, the jurisdiction of which has not been entrusted to the Federal Communications Commission by law; and the manner by which Mr Fly, through his domination and control of the Interdepartment Radio Advisory Committee, has prevented Government agencies from having their needs and opinions in such matters presented to the President for his consideration.

Mr. Fly's insistence that the question of sending cable ships to certain places was a matter to be decided by the Board of War Communications, which he dominated, notwithstanding the needs of the armed forces and the primary duty resting on the Navy to arrange a convoy to prevent the loss of such cable ships in transit.

Mr. Fly's insistence that no commercial company could permit the War or Navy Department to take over and operate a transmitter without a license from the Federal Communications Commission.

Mr. Fly's insistence that the Board of War Communications should handle Army and Navy requests of commercial companies for frequencies and stations and the consequent resulting and unjustifiable delay which endangered the national defense.

Mr. Fly's refusal for a period of nine months—and for nearly seven months after Pearl Harbor—to turn over to the Federal Bureau of Investigation, at the request of that Bureau and the Navy, the fingerprints of radio operators aboard American merchant marine vessels, for investigation by the Federal Bureau of Investigation; the importance to the national defense that such investigation should have been promptly made, and the strategic position occupied by any disloyal or enemy operators to endanger the national defense; the incompetent manner in which such fingerprints were taken by the Federal Communications Commission, compelling the return to the Federal Communications Commission of the fingerprints of some 55,000 operators as useless and of no value.

The protests made by the Admirals in charge of convoys respecting the failure of the Federal Communications Commission to have the ship radio operators investigated by the Federal Bureau of Investigation promptly because of the imminent danger to the national interests in the event that such action was not promptly taken.

Mr. Fly's successful activities in defeating the Army-Navy and Hawaiian broadcasting stations' voluntary pre-Pearl Harbor joint efforts to arrange for the elimination of Japanese language broadcasts in Hawaii; and the contribution of such resulting failure to the Pearl Harbor disaster.

Federal Communications Commission's penetration into the military field of radio intelligence and direction finding; the resulting duplication of such services maintained by the Army and Navy; the fact that the names of Federal Communications Commission's two divisions—Radio Intelligence Division and Foreign Broadcast Intelligence Service—are misnomers and misleading, since such divisions do not perform intelligence services, because it is impossible to impart to an agency like the Federal Communications Commission information which it would have to have, and which the Army and Navy do have, in order to do such work effectively; that such services was first known as Foreign Broadcast Monitoring Service (F. B. M. S.); and the fact that it is impossible to coordinate any civilian agency like the Federal Communications Commission with the Navy's radio direction finding systems, which are coordinated with military systems.

That the Federal Communications Commission is not equipped to do radio intelligence work because of the elaborate systems that the military services maintain, the location of their stations, and the work done by such services with the stations maintained by our military allies, and because of the nature of the secret military information which can be known only to the few

military people charged with the responsibility of doing that kind of work; that such work is a form of military work more distinctly necessary than combat work itself.

That military radio intelligence means gaining through the radio spectrum intelligence of the enemy; and that what Federal Communications Commission attempts to do does not constitute radio intelligence but merely constitutes monitoring or more primarily listening to the enemy's transmissions.

That radio intelligence requires a staff of expert people with knowledge of military operations. Such a service must know where its own forces are and, by reconnaissance and other means must also know where the enemy forces are.

That such a service must have specially trained operators, who must know the enemy's code and be familiar with the traffic handled, because in wartime, unlike peacetime, the messages are in secret code. Such a service must be able, when they take a bearing, to identify it and know where it is coming from and must have full knowledge of the cryptographic systems employed, which oftentimes vary from message to message.

In none of the respects above noted, as well as in other respects not specifically herein noted, can Federal Communications Commission meet the necessary requirements referred to.

That the Federal Communications Commission personnel is inadequately trained in radio intelligence work and not familiar with the methods and radio activities of our enemies. That essential information to a proper conduct of this intelligence work is of the highest degree of secrecy, which can be given only to the most trusted and experienced personnel, who must also be subject to military discipline. That without this essential information, no matter how technically able any civilian agency might be, the inevitable result would necessarily be information which could not be properly evaluated. That if such information is disseminated it would result in operations based on such improperly evaluated information.

That such an event would be highly dangerous, and that such an incident based on such improperly evaluated information furnished by the Federal Communications Commission actually transpired in Alaskan waters.

That the Radio Intelligence Division of the Federal Communications Commission definitely overlaps functions and operations of the military services in the fields of radio direction finding overseas, radio direction finding of domestic clandestine stations, the interception of enemy radio telegraph transmissions, the conduct of a distress service, and such matters as the furnishing of information to aircraft in operation. That the War and Navy Departments believe that the above activities should be conducted by the military services, Army and Navy, in accordance with the delineation of fields of responsibility between them.

The fact that the Radio Intelligence Division (R. I. D.) of the Federal Communications Commission is not qualified, either from the standpoint of equipment or personnel, to do other than local monitoring, because (1) its stations are not properly located, (2) its personnel lacks adequate intelligence information respecting the enemy and is not trained to handle direction finding triangulations and other radio intelligence functions, and (3) the military services cannot entrust secret military information essential to the proper functioning in radio intelligence to a civilian agency, and more particularly to one prone to publicize its activities for its own aggrandizement. The fact that the military personnel is trained and equipped to and does perform adequate radio intelligence functions; and the fact that the alleged national defense efforts of the Federal Communications Commission constitute a duplication of no value whatsoever to the armed forces, but, on the contrary, in fact endanger national security.

That the Federal Communications Commission does not and cannot, as claimed by Mr. Fly, render services of any value to the Navy in locating enemy ships or in reporting attacks upon war shipping.

That Federal Communications Commission, through its Radio Intelligence Division, does not perform the services which Mr. Fly has claimed it renders for the Army and Navy in his testimony before various committees of the Congress, such as the Appropriations, Costello and other committees. That the Army and Navy have never requested (and do not want) Federal Communications Commission to perform for them the services claimed by Mr. Fly to be rendered to them by their request. That such information furnished the Navy by the Radio Intelligence Division of the Federal Communications Commission respecting the alleged location of enemy ships has necessitated the expenditure by the Navy of days in checking such reports, only to ascertain that the alleged enemy ships were in fact standard radio stations located in Japan.

That neither the Army nor the Navy is engaged in work which calls for the use of the transcripts of foreign broadcasts prepared by the Federal Communications Commission's Foreign Broadcast Intelligence Service, with the possible exception of Naval Intelligence, and that with the exception noted none of such material is used by either.

That the daily, weekly and other analyses prepared by the Federal Communications Commission's Foreign Broadcast Intelligence Service from the foreign broadcasts are of no value to the Army or Navy, since they are engaged in military operations controlled by Chiefs of Staff pursuant to plans made long in advance.

That the Army and Navy prefer to have information in the form of "raw material" so that they can subject the same to their own intelligence tests and make their own analyses of the same rather than to accept the analyses made by the inexperienced and only partly informed staff of the Federal Communications Commission's Foreign Broadcast Intelligence Service.

That neither the Army nor the Navy makes use of the wire or analysis material put out by the Federal Communications Commission's Foreign Broadcast Intelligence Service, because they have their own well tried and established means of obtaining such material as they require for the purpose of military operations.

That the material gathered by the Federal Communications Commission's Foreign Broadcast Intelligence Service and wired by it through the Office of War Information is nothing more than a sort of glorified, world-wide news-gathering and disseminating agency which serves the national and international press associations, the daily press, and the broadcasting companies.

That the Foreign Broadcast Intelligence Service is a service in which neither the Army nor the Navy is en-

gaged, in which neither service has any desire to engage, and in which neither service would engage, even though no such service were maintained by the Federal Communications Commission.

That the disclosures made by Mr. Fly to the Appropriations Committee of the Congress in respect of the alleged war activities of the Federal Communications Commission in support of appropriations sought by him to maintain these useless divisions, are detrimental to the national security, because the Army and Navy feel that even the existence of the conduct of such services should not be disclosed, much less a description of the manner in which they function. That false impressions have been given to the Congress in the representations made to get appropriations for such services.

That the influx of the civilian employees of the Foreign Broadcast Intelligence Service of the Federal Communications Commission and the Office of War Information in the North African theatre of war operations has presented difficulties and embarrassment to the armed forces there which have necessitated a request for their immediate withdrawal and transfer.

Mr. Fly's domination of the Federal Communications Commission and his control over its actions and activities.

The letter dated February 1, 1943, to the Secretary of the Navy from William D. Leahy, Admiral, U.S.N., Chief of Staff to the Commander in Chief of the Army and Navy, requesting the Secretaries of War and Navy to join in a recommendation to the President that he transfer to the Army personnel and equipment now used by the Federal Communications Commission in the field of radio intelligence, and transmitting a proposed Executive Order designed to accomplish that objective.

The joint letter dated February 8, 1943, of the Secretaries of War and Navy to the President recommending the transfer aforesaid and transmitting to the President the letter dated February 1, 1943, aforesaid.

The thorough and comprehensive study of the problems made by the Joint Chiefs of Staff on the Federal Communications Commission activities last above described, pursuant to the Directive of the Secretary of the Navy dated September 11, 1942, and a discussion of the facts and circumstances revealed by such study.

Mr. Fly's successful efforts in delaying television, thereby depriving the national defense of the benefits of such development in wartime.

Mr. Fly's delay of frequency modulation (F.M.) by the expenditure of the Commission's time in establishing Commission policy with respect of matters more properly within the competency of the Congress rather than within the lawful jurisdiction of the Commission; and his activities in keeping the radio industry terrorized and in a state of fear, particularly during a period when unity is required and every energy devoted to the winning of the war.

From information in the possession of the Committee, these naval officers can be made available for the purposes stated, and I assume that you will direct the attendance of such officers before the Committee for the purpose of giving testimony, within substantially the limits above stated, on the day(s) which I will in due course advise you the Committee has fixed for such purpose, without the necessity of requiring the Committee to issue its process either to compel the attendance of such officers or the production of the documents desired from your Department.

It will be extremely helpful to the Committee if you would forward to it at once the documents and files herein enumerated for consideration by the Committee and its staff in advance of the public hearings.

Will you be good enough to advise me promptly in your official capacity and over your own signature of your willingness to cooperate with the Committee in the manner and to the extent requested herein so that the Committee may be advised accordingly.

With assurance of high respect and esteem, I am, Sir

Faithfully yours,

EUGENE L. GAREY,
General Counsel.

FLY STATEMENT

James Lawrence Fly, Chairman of the Federal Communications Commission released this statement following the opening of the hearings:

"We have grown accustomed to Cox announcing conclusions in advance of a hearing. These charges are a tissue of falsehoods. They will be wholly disproved if anything like a fair hearing can be expected from a Committee constituted and motivated as is this one."

The National Association of Broadcasters
1760 N STREET, N. W. ★ ★ ★ ★ ★ ★ ★ WASHINGTON 6, D. C.
July 7, 1943 SPECIAL LEGISLATIVE BULLETIN No. 6

STATEMENT OF JAMES LAWRENCE FLY, CHAIRMAN OF THE FEDERAL COMMUNICATIONS COMMISSION

In its first open session on Friday the Cox Committee "to investigate" the Communications Commission was finally unveiled to the public in its true character. There it stands in its stark reality announcing to the public through its Wall Street mouthpiece the 50 vicious conclusions it is going to arrive at come hell or high water, after purporting to go through some of the forms of a "judicial" inquiry and "due process of law."

Three years ago Congressman Cox had defended the Commission and condemned the radio monopoly on the floor of the House. He said, "Mr. Speaker, an attack is being made upon the Federal Communications Commission. . . . What we probably need more than anything else is an investigation of the broadcasters' trust. It is time they were stopped from monopolizing the air." Three months later he came to the defense of the Commission and made the observation "that we have about reached the point where we should investigate the broadcasting business." Some time thereafter it became the unfortunate duty of the Commission to report to the Attorney General that Representative Cox had procured a $2,500 fee for representing a successful applicant for a broadcast station license. Congressman Cox, now calling for an investigation of the Commission, stated on the floor of the House, "Mr. Speaker. I am this morning bringing to you a matter in which I have the deepest possible personal interest." And again he stated:

> **"Mr. Fly of the Communications Commission is guilty of a monstrous abuse of power and is rapidly becoming the most dangerous man in the Government. He maintains an active and ambitious Gestapo and is putting shackles on the freedom of thought, press and speech without restraint. . . . The Communications Commission, as now operating under Mr. Fly, must be stopped."**

The House of Representative then voted Cox's Resolution to "investigate" the Commission, particularly its Chairman. Cox immediately joined forces with the radio monopoly and Wall Street interests on the one hand and the Military on the other, all moving in for the kill. The aim has obviously been to wreck the Commission, the only agency representing the public in this important field, to set up monopolistic control by commercial interests and to establish actual and coercive surveillance of the nation's most significant mechanism of free speech.

Already Cox's Wall Street mouthpiece has declared the intention of destroying the highly valuable war work of the Commission—particularly that part which has made it literally impossible for a single enemy transmitter in this country to communicate with our enemies abroad. That is the inexorable fact—and it is the simple result of the expertness, loyalty and devotion of the men who for twenty-four hours every day are patrolling the radio ether. These are the men who have taken the lead in improving and developing the very mechanisms employed by the armed forces. These are the same men who have rendered invaluable aid in closing out the espionage stations of Central and South America. These are the men who have operated the schools to instruct men of the armed forces and of our neighbor countries in the art of radio direction-finding. These are the activities so frequently commended by the Army, Navy and other Government Departments for the valuable results achieved and for the efficiency and security of the methods employed and the complete cooperation of its personnel.

In addition, the Federal Communications Commission has a highly effective organization charged with collecting, translating, analyzing and reporting to 200 Government offices the radio propaganda of the world at war. Adequate information on the world's psychological warfare is utterly essential to a nation at war. It is this important agency—the Commission's Foreign Broadcast Intelligence Service—which comes in for a vicious attack from the Committee, all without the form of a hearing.

Cox and his Wall Street mouthpiece have been slow in disclosing to the public their long existing tie-in with the radio monopoly. But the cat was out of the bag when the Committee's counsel referred on Friday to Mr. Fly's successful efforts in delaying television, which all too obviously is directed at the Commission's earlier stand against the radio monopoly in its efforts to lock down the great future of the television industry to the inadequate systems then controlled by that monopoly. This is the same stand of the Commission which Congressman Cox had so vigorously defended on the floor of the House in happier days.

Again Committee Counsel emphasized "Mr. Fly's insistence on reopening the consent decree and refusing to renew RCAC licenses." This, it may be observed, was the Commission's insistence that RCA strike out of its traffic agreements with its foreign correspondents, clauses which prevented other companies from establishing competing circuits.

The Committee further revealed its marriage to the broadcast trust by announcing that it plans to attack the anti-monopoly regulations in chain broadcasting which the Commission under attack from the radio trust has successfully defended before both Houses of Congress and in the Supreme Court of the United States.

The time has come for the public to know not merely what the Cox Committee has concluded to conclude but also some of the vicious processes employed which further reveal what the Cox Committee is up to. To take but a few of the many examples:

(a) The long continued conduct of star-chamber proceedings where witnesses were required to appear privately before the Committee's lawyers. On certain important occasions these "hearings" were conducted in hotel rooms. The failure to give the Commission notice of any hearing whatsoever, or to permit its representatives to attend any of these hearings or to permit the Commission to purchase a copy of the transcript or even to inspect a copy thereof. The Commission on different occasions formally requested permission to purchase these transcripts and on each occasion this request was denied.

(b) The illegal issuance of subpoenas requiring appearances before staff members—and on certain occasions in the Wall Street offices of a lawyer who is contributing his services to "the cause" at $1.00 a year.

(c) Constant efforts, by badgering Commission employees and other witnesses and by circularizing radio stations for complaints, to stir up destructive criticism of the Commission.

(d) Seizure of a truckload of irreplaceable Commission files without opportunity for property listing or copying them to insure against loss or interference with the essential functions of the Commission.

(e) Widespread efforts by stirring up vicious rumors and gossip to destroy the reputation and standing of the Commission, its individual Commissioners and staff members.

The foregoing are but a few of the examples which demonstrate the character and the activation of the Cox Committee. I cannot but feel that this sort of harassing and unfair tactics ought to stop. If we must be slandered $2,500 worth is enough, and we have been visited with that much long ago. We have a war on other fronts and those of us who are devoting ourselves to that war might well be permitted to get on with the job.

The National Association of Broadcasters

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

July 9, 1943 **SPECIAL LEGISLATIVE BULLETIN** No. 7

78th CONGRESS
1st SESSION

H. R. 3109

IN THE HOUSE OF REPRESENTATIVES

JULY 2, 1943

MR. HOLMES of Massachusetts introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

A BILL

To amend the Communications Act of 1934, as amended.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3 of the Communications Act of 1934, as amended, is amended by adding after paragraph (aa) the following new paragraphs:

"(bb) The term 'construction permit' or 'permit for construction' means that instrument of authorization required by this Act for the construction of apparatus for the transmission of energy, or communications, or signals by radio, by whatever name designated by the Commission.

"(cc) The term 'license', 'station license', or 'radio-station license' means that instrument of authorization required by this Act, or the rules and regulations of the Commission enacted pursuant to this Act, for the use or operation of apparatus for the transmission of energy, or communications, or signals by radio, by whatever name designated by the Commission."

SEC. 2. Subsection (b) of section 4 of such Act, as amended, is amended by striking out the last sentence thereof and by inserting in lieu thereof the following: "Not more than four members of the Commission and not more than two members of either Division thereof shall be members of the same political party."

SEC. 3. Section 5 of such Act, as amended, is amended to read as follows:

"DIVISIONS OF THE COMMISSION

"SEC. 5. (a) The members of the Commission other than the Chairman shall be organized into two divisions of three members each, said divisions to be known and designated as the Division of Public Communications and the Division of Private Communications and no member designated or appointed to serve on one Division shall have or exercise any duty or authority with respect to the work or functions of the other Division, except as hereinafter provided. The President shall designate the Commissioners now in office who shall serve upon a particular Division, but all Commissioners other than the Chairman subsequently appointed shall be appointed to serve upon a particular Division and the Chairman subsequently appointed shall be appointed to serve in that capacity.

"(b) The Division of Public Communications shall have jurisdiction over all cases and controversies arising under the provisions of this Act and the rules and regulations of the Commission enacted pursuant to this Act relating to wire and radio communications intended to be received by the public directly, and shall make all adjudications involving the interpretation and application of those provisions of the Act and of the Commission's regulations.

"(c) The Division of Private Communications shall have jurisdiction over all cases and controversies arising under the provisions of this Act and the rules and regulations of the Commission enacted pursuant to this Act relating to wire and radio communications by a common carrier or carriers, or which are intended to be received by a designated addressee or addressees, and shall make all adjudications involving the interpretation and application of those provisions of the Act and of the Commission's regulations.

"(d) The whole Commission shall have and exercise jurisdiction over the adoption and promulgation of all rules and regulations of general application authorized by this Act, including procedural rules and regulations for the Commission and the Divisions thereof; over the assignment of bands of frequencies to the various radio services; over the qualification and licensing of all radio operators; over the selection and appointment of all officers and other employees of the Commission and the Divisions thereof; and generally over all other matters with respect to which authority is not otherwise conferred by the other provisions of this Act. In any case where a conflict arises as to the jurisdiction of the Commission or any Division thereof, such question of jurisdiction shall be determined by the whole Commission.

"(e) The Chairman of the Commission shall be the chief executive officer of the Commission. It shall be

his duty to preside at all meetings and sessions of the whole Commission, to represent the Commission in all matters relating to legislation and legislative reports, to represent the Commission or any Division thereof in all matters requiring conferences or communications with representatives of the public or other governmental officers, departments, or agencies, and generally to coordinate and organize the work of the Commission and each division thereof in such manner as to promote prompt and efficient handling of all matters within the jurisdiction of the Commission. The Chairman of the Commission shall not be a member of or serve upon either of said Divisions, except that in the case of a vacancy or the absence or inability of any Commissioner appointed to serve thereon, the Chairman may temporarily serve on either of said Divisions with full power as a member thereof until the cause or circumstance requiring said service shall have been eliminated or corrected.

"(f) Each Division of the Commission shall choose its own chairman, and, in conformity with and subject to the foregoing provisions of this section, shall organize its membership and the personnel assigned to it in such manner as will best serve the prompt and orderly conduct of its business. Each Division shall have power and authority by a majority thereof to hear and determine, order, certify, report, or otherwise act as to any of said work, business, or functions over which it has jurisdiction. Any order, decision, report made or other action taken by either of said Divisions with respect to any matter within its jurisdiction, shall be final and conclusive, except as otherwise provided by said Communications Act of 1934 as hereby amended. The secretary and seal of the Commission shall be the secretary and seal of each Division thereof.

"(g) In the case of a vacancy in the office of the Chairman of the Commission or the absence or inability of the Chairman to serve, the Commission may temporarily designate and appoint one of its members to act as Chairman of the Commission until the cause or circumstance requiring said service shall have been eliminated or corrected. During the temporary service of any such Commissioner as Chairman of the Commission, he shall continue to exercise the other duties and responsibilities which are conferred upon him by this Act.

"(h) The term 'Commission' as used in this Act shall be taken to mean the whole Commission or a Division thereof as required by the context and the subject matter dealt with. The term 'cases and controversies', as used herein, shall be taken to include all adversary proceedings whether judicial or quasi-judicial in nature, and whether instituted by the Commission on its own motion or otherwise, and the term 'adjudications' means the final disposition of particular cases, controversies, applications, complaints, or proceedings involving named persons or named res.

"(i) The Commission or either division thereof is hereby authorized by its order to assign or refer any portion of its work, business, or functions to an individual Commissioner, or to a board composed of an employee or employees of the Commission, to be designated by such order for action thereon, and by its further order at any time to amend, modify, or rescind any such order or reference: *Provided, however,* That this authority shall not extend to duties specifically imposed upon the Commission, either division thereof, or the Chairman of the Commission, by this or any other Act of Congress. Any order, decision, or report made or other action taken by any such individual Commissioner or board in respect of any matter so assigned or referred shall have the same force and effect and may be made, evidenced, and enforced as if made by the Commission or the appropriate division thereof: *Provided, however,* That any person affected by any such order, decision, or report may file a petition for review by the Commission or the appropriate division thereof, and every such petition shall be passed upon by the Commission or that division."

SEC. 4. (a) So much of subsection (a) of section 308 of such Act, as amended, as precedes the first proviso is amended to read as follows: "The Commission may grant instruments of authorization entitling the holders thereof to construct or operate apparatus for the transmission of energy, or communications, or signals by radio only upon written application therefor received by it:".

(b) Such subsection (a) is further amended by striking out the period at the end thereof and inserting a colon and the following: "*And provided further,* That (1) in cases of emergency found by the Commission involving danger to life or property, or (2) during the continuance of any war in which the United States is engaged and when such action is necessary for the national defense or security or otherwise in furtherance of the war effort, the Commission may grant and issue authority to construct or operate apparatus for the transmission of energy or communications or signals by radio in such manner and upon such terms and conditions as it shall by regulation prescribe, and without the filing of a formal application."

SEC. 5. Section 309 of such Act, as amended, is amended to read as follows:

"HEARINGS ON APPLICATIONS FOR LICENSES; FORM OF LICENSES; CONDITIONS ATTACHED TO LICENSES

"SEC. 309. (a) If upon examination of any application provided for in section 308 the Commission shall determine (1) that public interest, convenience, or necessity would be served by the granting thereof, and (2) that such action would not aggrieve or adversely affect the interest of any licensee or applicant, it shall authorize

the issuance of the instrument of authorization for which application is made in accordance with said findings.

"(b) If upon examination of any such application the Commission is unable to make either or both of the findings specified in subsection (a), it shall designate the application for hearing and forthwith notify the applicant and other parties in interest of such action and the grounds or reasons therefor. Any hearing subsequently held upon such application shall be a full hearing in which the applicant and all other parties in interest, whether originally notified by the Commission or subsequently admitted as interveners, shall be permitted to participate. Such hearing shall be preceded by a notice to all such parties in interest specifying with particularity the matters and things in issue and not including issues or requirements phrased generally or in the words of the statute.

"(c) When any instrument of authorization is granted by the Commission without a hearing, as provided in subsection (a), such grant shall remain subject to protest as hereinafter provided for a period of thirty days. During such thirty-day period, any person who would be entitled to challenge the legality or propriety of such grant under the provisions of section 402 may file a protest directed to such grant, and request a hearing on said application so granted. Any protest so filed shall contain such allegations of fact as will show the protestant to be a proper party in interest and shall specify with particularity the matters and things in issue but shall not include issues or allegations phrased generally or in the words of the statute. Upon the filing of such protest, the application involved shall be set for hearing upon the issues set forth in said protest and heard in the same manner in which applications are heard under subsection (b). Pending hearing and decision upon said protest, the effective date of the Commission's action to which said protest is directed shall be postponed to the date of the Commission's decision after hearing unless the authorization involved in such grant is necessary to the maintenance or conduct of an existing service, in which event the Commission shall authorize the applicant to utilize the facilities or authorization in question pending the Commission's decision after hearing on said protest.

"(d) Such station licenses as the Commission may grant shall be in such general form as it may prescribe, but each license shall contain, in addition to other provisions, a statement of the following conditions to which such license shall be subject: (1) The station license shall not vest in the licensee any right to operate the station nor any right in the use of the frequencies designated in the license beyond the term thereof nor in any other manner than authorized therein; (2) neither the license nor the right granted thereunder shall be assigned or otherwise transferred in violation of this Act; (3) every license issued under this Act shall be subject in terms to the right or use or control conferred by section 606."

SEC. 6. Subsection (b) of section 310 of such Act, as amended, is amended to read as follows:

"(b) No instrument of authorization granted by the Commission entitling the holder thereof to construct or operate radio apparatus, and no rights granted thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such instrument of authorization, to any person except upon application to the Commission and upon a finding by the Commission that the proposed transferee or assignee is capable of constructing or operating under such instrument of authorization in the public interest, convenience, and necessity. The procedure to be employed in the handling of such applications shall be that provided in section 309, as amended."

SEC. 7. Section 326 of such Act, as amended, is amended to read as follows:

"SCOPE OF COMMISSION'S POWERS OVER LICENSEES; CENSORSHIP; OBSCENE, INDECENT, OR PROFANE LANGUAGE

"SEC. 326. (a) Nothing in this Act shall be understood or construed to give the Commission the power to regulate the business of the licensee of any radio broadcast station and no regulation, condition, or requirement shall be promulgated, fixed, or imposed by the Commission, the effect or result of which shall be to confer upon the Commission supervisory control of station programs or program material, control of the business management of the station or control of the policies of the station or of the station licensee.

"(b) Nothing in this Act shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communications. No person within the jurisdiction of the United States shall utter any obscene, indecent, or profane language by means of radio communication."

SEC. 8. Section 402 of such Act, as amended, is amended to read as follows:

"PROCEEDINGS TO ENFORCE OR SET ASIDE THE COMMISSION'S ORDERS—APPEAL IN CERTAIN CASES

"SEC. 402. (a) The provisions of the Act of October 22, 1913 (38 Stat. 219), as amended, relating to the enforcing or setting aside of orders of the Interstate Commerce Commission are hereby made applicable to

suits to enforce, enjoin, set aside, annul, or suspend any order of the Commission under this Act (except those appealable under the provisions of subsection (b) of this section), and such suits are hereby authorized to be brought as provided in that Act. In addition to the venues specified in that Act, suits to enjoin, set aside, annul, or suspend, but not to enforce, any such order of the Commission may also be brought in the District Court for the District of Columbia.

"(b) Appeals may be taken from decisions and orders of the Commission to the United States Court of Appeals for the District of Columbia in any of the following cases:

"(1) By an applicant for any instrument of authorization required by this Act, or the regulations of the Commission enacted pursuant to this Act, for the construction or operation of apparatus for the transmission of energy, or communications, or signals by radio whose application is denied by the Commission.

"(2) By any party to an application for authority to assign any such instrument of authorization or to transfer control of any corporation holding such instrument of authorization whose application is denied by the Commission.

"(3) By any applicant for the permit required by section 325 or any permittee under said section whose permit has been modified, revoked or suspended by the Commission.

"(4) By any other person who is aggrieved or whose interests are adversely affected by any order of the Commission granting or denying any application described in paragraphs (1), (2), and (3) of this subsection.

"(5) By the holder of any instrument of authorization required by this Act, or the regulations of the Commission enacted pursuant to this Act, for the construction or operation of apparatus for the transmission of energy, or communications, or signals by radio, which instrument has been modified, revoked, or suspended by the Commission.

"(6) By any radio operator whose license has been revoked or suspended by the Commission.

"(c) Such an appeal shall be taken by filing a notice of appeal with the court within thirty days after the entry of the order complained of. Such notice of appeal shall contain a concise statement of the nature of the proceedings as to which appeal is taken; a concise statement of the reasons on which the appellant intends to rely, separately stated and numbered; and proof of service of a true copy of said notice and statement upon the Commission. Upon the filing of such notice, the court shall have exclusive jurisdiction of the proceeding and of the questions determined therein and shall have power, by order directed to the Commission or any other party to the appeal, to grant such temporary relief as it may deem just and proper. Orders granting temporary relief may be either affirmative or negative in their scope and application and may be such as to permit either the maintenance of the status quo in the matter in which the appeal is taken or the restitution of a position or status terminated or adversely affected by the order appealed from and shall, unless otherwise ordered by the court, be effective pending hearing and determination of said appeal and compliance by the Commission with the final judgment of the court rendered in said appeal.

"(d) Upon the filing of any such notice of appeal, the Commission shall, not later than five days after date of service upon it, notify each person shown by the records of the Commission to be interested in said appeal of the filing and pendency of the same and shall thereafter permit any such person to inspect and make copies of said notice and statement of reasons therefor at the office of the Commission in the city of Washington. Within thirty days after the filing of an appeal, the Commission shall file with the court a copy of the order complained of, a full statement in writing of the facts and grounds relied upon by it in support of the order involved upon said appeal, and the originals or certified copies of all papers and evidence presented to and considered by it in entering said order.

"(e) Within thirty days after the filing of an appeal any interested person may intervene and participate in the proceedings had upon said appeal by filing with the court a notice of intention to intervene and a verified statement showing the nature of the interest of such party, together with proof of service of true copies of said notice and statement, both upon appellant and upon the Commission. Any person who would be aggrieved or whose interests would be adversely affected by a reversal or modification of the order of the Commission complained of shall be considered an interested party.

"(f) The record upon which any such appeal shall be heard and determined by the court shall contain such information and material and shall be prepared within such time and in such manner as the court may by rule prescribe.

"(g) At the earliest convenient time the court shall hear and determine the appeal upon the record before it and shall have power upon such record to enter judgment affirming or reversing the order of the Commission. As to the findings, conclusions, and decisions of the Commission, the court shall consider and decide, so far as necessary to its decision and where raised by the parties, all relevant questions of (1) constitutional right, power, privilege, or immunity; (2) the statutory authority or jurisdiction of the Commission; (3) the lawfulness and adequacy of Commission procedure; (4) findings, inferences, or conclusions of fact unsupported, upon the whole record, by substantial evidence;

and (5) administrative action otherwise arbitrary or capricious.

"(h) In the event that the court shall render a decision and enter an order reversing the order of the Commission, it shall remand the case to the Commission to carry out the judgment of the court and it shall be the duty of the Commission, in the absence of proceedings to review such judgment, to forthwith give effect thereto, and unless otherwise ordered by the court, to do so upon the basis of the proceedings already had and the record upon which said appeal was heard and determined.

"(i) The court may, in its discretion, enter judgment for costs in favor of or against an appellant, or other interested parties intervening in said appeal, but not against the Commission, depending upon the nature of the issues involved upon said appeal and the outcome thereof.

"(j) The court's judgment shall be final, subject, however, to review by the Supreme Court of the United States as follows:

"(1) An appeal may be taken direct to the Supreme Court of the United States in any case wherein the jurisdiction of the court is invoked, or sought to be invoked, for the purpose of reviewing any decision and order entered by the Commission in proceedings instituted by the Commission which have as their object and purpose the revocation, modification, or failure to renew or extend an existing license. Such appeal shall be taken by the filing of an application therefor or notice thereof within thirty days after the entry of the judgment sought to be reviewed, and in the event such an appeal is taken the record shall be made up and the case docketed in the Supreme Court of the United States within sixty days from the time such an appeal is allowed under such rules as may be prescribed. Appeals under this section shall be heard by the Supreme Court at the earliest possible time and shall take precedence over all other matters not of a like character.

"(2) In all other cases, review by the Supreme Court of the United States shall be upon writ of certiorari on petition therefor under section 240 of the Judicial Code, as amended, by the appellant, by the Commission, or by any interested party intervening in the appeal or by certification by the court pursuant to the provisions of section 239 of the Judicial Code, as amended."

SEC. 9. Section 405 of such Act as amended, is amended to read as follows:

"REHEARING BEFORE COMMISSION

"SEC. 405. After a decision, order, or requirement has been made by the Commission or any Division thereof in any proceeding, any party thereto or any other person aggrieved or whose interests are adversely affected thereby may petition for rehearing. When the decision, order, or requirement has been made by the whole Commission, the petition for rehearing shall be directed to the whole Commission; when the decision, order, or requirement is made by a division of the Commission, the petition for rehearing shall be directed to that Division; petitions directed to the whole Commission requesting a rehearing in any matter determined by a division thereof shall not be permitted or considered. Petitions for rehearing must be filed within thirty days from the entry of any decision, order, or requirement complained of and except for those cases in which the decision, order, or requirement challenged is necessary for the maintenance or conduct of an existing service, the filing of such a petition shall automatically stay the effective date thereof until after decision on said petition. The filing of a petition for rehearing shall not be a condition precedent to judicial review of any such decision, order or requirement, except where the party seeking such review was not a party to the proceedings before the Commission resulting in such decision, order or requirement, or where the party seeking such review relies on questions of fact or law upon which the Commission has been afforded no opportunity to pass. Rehearings shall be governed by such general rules as the Commission may establish but any decision, order, or requirement made after such rehearing reversing, changing, or modifying the original determination shall be subject to the same provisions as an original order. The time within which an appeal must be taken under section 402 (b) hereof shall be computed from the date upon which the Commission enters its order disposing of all petitions for rehearing filed in any case."

SEC. 10. Subsection (a) of section 409 of such Act, as amended, is amended to read as follows:

"(a) In all cases where a hearing is required by the provisions of this Act, or by other applicable provisions of law, such hearing shall be a full and fair hearing. Hearings may be conducted by the Commission or a Division thereof having jurisdiction of the proceeding or by any member or any qualified employee of the Commission when duly designated for such purpose. The person or persons conducting any such hearing may sign and issue subpenas, administer oaths, examine witnesses, and receive evidence at any place in the United States designated by the Commission. In all cases, whether heard by a quorum of the Commission or a Division thereof, or by any member or qualified employee of the Commission, the person or persons conducting such hearing shall prepare and file an intermediate report setting out in detail and with particularity all basic or evidentiary facts developed by the evidence as well as conclusions of fact and of law upon each issue submitted for hearing. In all cases the Com-

mission, or the Division having jurisdiction thereof, shall, upon request of any party to the proceeding, hear oral argument on said intermediate report or upon such other and further issues as may be specified by the Commission or the Division and such oral argument shall precede the entry of any final decision, order, or requirement. Any final decision, order, or requirement shall be accompanied by a full statement in writing of all the relevant facts as well as conclusions of law upon those facts."

SEC. 11. Title IV of such Act, as amended, is amended by adding at the end thereof the following sections:

"DECLARATORY RULINGS

"SEC. 417. (a) The Commission shall have the power to issue declaratory rulings concerning the rights, status, and other legal relations of any person who is the holder of or an applicant for a construction permit or license provided for in this Act or by the rules and regulations of the Commission enacted pursuant to this Act.

"(b) Upon the petition of any such person and when necessary to terminate a controversy or to remove a substantial uncertainty as to the application of the terms of this Act or of Commission regulations enacted pursuant to this Act to such person, the Commission may hear and determine the matters and things in issue and may enter a declaratory ruling which shall, in the absence of reversal after appropriate judicial proceedings, have the same force and effect and be binding in the same manner as a final order of the Commission. When a petition for declaratory ruling is entertained by the Commission, all persons shown by the records of the Commission to have or claim any interest in the subject matter shall be ordered by the Commission to be made parties to the proceeding and no such ruling shall bind or affect the rights of persons who are not parties to such proceeding.

"(c) In all proceedings instituted by the Commission and which have as their object and purpose the revocation, modification, or failure to renew or extend an existing construction permit or license, the Commission shall be required to entertain any petition for declaratory relief which is filed within a period of ten days after the institution of any such proceedings, and such proceedings so instituted by the Commission shall be held in abeyance until all petitions for declaratory rulings involving the same parties and the same subject matter have been heard and determined and the results thereof made subject to judicial review as herein provided.

"(d) Any party to a proceeding in which the Commission has entered a declaratory ruling may appeal from such ruling and any party to a proceeding arising under paragraph (c) hereof in which the Commission is requested to issue a declaratory ruling may appeal from such ruling or from the Commission's failure to issue such ruling to the United States Court of Appeals for the District of Columbia, and that court shall have jurisdiction to hear and determine any such appeal in the same manner and to the same extent as in the case of final orders of the Commission appealable under section 402 (b) of this Act, as amended.

"SCOPE OF COMMISSION'S POWER WITH RESPECT TO PENALTIES, PROHIBITIONS, CONDITIONS, AND SO FORTH

"SEC. 418. Penalties, denials, prohibitions, and conditions other than those expressly authorized by statute shall not be exacted, enforced, or demanded by the Commission in the exercise of its licensing function or otherwise, and no sanctions not authorized by statute shall be imposed by the Commission upon any person. Rights, privileges, benefits, or licenses authorized by law shall not be denied or withheld in whole or in part where adequate right or entitlement thereto is shown. The effective date of the imposition of sanctions or withdrawal of benefits or licenses shall, so far as deemed practicable, be deferred for such reasonable time as will permit the persons affected to adjust their affairs to accord with such action or to seek administrative reconsideration or judicial review."

The National Association of Broadcasters

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

July 9, 1943 **SPECIAL LEGISLATIVE BULLETIN** No. 8

More Material on the FCC-Supreme Court Decision

Speeches of Senator Robert Taft (Ohio) and Congressman Dewey Short (Missouri) given on the floors of Congress July 7 and July 3, respectively. Speech of Neville Miller given before the Advertising Federation of America War Conference, June 30, in New York City. Article by Frank C. Waldrop appeared in the Washington Times-Herald, July 5, 1943:

FREEDOM OF EXPRESSION IN PRESS AND RADIO

MR. TAFT: Mr. President, on May 10 of this year the Supreme Court of the United States handed down an opinion in the case of the National Broadcasting Co. against the United States, which subjects the radio stations of this country to the absolute and arbitrary rule of the Federal Communications Commission. It is my belief that this opinion threatens freedom of speech in the United States unless it is corrected by legislation. Such legislation is pending before the Committee on Interstate Commerce. It was introduced by the senior Senator from Maine [Mr. White] and the senior Senator from Montana [Mr. Wheeler]. My belief is that the committee should consider the bill and should report it during the approaching recess.

I suppose there is no other place in the world where the right of free speech is so freely granted as in the United States Senate. Therefore it is all the more our obligation to see that that right is preserved throughout the United States, and it is appropriate that I should speak here when that right is threatened.

We have been told that one of the great purposes of this war is to spread freedom of expression throughout the world. Whether any such purpose is feasible insofar as it interferes with the governments of other countries may be doubtful, but there can be no doubt that our victory in the war will contribute largely to its establishment elsewhere. However, in urging that ideal upon the world certainly we cannot forget the right of the people of the United States to free speech. That right is far older than the "four freedoms." Article I of the Bill of Rights says:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press. . . ."

There is no more fundamental liberty. If freedom of speech is destroyed, then every other freedom can be whittled away without the realization that it is disappearing. Anyone who aims at arbitrary government must first destroy freedom of speech or he will not reach his goal.

There are a number of reasons why we must exert every effort today to protect this right. It is a time of war and distress, when men's minds are confused and diverted to the needs of the moment. Even before the war, we were overwhelmed by a general passion to regulate everything and everybody. Because the war requires that we must all submit to certain Fascist controls, Government regulation has been indefinitely extended, and at least in some instances those who have a passion for running other people's business have availed themselves of the war necessities to acquire power which the war does not justify.

We are governed by an administration which, however much it may be interested in abstract freedom in Europe and Asia, certainly does not seem interested in individual freedom in the United States. It is therefore inevitable that this passion for regulation should extend to the institutions through which free expression reaches the people of the United States. Yet the freedom of these institutions, in particular the press and radio, is essential to freedom of speech for the people. If speech is to be really free, there must be freedom of every possible means of communicating ideas and views and principles and hopes from one citizen to another, from one section of the country to another. It is only by free means of communication that a people can remain free. There is no freedom if these means of communication are owned and operated by the Government. Freedom of speech does not mean that only those in control of the Government shall have the right to speak. The people must have the right and the means to speak to each other. The opposition to those in power must have the same right and means of speaking as the directors of government.

The present administration has shown no concern for freedom of the press at home. The suit brought against the Associated Press under the Sherman Act shows the attitude of the administration that the press and distribution of news shall be subjected to the same kind of rules as the manufacturer or the chain store. Regardless of the legalities of the case, it is clear that the policy which directed the bringing of this suit is part of the general passion for Government control, and those who brought it show a reckless disregard for freedom of the press. Those who drafted the Sherman Act surely had no thought that it could ever be used for such a purpose. No doubt today the Associated Press could secure the dismissal of the suit, if they were willing to run their business as the Department of Justice or some other new Deal agency thinks that the distribution of news should be run.

The Senate only this week had to step in to prohibit the wide distribution of Government propaganda within

the United States by the Office of War Information. There is no freedom of speech if the Government, by the use of its vast funds and the means that are open to it, floods the country with propaganda and blankets the voices which speak in opposition. When Mr. Elmer Davis requisitions all four networks to hear his weekly outpourings and everyone must listen or turn off the radio, it is an infringement upon freedom of speech.

We have seen on the part of the Government a complete suppression of a great deal of news relating directly to the war, far more complete than seems to be necessary for any legitimate war purpose. There has been imposed on the newspapers a voluntary censorship of many facts the knowledge of which will do the enemy no good. Naturally, when news is suppressed, all comment on such news is automatically destroyed. The people were not told the whole truth about Pearl Harbor until a year after that inexcusable disaster, and the news relating to the bombing of Tokyo went even further in almost deliberate misrepresentation. In two very recent instances the administration sought to achieve complete secrecy in relation to international conferences of far-reaching application—the Refugee Conference held in Bermuda, and the International Food Conference at Hot Springs.

The Office of Censorship has been less criticized than the O. W. I., but here also it seems that suppression of facts has amounted to a denial of freedom of speech. There has been much complaint from British and other foreign correspondents over the censorship of their dispatches. In the case of Alex Faulkner, correspondent of the London Telegraph, it was agreed by Mr. Byron Price that in one instance at least his dispatch had been heavily overcensored. Don Iddom, correspondent of the London Daily Mail and Sunday Dispatch, said in a report to the British press:

> "The American censorship of outgoing press messages is preventing the British people from getting a complete picture of America at war. What we have been sending is the truth, but not the whole truth. . . . Officialdom is partly gagging us."

Quoting the head of a British news agency, who has recently completed a tour of the United States, he said: "The British censorship at its worst is better than the American censorship at its best," and added:

> "Our censorship of dispatches and articles going out of Britain is much more lenient, much more tolerant, much more in democratic tradition.
>
> "Now what is the reason for this bad and stifling American censorship? I suggest that it is because it is trying to do too big a job. Instead of trying to carry out its function of preventing information that might be of military value reaching the enemy it has taken on itself the task of deciding what the British public should know about America and what they should not know about America.
>
> "One day there might be a major schism in Anglo-American policy and the people in Britain will say and rightly: 'But we had no idea American opinion took this view. This is absolutely new to us. There were never any indications of such a trend."

From the time that the President traveled publicly all over the United States without a word appearing in the newspapers, the people have lost confidence in the accuracy or completeness of any news. Such a condition is not freedom of the press.

And yet while all these policies indicate that the administration has no real interest in freedom of the press in this country, the ingrained insistence of our people upon that freedom has prevented any great progress toward actual suppression of the freedom of newspapers and magazines. Publications still represent every shade of opinion among the people, and anyone with a real message can find a newspaper or magazine to print it. There is as yet no Federal agency in control of the press, and there is as yet no Federal bureau which licenses the press.

But what is true of the newspapers is no longer true of the radio, and the radio is an even more important instrument of free speech than the newspaper. In the broadcasting case the Federal Communications Commission undertook to issue regulations assuming complete control of all the relations between the local broadcasting stations and the networks and breaking down the network system which has grown up in recent years. The Commission did this under the Communications Act of 1934, not by direct regulations of chain broadcasting but by using its power to refuse licenses to local stations. These regulations provided that no license should be granted to any station having a contract with a network which provides that it shall only broadcast the programs of that network, or a contract which provides that other stations within the area cannot use the network's programs. Licenses are to be denied to any station having a contract with a network for more than 2 years, or giving the network options on more than a very limited period of time. The Commission will refuse licenses to any local station which does not retain the complete right to reject any program in its own discretion, or which agrees that it will not undercut its network rates for national advertisers who come to it directly.

It seems obvious that if licenses can be denied for violations of regulations of this kind, they can be denied for almost any method of conducting the local radio business of which the Commission does not approve. If these regulations are valid, then local stations are subject to almost any rules which the Federal Communications Commission sees fit to make. The Court held that these regulations were valid, and the majority decision of Mr. Justice Frankfurter is broad enough to justify any regulation which is not completely arbitrary.

The Communications Act was undoubtedly passed because of the confusion which would exist in broadcasting without some regulations. Unlike the situation of the newspapers, it was essential that stations be confined to specific wavelengths and powers, so that they might not conflict with each other. There is nothing in the Communications Act, as I read it, which shows any intention of Congress to go beyond that simple purpose in conferring power to regulate. The Court relies on that section of the act which authorizes the Commission "from time to time, as public convenience, interest, or necessity requires," to make various types of regulation. I believe this language refers merely to qualifications of the stations to serve the public, but the breadth of Mr. Justice Frankfurter's decision is evident from his use of the following language:

> "We are asked to regard the Commission as a kind of traffic officer, policing the wavelengths to prevent stations from interfering with each other. But the act does not restrict the Commission merely to supervision of the traffic. It puts upon the Commission the burden of determining the composition of that traffic."

I repeat the language of the majority opinion:

> "It puts upon the Commission the burden of determining the composition of that traffic."

In other words, it is declared that control of what reaches the American people over the air has passed from the American public into the hands of an all-powerful Commission, whose edicts are final and conclusive, and which exercises powers as complete as those existing in many foreign countries.

Mr. Justice Murphy and Mr. Justice Roberts dissented,

but they take the same view of the scope of the Frankfurter opinion, for Mr. Justice Murphy says:

> "By means of these regulations and the enforcement program, the Commission would not only extend its authority over business activities which represent interests and investments of a very substantial character, which have not been put under its jurisdiction by the act, but would greatly enlarge its control over an institution that has now become a rival of the press and pulpit as a purveyor of news and entertainment and a medium of public discussion. To assume a function and responsibility of such wide reach and importance in the life of the Nation, as a mere incident of its duty to pass on individual applications for permission to operate a radio station and use a specific wave length, is an assumption of authority to which I am not willing to lend my assent. . . . We exceed our competence when we gratuitously bestow an agency power which the Congress has not granted."

The majority opinion rests its case on the authority given the Commission to do certain things "as public convenience, interest, or necessity requires." I agree that these words are broad. Congress has been properly criticized for passing statutes like this statute and the National Labor Relations Act and the Securities Act, conferring power on administrative agencies in loose language with no definite meaning. Congress has been too prone to give to these agencies the right to make rules and regulations without defining clearly enough the limitations on the delegation of what is actually law-making power. And yet I believe this decision goes far beyond any intent of Congress which can be read into the act by the average layman having some knowledge of its history.

Mr. President, the apparent intent of the new regulations, as stated by the Commission, is to free the local broadcasting stations from network control and permit them to do as they please. But this is not the real effect. It may be that they will be less subject to influence by the networks, but the direct effect of the regulations is to prevent them from making the contracts which they may desire to make. Such freedom as they acquire is only acquired by the adoption of a principle under which in the future they may be made to do exactly as the Government pleases. There is practically no limit to the manner in which their business may hereafter be regulated by the Federal Communications Commission. There will remain to them no freedom of expression. The present regulations cover every phase of the manner in which these stations may make contracts with the networks, they extend to certain phases of their charges for advertising, and presumably may be extended to the entire manner in which advertising charges are made, and the amount of such charges. From the language of the Frankfurter opinion the Commission may determine "the composition of the traffic over the air." This apparently means that the Government can prescribe the amount of time to be devoted to every kind of program, and perhaps even specify the programs themselves. If the character of the programs and the right to advertise may be restricted and limited, then these local broadcasting stations cannot long survive under private control.

As for the network system, the effect of the decision is ultimately destructive. Many persons have regarded the networks as somewhat monopolistic, but, on the whole, I believe the people approve the job they have done. The destruction of that system would be itself a serious limitation of freedom of expression throughout the United States. It is the network which makes it possible for the whole people of the United States to listen to the Philharmonic Symphony under Bruno Walter on a Sunday afternoon. It has made it possible for all our people to listen to the N. B. C. Symphony under Toscanini, a delight once reserved to a few people in very large cities. It has opened the doors of the Metropolitan Opera to the whole American people rather than to the few who could afford to buy a seat in New York. It has opened avenues for personal discussion and debate for such institutions as the Town Meeting of the Air, the American Forum, the Chicago Round Table, and other organizations for discussing important public questions. It has made it possible for public officials and Members of Congress to reach millions of citizens. When the President of the United States wishes to, he can speak directly to the whole American people sitting in their homes. It requires organization to develop such facilities. In contrast to other countries where the radio is controlled by the Government, these networks have been developed by private capital, individual ability, and freedom to keep a proper balance between the artistic, theatrical, humorous, and political outpourings of the Nation. No other country produces programs of equal quality and quantity.

The protection of the network system has been commercial advertising. By this means it has been possible for the broadcasters to send over the air programs that represent millions of dollars of expenditure. But if that expenditure is to be justified, the advertiser must be guaranteed an audience sufficiently large to make the expenditures worth while. The Texas Oil Co., for instance, finances the broadcasting of the Metropolitan Opera Co. every Saturday afternoon during the season. The program involves a huge expenditure for a very few minutes of advertising. The advertiser can only afford to underwrite such a huge enterprise—opera available to perhaps 200,000,000 people—because he knows that a large number of those people will hear his name and have some sense of gratitude to him for that service.

But the regulations which have been upheld prevent any network from guaranteeing to an advertiser any of the affiliated stations; in fact, they destroy the whole system of affiliated systems. A majority of a seven-man board has decided that the present network system is entirely wrong, and, without consultation with Congress, has undertaken a compulsory restriction which may well destroy these systems.

Mr. President, I may say that the senior Senator from Maine [Mr. White] was one of the authors of the Communications Act of 1934. I think he agrees with me that when the act was written Congress did not have the slightest intention of granting any such power to the Radio Commission.

Mr. President, the radio is a means of communication, a facility of free speech, of equal importance today with the press. From its very nature, it must be regulated in a manner which is not necessary in the case of the press. But that regulation should be limited to the essential rules necessary to prevent confusion in the air, decent expression, and the affording of facilites to all points of view. If Congress feels that rules to prevent monopoly in the network field should be added, they should be made by Congress, and not by a subordinate agency of the Government.

In my opinion the Congress should proceed at once to amend the Federal Communications Act to define precisely the limitations of authority to be conferred on the Federal Communications Commission. The senior Senator from Maine [Mr. White] and the senior Senator from Montana [Mr. Wheeler] have introduced a bill to carry out this purpose. They are experts on the question, and are familiar with the intent of the former act. I hope that hearings may be held immediately upon the proposed bill, and that Congress may consider it immediately upon its return from the recess. In the meantime, the regulations should be suspended until the whole problem can be considered by Congress. Only in that way can we defend

ourselves against the most serious infringement on the right of freedom of speech in the United States which has occurred since the Bill of Rights was adopted.

DEFENSE OF OUR LIBERTIES

Mr. SHORT. Mr. Speaker, I want to speak for a few minutes about the defense of our liberties—not by our armed forces abroad but by ourselves at home.

I think we have no right to send men out to fight and to die for liberty if we are not ready at least to speak for liberty at home when it is in danger.

The decision of the Supreme Court on May 10, in connection with radio broadcasting, has done something to one of our liberties. Either it has begun to destroy a specific part of American liberty or it has redefined the word until it has no meaning for true Americans. Look at our United States Supreme Court today and you will know why Jesus wept.

If we are honest with ourselves, we will all admit that our liberties have been jeopardized. Some of us think the danger is serious, others are complacent. But no one in this Chamber believes that our solitude for freedom is, in the elegant words of the Chairman of the Federal Communications Commission, "hooey." Mr. Fly, as Chairman of the F. C. C., has been authorized by the Supreme Court to take charge of all radio programs in the United States. There is, to be sure, a statute which forbids Mr. Fly to interfere with the services and the pleasures which radio brings to the American people. But the Supreme Court has explained the law away. It has gone beyond Mr. Fly's bid for power over the business of broadcasting and has given him and the Communications Commission, supreme and unlimited power over programs as well.

We are in the midst of a war for liberty. If I were to inform this body that a company, a battalion, or a regiment had been lost unnecessarily—by ignorance or neglect—every Member, regardless of party, would cry out for court martial of the guilty, or for impeachment. By the Supreme Court decision we have lost more than a battalion of fighters for liberty. We have begun to lose what we fight for—since you cannot lose one civil right without endangering all civil liberty. And there is no one to impeach for ignorance and neglect—no one except ourselves. In the miserable loophole left—the almost invisible loophole through which a tiny ray of light still shines—the Court itself has challenged us, saying that "the responsibility belongs to the Congress." All we are guilty of is not taking our responsibility—and acting wisely upon it.

I do not know whether all of you have read the decision of May 10. Perhaps the headlines repeated the old words about the Court curbing the networks. Curbing has become a friendly word—almost like checking abuses—not at all like destroying freedom. Perhaps you have thought it only natural that the networks should protest—after all, they lost the decision. Perhaps you have heard many times that Congress meant the F. C. C. to be something more than a traffic officer of the radio waves. The sharp outlines of objects are dulled by familiarity—we hear a phrase so often that it ceases to have meaning. And when five members of the Court deliver a decision we assume that all is right with the world. It does not seem possible that in the midst of a war to bring freedom to the world one of our own basic freedoms should be destroyed. It hardly seems necessary to worry about it. Mr. Fly would be glad if we did not worry about freedom. The fuss about freedom is all "hooey," says Mr. Fly. Maybe it is, to him. Maybe freedom is also "hooey." But millions of men and women are in the armed services of this country, and many of them will die—at this very moment some of them are dying—for freedom. We have the right to be concerned.

Is it true that the Federal Communications Commission has been given authority over radio programs? Can the Commission actually prevent a radio station from putting on a comedian whose humor it does not appreciate? Or a commentator whose philosophy it does not share? It seems improbable. But it is so.

Let me go back to the business of the traffic cop. You may know that before 1927 there was a totally unregulated scramble for the air waves, one station overlapped another and broadcasting might have been destroyed if some traffic regulations had not been put into force. These regulations were not made for the benefit of the broadcasters. They were set up for the advantage of the American people—and Congress imposed regulation of the traffic in accordance with public interest, convenience, and necessity.

The five judges who gave the May 10 decision say that the act of Congress "does not restrict the Commission merely to supervision of the traffic." The act, says the Court, "puts upon the Commission the burden of determining the composition of that traffic."

You and I, Mr. Speaker, are not familiar with the intricate problems of broadcasting, but we do know about traffic officers. And we know what English words mean. Let us, then, imagine that we have been made special traffic officers in the meaning of the Supreme Court's decision.

We do not merely see to it that east-west traffic moves on a green light, while north-south stands still on red. We are not restricted to preventing speed maniacs from cutting out of line, jamming ahead of other drivers into wrong lanes of traffic. No. The Supreme Court says to us "You are now a Federal bureau. You are to have the burden of determining the composition of the traffic."

So, as good Federal bureaucrats we do nothing openly at first—we let common people drive blue cars or green ones, limousines or roadsters—but on the side we confine station wagons to truck roads. Then we announce that only 10 per cent of the commercial vehicles owned by one company may operate on one day. We deny driving licenses to women drivers, we refuse the road to cars bought on the installment plan, and finally we get tired of all these half measures and determine the composition of the traffic once for all—we drive all privately owned vehicles off the road entirely.

It sounds preposterous. But apply it to radio. The F. C. C. is authorized to decide what radio shall be. It may begin by changing the business methods of the stations—but it has the power to go farther—and power never lies around unused. Mr. Fly, it is reported, is satisfied with his victory over American broadcasting. His appetite for dictating the composition of the programs may be dormant. But the power is there. This month and next, nothing may change. But if a station thinks the people in its neighborhood want comedy at night and the F. C. C. thinks the people ought to have lectures—the F. C. C. has the last word. The comedian will be kept off the highways of the air. If a woman commentator disagrees with someone's policy on regimenting women, the woman—or the station on which she appears—will be warned and, by one means or another, will be shunted off the air. And as the appetite for tyranny grows, someone, today's F. C. C. or its successor tomorrow, will also determine the traffic for good and all, and we will have no private radio—which means no free radio.

That sounds ominous. To a minority of the Supreme Court it seems even lacking in common sense. If the Congress meant to interfere with the business arrangements of the highways—not to mention the composition of the traffic—it would have said so. The minority says with some irony that "the subject is one of such scope and importance as to warrant explicit mention." But, of course,

Congress did not mean to let any traffic officer determine the composition of the traffic—not on the highway—and not on the air waves.

If the American people were informed today that after the war a Federal agency will tell them what size and color and type of car to buy, they would march on Washington and demand, from us, redress of grievances. We are a long-suffering people, but we are not so stupified as to let all our freedom go by default. Why is it, then, that our folks at home have not protested against destruction of their liberty to hear whatever they want on the air?

I hope we will not delude ourselves, gentlemen, into thinking the people do not care. They care intensely. For 20 years American radio has given the American people a greater range, a finer standard, of information and entertainment than any other people of the world has enjoyed—and this has been done without taxing the people, without propagandizing the people. In short, it has been American—and it has been free. The lives of millions of us are in an orbit which radio touches—in important ways—at every hour of the day, from the moment it gives us crop information in the morning through the news of the day, the music and the plays and the war messages of the evening to the music which sends us to sleep at night.

No one can tamper with the legitimate entertainment of a democratic people and survive. The reason we have not been denounced is that the American people do not know what has happened. They are not interested in networks and affiliated stations. They are interested in programs, in Fibber McGee and Fred Allen, in Raymond Gram Swing and Toscanini and the Man Behind the Gun. They do not know that these are threatened. They imagine that some complicated contracts between networks and stations will be altered. They have not been told that the composition of the traffic will be determined in Washington by the Federal Communications Commission. And if they have heard that the networks can find no defense against this tyranny, they have also heard Mr. Fly say "hooey."

I do not know how you can be too solicitous of liberty. If you think liberty was created, once for all, in 1776, and all we have to do is enjoy it, then you may retire into your cave and wait until the war is over and other men have fought and died for liberty. For liberty is like our daily bread, and is our daily bread, because we live by it, and it must be created again and again, and watched over and protected. And in defense of liberty we who do not run the risk of death in action have an obligation to those who do. We must see to it that liberty is not diminished when they return.

I challenge Mr. Fly to say to our armed services that while they were away he has taken radio away from the people. Let him tell them that he will decide what the composition of the radio traffic will be when they get back, and if they will politely petition him to let them hear Jack Benny or Invitation to Learning, he and the F. C. C. will listen to their request, and grant it if they happen to feel so inclined. For the court says the commissioners have expansive powers. The court places no restriction upon them.

But we—as part of the Congress of the United States—we can restrict the Commission. We can restore freedom to radio under the regulations and restrictions we have always imposed.

We must not let the defense of American liberty fall into the hands of one party. We must not, by default, let ourselves become the party of its enemies. If we do not fight, if we are silent, we are betraying liberty, and it shall not be forgiven us.

The liberty of a people is made up of many things—some great, some trifling. And the attack upon liberty always begins with the little things, those hardly worth fighting for. The attack on free radio is almost invisible now; it is concealed under legal terms. It seems concerned only with insignificant business details.

But the stake is a great one; it is even greater than the people's rights in radio. The stake is freedom.

An outpost has been taken. If we react promptly we can throw the enemy back and punish him for his arrogance. We have the weapons, it is our right to make laws, to define powers, to protect liberty. I hope we will have the courage and intelligence to do our duty.

Mr. ELSTON of Ohio. Mr. Speaker, will the gentleman yield?

Mr. SHORT. I yield to the gentleman from Ohio.

Mr. ELSTON of Ohio. Does not the gentleman think that under the decision of the Supreme Court, to which he has referred, it is possible for the Federal Communications Commission to deny to any political party the right to use the airways?

Mr. SHORT. Of course, the distinguished gentleman from Ohio is one of the ablest lawyers in this House and I am neither a lawyer nor the son of a lawyer, but I can, I think, understand fairly well the English language. The gentleman almost answers his own question. I think it has such broad and expansive powers that it could do that very thing.

The Court has shown us the way. We have the solemn obligation of writing a law so clear that it will forever do away with the shabby generalizations by which authority is usurped. In place of "the composition of the traffic" we can write the exact phrases by which the powers of the F. C. C. will be described. If we want to protect liberty in America, we must make the laws precise and practical, by which radio can continue to function as one of the most powerful engines of democracy ever invented by the mind of man.

Talk Before the Meeting of AFA
Wednesday, June 30, 1943
by
Neville Miller, President
National Association of Broadcasters

With over 900 radio stations in the United States and only 106 airlanes, the need for physical regulation of the wave lengths is evident. Realizing this fact, Congress, when it enacted the Radio Act of 1927, saw fit to impose regulations of purely a technical nature. Radio is not a public utility and the power which Congress exercised in passing this Act arises from its constitutional grant to regulate interstate and foreign commerce.

It is important to keep in mind the reason for regulation and the source of the power.

During its lifetime radio has grown in number of sets and number of listeners because it has served the American public by giving it programs equalled by no other system in the world. This high standard was not arrived at by the brain work of one group of men, but by the competing brain work of many men. Free speech, free enterprise and good old American competition built radio as we know it today. You who have competed with the other fellow, who have experienced the thrill of success and have been pushed to even greater efforts by the untiring efforts of your competitors can realize the chilling, dampening effect which would have been produced on programs had the control been under a government bureau.

Radio as you know it has operated under a Commission whose jurisdiction was summarized by the Supreme Court in the Sanders case as follows:

"But the Act does not essay to regulate the business of the licensee. The Commission is given no supervisory

control of the programs, of business management or of policy. In short, the broadcasting field is open to anyone, provided there be an available frequency over which he can broadcast without interference to others, if he shows his competency, the adequacy of his eequipment, and financial ability to make good use of the assigned channel."

Now what has happened?

On May 10th, the Supreme Court by a 5-to-2 decision, written by Justice Frankfurter, gave the F. C. C. practically unlimited power to exercise as it thinks best "in the public interest, convenience and necessity." As one editor said: "It takes little imagination to picture the possible consequences to the public's liberty of the rule by a group of Commissioners all equipped with powers to make regulations which the respective majorities of Commissioners deem to be 'in the public interest, convenience and necessity.'" Let me read to you from that Opinion and you can understand why we in radio are greatly concerned. I quote from the Opinion:

Page 19. ". . . we are asked to regard the Commission as a kind of traffic officer, policing the wave lengths to prevent stations from interfering with each other. But the Act does not restrict the Commission merely to supervision of the traffic. It puts upon the Commission the burden of determining the composition of that traffic."

What does the Court mean when it says: "It puts upon the Commission the burden of determining the composition of that traffic." It means that the Commission has control of programs.

I quote again:

Page 20. "These provisions, individually and in the aggregate preclude the notion that the Commission is empowered to deal only with technical and engineering impediments to the 'larger and more effective use of radio in the public interest.' We cannot find in the Act any such restriction of the Commission's authority."

Page 21. "In the context of the developing problems to which it was directed, the Act gave the Commission not niggardly but expansive powers."

This grant of expansive power was opposed by Justices Murphy and Roberts and was attacked by Justice Murphy when he said:

Page 31. "By means of these rgulations and the enforcement program, the Commission would not only extend its authority over business activities which represent interests and investments of a very substantial character, which have not been put under its jurisdiction by the Act, but would greatly enlarge its control over an institution that has now become a rival of the press and pulpit as a purveyor of news and entertainment and a medium of public discussion. To assume a function and responsibility of such wide reach and importance in the life of the nation, as a mere incident of its duty to pass on individual applications for permission to operate a radio station and use a specific wave length, is an assumption of authority to which I am not willing to lend my assent."

Page 28. ". . . we exceed our competence when we gratuitously bestow upon an agency power which the Congress has not granted. Since that is what the Court in substance does today, I dissent."

What is the net result of the majority decision? It is this: The FCC can tell broadcasters what must be broadcast whether it be news, public discussion, political speeches, music, drama or other entertainment.

The Commission can likewise enforce its edicts of what may not be broadcast in any one of these fields.

The Commission can regulate the business arrangements by which broadcasters operate and direct the management of each individual radio station. It can issue or deny licenses based upon business affiliations.

What may we expect? Will the FCC in the near future issue some rules regarding program content? Certainly not. It does not need to. The mere fact that the FCC has this unlimited power gives it complete and effective control without the need of issuing any rules. Let me explain. Imagine yourself a newscaster in foreign country A which has a censor. That censor looks over your script and blue pencils what he does not like. That may restrict you and you may not like it, but at least you can argue with him and can try to tell the news as you see it.

You move over to country B which has no censor. The government there merely says you can broadcast anything you like, but if you say anything the government does not think is in the public interest, it will run you out of the country. Will you do anything to cause the government to chop off your head? No—and moreover, if you ever get the least bit independent, a letter requesting a copy of yesterday's broadcast will quiet you down. Your broadcast is controlled without the government's lifting a finger. The inherent power and the threat to use it is sufficient.

Let's apply that to radio. Will the FCC put out program rules? No—but every radio station must come up for license renewal every two years and failure to renew is equal to a death sentence. The FCC need only indicate its displeasure by referring a matter to the Department of Justice or to the FTC. Both the Department of Justice and the FTC may report they have no power to deal with the situation, but you can bet your bottom dollar that radio stations are not going to risk loss of license to carry for your advertisers something which is perfectly legal, but which the FCC for reasons of its own does not like—does not think is compatible with the "public interest, convenience and necessity," as interpreted by the FCC.

Let's take another example. Maybe some bureaucrat should believe more religion should be carried. A casual statement by some one in authority may have a very marked effect. You can multiply the possibilities.

The point is that the mere existence of the power and the drastic penalty provided in the Act accomplishes the result.

There is always this threat in any system of licensing, and this thought was well expressed in *Thornhill* v. *Alabama*, decided April 22, 1940, (310 U. S. 88), when the Court said:

"The power of the licensor against which John Milton directed his assault by his 'Appeal for the Liberty of Unlicensed Printing' is pernicious not merely by reason of the censure of particular comments, but by reason of the threat to censure comments on matters of public concern. It is not the sporadic abuse of power by the censor, but the pervasive threat inherent in its very existence that constitutes the danger to freedom of discussion."

I emphasize this point because I believe that freedom of thought, freedom of discussion, freedom of the press and of speech—yes, freedom of radio—form the cornerstone of democracy. It is and always has been recognized that the rights of free men can only be guaranteed through the free play of ideas and through the right to criticize the action of those placed in temporary authority of office. Except in the case of violent revolution, the rights of citizens are never taken away abruptly, but little by little essential rights are plucked away if protests and remedial measures are not made.

Chairman Fly has asserted that he does not believe the decision of the Supreme Court has given the FCC the broad power as alleged by the NAB and if it has, he

does not intend to use it. I hope he is right and that he will not use it if he has it, but the next Chairman will not be controlled by Mr. Fly's declarations. So long as the words which I have read to you remain in the reports unreversed they are a serious threat to the freedom of radio.

Further, actions of the FCC unfortunately indicate a tendency on part of the Commission to supervise programs. Take two examples: The regulations of FM prescribe that there must be two hours of non-duplicated programs. Explain it any way you will, yet that is a definite step towards program supervision.

Also, the proposed new FCC renewal application has a new section calling for information concerning foreign language broadcasts. The Attorney General has ruled that the control of foreign language broadcasts lies with the Office of Censorship and that Office has requested no help from the FCC. What does the FCC propose to do with the information if it is not going to use it, and how is it going to use it unless to control programs?

Put yourself in the place of a station carrying foreign language broadcasts and with your license coming up for renewal shortly. Read the Opinion which says the Commission has 'the burden of determining the composition of the traffic.' If the Commission has any views about foreign language broadcasts, will it have to do more than indicate its views to secure compliance, especially when the penalty which can be meted out for a single offense is revocation of license.

What is the answer? The answer is legislation. Legislation to limit the power of the Commission and not legislation to set aside the network rules—they have gone into effect and time alone will tell whether they are wise or not. The network rules are involved in the present dispute merely because it was a case involving those rules in which the Court gave the FCC its broad grant of power. It is this grant of power which concerns us.

What is our legislative program? Time today is insufficient to go into the various amendments in detail, but I shall describe them generally.

NAB Platform

We propose an amendment limiting the Commission's jurisdiction to technical regulation in conformity with the decision in the Sanders Case. We do not believe that the Commission should have charge of determining "the composition of the traffic." We do not believe that we need the beneficent hand of bureaucracy to tell us what programs the American people should hear, nor supervise the contractual relationship between parties.

We believe a man is entitled to his day in court and to secure that result the Federal Communications Bar Association is advocating certain procedural changes. Furthermore, we are advocating the adoption of an amendment providing for declaratory judgment procedure. Today it is impossible to challenge the actions of the FCC without violating the Commission's order and placing your license in jeopardy. Under the declaratory judgment procedure, a station may request a ruling on any Commission action, and if not satisfied, may appeal the Commission's ruling to the court for review.

There are other provisions regulating the use of a station for the discussion of public or political questions and other amendments may be proposed before the hearings are concluded, but briefly our legislative program is aimed at maintaining a free radio. The White-Wheeler Bill embodying these provisions was introduced March 2, 1943, and hearings will start in September. It is possible to secure these needed amendments if we can only bring the need of them to the consciousness of the American people. It is highly important that this be done.

What is Chairman Fly's attitude towards this legislation? I think that is best told by quoting the remarks of Senator White made at the opening of hearings by the Senate Interstate Commerce Committee on May 13, 1941:

> "I have long been an advocate of a comprehensive study of this whole radio problem and of the administration of our present radio law.
>
> "As far back as 1937 I offered in the Senate a resolution which was pretty general in its character, and I strenuously urged at that time that we should undertake a study of the whole radio situation, and that the Congress should particularly concern itself with matters of principles and policies as they should guide the industry, whereby we would guide our regulatory body in its efforts to administer the law.
>
> "I still favor a comprehensive study of the whole radio situation.
>
> "I still feel that the Congress perhaps ought to lay down more definitely than we have in the existing law, the policies and principles which should guide us and which should control the regulatory body, and which should keep the industry itself in what we believe to be the appropriate bounds."

Referring to the regulations promulgated by the FCC, Senator White continued:

> "I am very frank to say that it never occurred to me there would be any substantial opposition in any quarter to a study of the possible or probable or feared effects of those regulations. I have thought and I might as well say it here openly, that I have been rather surprised, even shocked, that the Commission itself feels it appropriate to oppose the study which the resolution suggests.
>
> "I have been here in Congress quite a while; I think there is only one member about this table who has served longer than I, and this is the first time so far as my knowledge goes that a regulatory body of the Government, a creature of the Congress itself, has felt it appropriate to challenge either the wisdom or the right of a committee of Congress to review its acts and the policies which it is undertaking to put into effect."

It is important to you as advertisers because radio is an important medium of advertising. It is important that it be kept free. Let government control of programs once get started and it will, like creeping paralysis, gradually suck the vitality of radio.

Today your clients, because radio is free, can combat the many theories of the starry eyed boys who would love to remake the world. Yet let the government secure control of programs—let the FCC by raising its finger indicate that more time should be given to government officials and less to advertisers—and the very basis of free enterprise will be threatened.

But it is more important to you as an American interested in the future of this country. We have seen how radio has been used in Europe as a means to enslave nations. We all say it cannot happen here. Let's just look at a few examples. Take our elections. They are one of the cornerstones of our democracy. Elections though are based on free discussion, and elections without free discussion are merely a farce. Take these figures from a FORTUNE poll, made in November, 1942 limited to high school students. This question was asked:

Where do you get most of your news—from newspapers, radio, magazines, talking with people, or where?

The answer was:

Radio	57.2%
Newspapers	34.8%
Talking with people	20.7%
Magazines	5.6%
Others and don't know	1.4%

The man or group of men who control radio control the future of this country. That's why it is important to you that radio is kept free. That is why the decision of May 10, giving the FCC unlimited power is of importance to you, and that is why we ask your help and that of all right thinking people in securing the needed legislation so that radio may again be free.

EXTENSION OF REMARKS

of

Hon. William M. Colmer

of Mississippi

In the House of Representatives

Monday, July 5, 1943

Mr. COLMER. Mr. Speaker, under leave to extend my remarks in the *Record*, I include the following article by Frank C. Waldrop, from the Washington *Times-Herald* of today:

TAKE OFF THESE HANDCUFFS

(By Frank C. Waldrop)

New and further sensations are promised for next Friday when the Congressional Committee Investigating the Federal Communications Commission resumes hearings. If the revelations to come are more staggering than those made on the opening day of the hearings, last Friday, they will be stunners. On opening day, Eugene Garey, counsel for the investigating committee, disclosed that the Army and Navy distrust the Federal Communications Commission and have asked the President to take away from it control of a staff which conducts "radio intelligence" work, polite term for radio espionage and counter-espionage.

Garey read into the record letters and documents concerning activities of the Federal Communications Commission, and to its chairman, James L. Fly, which he said "constitute a danger and menace to national security."

Garey said the Federal Communications Commission is also accused of being "entirely motivated by political partiality and favoritism in the performance of its duties" and "its powers are unlawfully exercised for the purpose of furthering its own political ideologies and philosophies."

One more. "The radio industry has been so purposefully terrorized by the Commission that it is enslaved and lives in an unremitting state of fear, as a result of which it acquiesces in every whim and caprice of the Commission."

That is tough talk. And the word is that the congressional committee expects to demonstrate proof of the charges by documented detailed evidence.

As to that, we will see. Congress plans to adjourn shortly, and there are no other big investigations on just now unless the Jesse Jones-Wallace controversy gets off to an unexpectedly quick start, so this Federal Communications Commission investigation is likely to get a lot of attention during these next few weeks.

But whatever happens in detail, the fact remains that the Federal Communications Commission is in a bad way, and needs a going over. Herewith, the background.

The Federal Communications was one of the first projects of the New Deal, and has been an excellent demonstration of its basic philosophy toward private industry, property, and free enterprise.

Radio transmission was at the beginning of the First World War just about where television was at the beginning of this war—proved in the laboratory and waiting only on the breaks to emerge into the common stream of affairs.

World War No. 1 gave it a tremendous push forward, knocked together small companies warring for trade position, and brought the broadcasting of news and entertainment into being as a gigantic industry.

The peculiarities of radio transmission, that one station may pirate into another's territory and crowd out its program if there is no firm division of fields, in time brought the need for aerial traffic cops.

The first United States radio law was passed in 1910. It was a mere requirement that users of ship wireless obtain licenses from the Secretary of Commerce and Labor. In 1912 it was revised, but still there was no power given by Congress to withhold a license from any applicant.

The 1912 law stayed on the books until 1927, by which time radio had long since outgrown the field of mere ship's wireless, and the anarchy of program piracy was in danger of wrecking the whole, battling new industry of broadcasting.

The 1927 act provided for a radio commission of five members to grant broadcasting licenses and really act as aerial traffic cop between the tooth-and-claw competitors.

But radio kept on outrunning the regulators, so that it was obvious by 1933 that the act needed broadening again. This gave the New Dealers their chance.

The Federal Communications Commission as we know it today came into existence with the act of 1934, which in effect swept all property rights out from under the holder of a radio license and made him a mere dependent upon the Government.

His license, as of today, is for 2 years only. The law and the regulations attached thereto, really do make the radio broadcaster entirely dependent upon the Federal Communications Commission as to whether he will stay in business. Of independence in radio there is none. The whole industry is at the finger's beck of Government.

That is the basic vice in the Federal Communications Commission Act of 1934—its destruction of property rights in radio and the immediately consequent wreck of free, independent behavior by radio operators.

The committee investigating the Federal Communications Commission has a chance to show up that vice, if it will, and to demonstrate what happens when men are made entirely dependent upon governmental bureaucracy for their daily bread.

Once that is shown, maybe Congress will start to roll back oppressions laid upon us all in the past 10 years, not only in radio but all across the field of business enterprise and daily living.

The New Deal laid those oppressions on us calling them reforms.

They are not reforms, they are handcuffs. The affairs of this country cannot really be moved ahead until they are unlocked.

The National Association of Broadcasters
1760 N STREET, N. W. ★ ★ ★ ★ ★ ★ ★ WASHINGTON 6, D. C.
July 9, 1943 SPECIAL LEGISLATIVE BULLETIN No. 9

Additional Cox Investigation Information

(This bulletin contains Chairman James Lawrence Fly's twelve questions addressed to the Cox Committee and also contains four copies of correspondence exchange between Fly and Representative Cox in connection with questions 6, 10 and 11. Also reprinted is a story from the Washington Times-Herald of Tuesday, July 6, 1943, which is self-explanatory.)

July 6, 1943.

Select Committee to Investigate the
Federal Communications Commission,
535 Old House Office Building,
Washington, D. C.

MY DEAR SIRS:

In view of the gravity of the formal public statements issued through the Committee Counsel, in further view of the extremity and unfairness of the procedures heretofore followed by the Committee and its Counsel, and in further view of the need of the Commission, its Commissioners and staff members for some information as to what procedures may be expected from the Committee, I sincerely request the Committee to respond to the following questions at its early convenience:

1. Has the Committee already concluded that it will make findings as set forth in its Counsel's formal and broadly publicized statement?

2. Does the Committee have an open mind on these matters, and if so may we have a public statement to that effect?

3. Did the Committee authorize the publication of those conclusions of its Wall Street Counsel?

4. Is this Committee going to continue to permit such conclusions to be broadcast without giving the Commission an opportunity for a hearing?

5. Is the Committee now going to adjourn for the summer without giving the Commission an opportunity for a hearing on the publicly announced conclusions?

6. Will the Committee now give to the Commission whatever notice it is possible to afford it as to when hearings may be expected to be held and as to when individual Commissioners or staff members may be expected to be called for testimony?

7. Is the Committee going to continue the services of dollar-a-year men on Wall Street?

8. Is the Committee going to continue to permit lawyers to issue subpoenas requiring appearances before themselves?

9. Is the Committee going to permit its Wall Street lawyers to purport to put witnesses under oath?

10. Is the Committee going to continue to permit this sort of "testimony" behind closed doors, in private offices and hotel rooms with the Commission excluded?

11. Is the Committee going to continue the practice of refusing to permit the Commission to purchase copies of the transcripts of such testimony?

12. In view of repeated statements that the investigation is to be a constructive one, is the Committee going to afford the Commission any form of hearing procedure by permitting its counsel to bring matters to the attention of the Committee: (a) in connection with statements by Committee Counsel; (b) in relation to the introduction of documents by Committee Counsel, or (c) in the giving of testimony by witnesses called by Committee Counsel without threats of being ejected by the police, and by permitting reasonable cross examination of such witnesses to ensure against further falsehood and distortion.

Very truly yours,

/S/ JAMES LAWRENCE FLY,
Chairman.

April 15, 1943.

DEAR CONGRESSMAN COX:

The Commission is informed that Mr. Donald Flamm of New York City was subpoenaed to appear before Mr. Hauser of the Committee's staff, that upon his appearance an oath was administered and a complete written record made of the questions asked Mr. Flamm and the answers given.

We are also advised that when Nicholas F. Cureton, an employee of this Commission, appeared at the Committee's offices at your request he likewise was sworn and a record was made of the questions asked and his answers. We do not know what, if any, other witnesses have testified.

It would be appreciated if the Committee would make available to the Commission at the Commission's expense a copy of these transcripts and transcripts of all other testimony taken in this manner.

By direction of the Commission.

Very truly yours,

/S/ JAMES LAWRENCE FLY,
Chairman.

The Honorable,
Eugene S. Cox,
Chairman, Select Committe to Investigate
the Federal Communications Commission,
Room 535, Old House Office Building,
Washington, D. C.

April 19, 1943.

MY DEAR MR. CHAIRMAN:

Judge Cox has forwarded to me for reply your letter, dated April 15, 1943, asking for a transcript of all testimony taken on behalf of the Committee.

It is to be regretted that your request cannot be granted, however, at this time. To grant such request at this time would be incompatible with the public intent. After the Committee's investigations have been completed your request will be reconsidered by the Committee and you will be advised of its then action in respect to your request.

Very truly yours,

/S/ EUGENE L. GAREY,
General Counsel.

Honorable James Lawrence Fly,
Federal Communications Commission,
Washington, D. C.

May 19, 1943.

Honorable E. E. Cox,
Honorable Richard B. Wigglesworth,
Honorable Warren B. Magnuson,
Honorable Edward J. Hart,
Honorable Louis E. Miller,
House of Representatives,
Washington, D. C.

MY DEAR SIRS:

Some weeks ago the Commission received information that Mr. Donald Flamm of New York City had been subpoenaed to appear before Mr. Hauser of the Committee's staff, that upon his appearance an oath was administered and a complete record made of the questions asked Mr. Flamm and the answers given. The Commission at that time was also advised that the same procedure had been followed in the case of Nicholas F. Cureton, a Commission employee.

On April 15, 1943, at the direction of the Commission I addressed a letter to the Chairman of the Committee requesting that the Committee make available to the Commission at the Commission's own expense a copy of these transcripts and a copy of transcripts of all testimony taken in this manner. On that same date Congressman Cox advised me in writing that he was referring my letter to Mr. Garey for attention and reply. In a letter dated April 19, 1943, Mr. Garey denied the request made to the Committee.

It is now apparent that various other examinations of the above type have been made by the Committee's staff. We earnestly request the full Committee to reconsider this refusal and grant the Commission the privilege of purchasing copies of all such transcripts.

Sincerely yours,

/S/ JAMES LAWRENCE FLY,
Chairman.

June 3, 1943.

MY DEAR MR. CHAIRMAN:

Your letter, dated May 19, 1943, addressed to Congressmen Cox, Wigglesworth, Magnuson, Hart and Miller was considered by the full Committee this morning in Executive Session. I have been directed to advise you that the position that the

Committee heretofore adhered to is sustained and your request is again denied.

Very truly yours,

/S/ EUGENE L. GAREY,
General Counsel.

Honorable James Lawrence Fly,
Chairman,
Federal Communications Commission,
Washington, D. C.

(The following story is reprinted verbatim from the Washington Times-Herald of July 6, 1943.)

Fly Undermines Soldier Morale, Cox Charges

In a withering counter-blast at James L. Fly, chairman of the Federal Communications Commission, Representative Eugene Cox (D.) of Georgia, last night charged the FCC chairman with attempting to "destroy the confidence of American soldiers in their commanders."

Cox's criticism came in answer to a diatribe loosed by Fly at the Cox committee, which is currently investigating the FCC. In his statement, Fly charged the congressional committee with "joining with the military, the radio monopoly and Wall Street interests" in a plot to wreck the commission.

Too Serious to Ignore

When reached for comment on the Fly statement, Cox at first was reluctant to make answer. He said that it was a rule of the committee that individual members would not speak on current developments. Later he said he was unable to get the committee together, but that he considered Fly's statement too serious to go without an immediate answer.

Chairman Fly had stated in his blast at the Cox committee:

"The aim has obviously been to wreck the commission, the only agency representing the public in this important field, to set up monopolistic control by commercial interest and to establish actual and coercive surveillance of the nation's most significant mechanism of free speech."

Won't Be Sidetracked

The Georgia Representative declared:

"As to the attack of Mr. Fly upon the select committee of the House of Representatives, now investigating the commission, the committee has no statement to make. The committee does not mean to be drawn away from the constructive job it has undertaken.

"Mr. Fly's attack upon the military and naval departments for objecting to his attempt to take over the responsibilities of war activities cannot be ignored. The joint Chiefs of Staffs of the Army and Navy, the Chief of Staff to the Commander in Chief of the Army and Navy, the Secretary of War and the Secretary of the Navy say it has been found that the operations of Mr. Fly's commission constitute an interference with the war effort and a threat to the nation's security. If this be true then all possible effort must be made to stop this action.

Look to Military

"The fathers and the mothers of the boys and girls fighting this war, the wives and sweethearts of the soldiers and sailors and the men of the armed forces themselves are looking to our military authorities to direct the winning of the war in the shortest possible time and with the least possible loss of lives.

"Even Mr. Fly owes a service to the nation rather than the disservice of trying to destroy the confidence of the soldier in his commanders by charging them with conspiring to destroy the FCC. This commission is made up of seven members and several hundred employes that many of our citizens feel could better serve our country during this great conflict by carrying guns."

"The welfare of the millions of the boys at the battlefronts and in the camps is of far greater concern than Mr. Fly and his commission. The citizens are supremely interested in saving this country.

"Has not Mr. Fly in issuing this statement in question confessed all the Army and Navy had to say about him? If the first public hearing of the select committee has thrown Mr. Fly into such a state of hysterical wrath then what will be his condition after this inquiry has really gotten under way?"

The National Association of Broadcasters

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

July 14, 1943 **SPECIAL LEGISLATIVE BULLETIN** No. 10

Volume No. 2

Hearings Before the Select Committee to Investigate Federal Communications Commission, House of Representatives, U. S., Seventy-Eighth Congress

Place, Washington, D. C. Date, July 9, 1943.

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Friday, July 9, 1943

House of Representatives, U. S., Select Committee to Investigate the Federal Communications Commission, Washington, D. C.

The Select Committee met at 10 a.m. in the Committee Room of the House Banking and Currency Committee, Room 1301 New House Office Building, Hon. E. E. Cox (chairman) presiding.

Present: Representatives E. E. Cox (chairman), Edward J. Hart, Richard B. Wigglesworth, and Louis E. Miller.

Eugene L. Garey, General Counsel to the Select Committee.

The Chairman. The Committee will come to order. Mr. Garey, proceed, sir.

Mr. Garey. Mr. Chairman, in the stenographic transcript of the hearing before the Committee on July 2, 1943, at pages 60 and 84 thereof, the following statement appears in my letters to the Secretaries of War and of the Navy:

"That the influx of the civilian employees of the Foreign Broadcast Intelligence Service of the Federal Communications Commission and the Office of War Information in the North African theatre of war operations has presented difficulties and embarrassment to the armed forces there which have necessitated a request for their immediate withdrawal and transfer."

Shortly after the hearing adjourned on that day, a representative of the Office of War Information directed my attention to the fact that that paragraph which I have just read could be construed to mean that a request had been made for the withdrawal of the employees of the Office of War Information, as well as those of the Foreign Broadcast Intelligence Service, and that if so construed the paragraph would inaccurately state the situation so far as employees of the Office of War Information were concerned.

I suggested to him that the matter be directed to the attention of the Committee by letter, and I subsequently received from Mr. Elmer Davis, Director of the Office of War Information, a letter dated July 3, 1943, addressed to me, which reads as follows:

"DEAR MR. GAREY:

"In your letters of June 25 to the Secretary of War and the Secretary of the Navy you stated that investigators of the Select Committee of the House of Representatives to Investigate the Federal Communications Commission had substantially established, among other things, 'that the influx of the civilian employees of the Foreign Broadcast Intelligence Service of the Federal Communications Commission and the Office of War Information in the North African theatre of war operations has presented difficulties and embarrassment to the armed forces there which have necessitated a request for their immediate withdrawal and transfer.' You also stated the Committee proposed to inquire further into the validity of this allegation by direct examination of witnesses.

"The Office of War Information desires to go on record that the above allegation in so far as it relates to the Office fo War Information is absolutely without foundation. The facts are completely contrary to this allegation, namely, that the operations of the Overseas Branch staff have neither presented difficulties nor embarrassment to the armed forces. Instead of requesting the immediate withdrawal and transfer of our Overseas staff, Allied Forces Headquarters, Algiers, has requested that our staff in North Africa be substantially increased.

"I desire that this letter be incorporated in the record of your hearings, and further that Mr. Philip C. Hamblet, Assistant Director, Overseas Branch, be given an opportunity to testify before the Committee on these charges. Will you please notify Mr. Hamblet the time when the Committee will grant him a hearing? No subpoena will be necessary.

Very truly,

ELMER DAVIS,
Director."

Mr. Chairman, after the receipt of that letter I endeavored to establish contact with Mr. Hamblet, found he was out of the city, and yesterday his convenience and mine were not such that I could communicate with him directly. However, the paragraph in my letters to which Mr. Davis' letter refers would appear to be susceptible to a construction not intended by me. I am therefore glad to bring to the Committee's attention the suggested correction, and suggest that it will not be necessary for Mr. Hamblet to appear for that purpose.

The Chairman. Do you want the letter made a part of the record as an exhibit?

Mr. Garey. I think, Mr. Chairman, the reading of it into the record will be sufficient, and we need not incorporate it in the record as an exhibit.

With the Committee's permission I would like to call as a witness Mr. Harold D. Smith, Director of the Budget.

Mr. Smith, will you be sworn?

(Thereupon the witness, Harold D. Smith, was duly sworn by the Chairman.)

Sworn Testimony of Harold D. Smith, Director of the Budget

Mr. Garey. Mr. Smith, you are the Director of the Budget?

Mr. Smith. Yes.

Mr. Garey. How long have you acted in that capacity?

Mr. Smith. Since April 15, 1939.

Mr. Garey. On or about June 18, 1943, did you receive from a member of this Committee a letter requesting certain information?

Mr. Smith. May I see that?

Mr. Garey. Let me show you a carbon copy of that letter and ask you whether or not that is a copy of the letter which you received on or about that date?

Mr. Smith. (After examining paper) Yes.

Mr. Garey. With the Committee's permission I will read that letter into the record. This letter, if the Committee please, is dated June 18, 1943, and is addressed to The Director of the Budget:

"MY DEAR MR. SMITH:

"This Committee has information to the effect that a proposal was recently made to transfer to the military establishments the functions and duties now being performed by the Radio Intelligence Division of the Federal Communications Commission; and that the proposal was referred to the Bureau of the Budget for consideration and recommendations.

"It will be very much appreciated if you will permit duly accredited representatives of this Committee to examine the files of the Bureau of the Budget concerning said proposal, including the Bureau's conclusions and recommendations.

"If such examination is permitted, it will doubtless obviate the necessity for later issuing a subpoena to you to produce the files and testify before the Committee in this matter.

"Thanking you for your anticipated cooperation in this matter, I am,

"Sincerely yours,"

signed by Mr. Wigglesworth, a Member of the Committee, for the Chairman.

Your reply to that letter is dated July 6, 1943. Am I correct, Mr. Smith?

Mr. Smith. Yes, you are.

Mr. Garey. Will you look at the letter which I now hand you, and I ask you whether that is the letter by which you made reply?

Mr. Smith. That is correct.

Mr. Garey. And that bears your signature?

Mr. Smith. Right.

Mr. Garey. Now, the documents that were specified in that letter—and so that there won't be any doubt about the documents to which I refer I will describe them in detail to you, namely, all the files, records, papers, correspondence, and memoranda of the Bureau of the Budget relating and pertaining to the request of the War and Navy Departments to the President to sign an executive order transferring the functions of the Radio Intelligence Division of the Federal Communications Commission to the military establishments, including the recommendations of the Bureau of the Budget with respect thereto—are in your possession and under your control and jurisdiction, are they not?

Mr. Smith. Yes, so far as I know.

Mr. Garey. What do you mean by that answer, Mr. Smith?

Mr. Smith. I mean that I haven't recently seen the files.

Mr. Garey. They are files that are part of your office?

Mr. Smith. Executive Office of the President.

Mr. Garey. And they are under your jurisdiction and control?

Mr. Smith. So far as I know, yes.

Mr. Hart. May I have that question answered again? I don't know what the witness means by saying that so far as he knows the records in the office of which he is Chief are under his control. Is there any doubt of the papers in your office being under your control?

Mr. Smith. I think I can clear that up if I may read the letter I addressed to this Committee.

The Chairman. I think you might read the letter, Mr. Garey.

Mr. Garey. The letter is dated July 6, 1943, Mr. Chairman. It is on the stationery of the Executive Office of the President, Bureau of the Budget, Washington, D. C.

"My dear Mr. Wigglesworth:

"This will acknowledge your letter of June 18, written in behalf of the Chairman of the Select Committee of the House of Representatives to Investigate the Federal Communications Commission, requesting permission for accredited representatives of the Committee to examine files of this Bureau relating to a reported proposal to transfer certain radio intelligence functions of the Federal Communications Commission to the military establishments.

"Proposals of this character relate directly to problems and activities of military concern which affect the national defense and conduct of the war, and the President has issued specific instructions that their contents should not be made public. The files of the Bureau relating thereto and its conclusions and recommendations thereon are considered to be confidential papers, and disclosure of them would not comport with the public interest. For the reasons stated, and for additional reasons discussed at length in the attached opinion of the Attorney General, I have been directed by the President not to make the Bureau files available to the Committee or to testify as to their contents if called as a witness.

"Sincerely yours,

"Harold D. Smith,
Director."

It is addressed to the Honorable Richard B. Wigglesworth, House of Representatives, Washington, D. C.

The enclosure to which Mr. Smith makes reference in his letter is an Opinion of the Attorney General of the United States dated April 30, 1941, on the Position of the Executive Department Regarding Investigative Reports, and the opinion relates to the request of Congressman Vinson, when acting as Chairman of the House Committee on Naval Affairs, for certain reports in the Federal Bureau of Investigation.

Mr. Hart. The fact remains, despite the letter you addressed to the Committee, that these files and documents are at least under your physical control?

Mr. Smith. I would interpret this that they are not.

Mr. Garey. Let us see, Mr. Smith. You have an office known as the Bureau of the Budget, do you not?

Mr. Smith. That is right.

Mr. Garey. And where is that office located?

Mr. Smith. In the State Department Building, in part, and several other buildings.

Mr. Garey. And these particular papers, documents, memoranda and the like to which your attention has already been directed are located where?

Mr. Smith. I am not aware, sir, where they are located at the moment.

Mr. Garey. When did you last see them?

Mr. Smith. I don't recall the date, but it was at least several months ago.

Mr. Garey. How long ago?

Mr. Smith. Several months ago.

Mr. Garey. And where did you see them then?

Mr. Smith. In part they were on my desk. I am not sure I ever saw all the documents assembled.

Mr. Garey. And they were at that time a part of the records of your office?

Mr. Smith. That is right.

Mr. Garey. How were they brought to your desk at that time?

Mr. Smith. Probably by a staff member.

Mr. Garey. Pursuant to a direction that you gave?

Mr. Smith. I think not.

Mr. Garey. Under what circumstances did those papers happen to come to your desk at the time to which you refer?

Mr. Smith. Probably for discussion of some point.

Mr. Garey. With some member of your staff?

Mr. Smith. Yes.

Mr. Garey. And they were taken up with you as the executive head of the Bureau of the Budet?

Mr. Smith. Yes.

Mr. Garey. I take it you don't want this record to show, Mr. Smith, that any doubt exists in your mind of the fact that physically the papers we have been talking about are actually located in the office of the Bureau of the Budget?

Mr. Smith. I am not sure that they are located in the Bureau of the Budget at the moment. I did not check that.

Mr. Garey. Did you make any search for them?

Mr. Smith. No, I did not. It is my understanding they were turned over to the White House at the request of someone over there in my absence.

Mr. Garey. Let me direct your attention, if I may, Mr. Smith, to a subpoena dated July 3, 1943, which bears on the back thereof a return that it was served on you in your office in the State Department Building on July 8, 1943, by exhibiting the same to you and leaving with you a true copy thereof. Is that return a correct return?

Mr. Smith. Is that a technical question you are asking me?

Mr. Garey. Was that subpoena served upon you?

Mr. Smith. Yes, it was.

Mr. Garey. And a copy left with you?

Mr. Smith. Yes.

Mr. Garey. With the Committee's permission, I offer in evidence the subpoena which has just been identified by the witness, and ask that it be marked Exhibit No. 3 and received in evidence accordingly.

The Chairman. It is admitted.

(The Subpoena for Harold D. Smith, Director, Bureau of the Budget, above referred to, offered and received in evidence, was marked Exhibit 3 and is filed in connection with these proceedings.)

Mr. Garey. You noted when this writ was served upon you, did you not, Mr. Smith, that you were commanded to appear here this morning, as you have, and to produce and bring with you, I quote, "All the files, records, papers, correspondence, and memoranda of the Bureau of the Budget relating and pertaining to the request of the War and Navy Departments to the President to sign

an executive order transferring the functions of the Radio Intelligence Division of the Federal Communications Commission to the military establishments, including the recommendations of the Bureau of the Budget with respect thereto"?

Mr. Smith. I did.

Mr. Garey. Did you make any search for these records before you came here this morning, in response to this subpoena?

Mr. Smith. I did not, in view of the position in which I find myself on advice of counsel—

Mr. Garey. Which counsel, Mr. Smith?

Mr. Smith. Counsel of the Bureau of the Budget, and the Attorney General's opinion, that these papers constituted confidential papers flowing between the Director of the Budget and the President of the United States, and therefore I am not to testify.

Mr. Garey. When did you first discuss the matter with your counsel?

Mr. Smith. Upon the receipt of this letter.

Mr. Garey. That is the letter of June 18, 1943, which was signed by Mr. Wigglesworth?

Mr. Smith. Yes.

Mr. Garey. And after you received that letter, what was the first thing that you did?

Mr. Smith. I don't recall, sir.

Mr. Garey. Well, with respect to this particular matter, now, something happened when that letter came into your hands?

Mr. Smith. This is an issue that has been up a number of times, it is not a new issue, and on which I asked advice.

Mr. Garey. So that the first thing you did, then, was to seek advice, is that correct?

Mr. Smith. That is right. I considered it a legal problem.

Mr. Garey. So that the first thing you did, Mr. Smith, was to seek legal advice, is that true?

Mr. Smith. Well, I don't recall if it was the first or second, sir, or the third.

Mr. Garey. Among the first things you did, then, was to seek legal advice. Can we agree upon that?

Mr. Smith. Yes.

Mr. Garey. From whom did you seek that advice?

Mr. Smith. From the counsel of the Bureau of the Budget.

Mr. Garey. And what is his name?

Mr. Smith. Edward Kemp.

Mr. Garey. And will you tell us just what transpired at that time?

Mr. Smith. I think if I were to discuss that it would be inconsistent with the position I am taking here.

Mr. Garey. Whether it is inconsistent or consistent, will you be good enough to answer the question?

Mr. Smith. I consider the question inconsistent with my position, and it is impossible for me to answer it.

Mr. Garey. Will the Committee direct the witness to answer that question?

The Chairman. You will do the best you can to answer it, Mr. Witness.

Mr. Smith. I will do the best I can to answer it within this framework.

The Chairman. Is the Committee to understand you decline to answer?

Mr. Smith. I think if this series of questions involves a violation of the position in which I find myself, that I don't feel I can answer the questions. My position is not of my own making. It is a very clear position, as stated here in the letter to the Committee, and I don't think any amount of argument can change the position.

Mr. Hart. You feel compelled to carry out the orders of the Chief Executive?

Mr. Smith. That is right.

Mr. Garey. Upon whose orders did you take this position?

Mr. Smith. I am not a lawyer. I am not familiar with all the judicial or constitutional questions involved here, but I took the position upon the direction of counsel, because it involves an issue which goes back, as I understand it, historically, to the days of George Washington.

Mr. Garey. So that your position is based on this historical background rather than the specific advice of counsel?

Mr. Smith. I think the counsel of the Bureau of the Budget relied heavily on the opinion of the Attorney General enclosed with my letter to the Committee.

Mr. Garey. Miss Arceneaux, will you read the question, and I will ask you, Mr. Smith, to answer the question.

(The question was repeated by the reporter as follows:

"So that your position is based on this historical background rather than the specific advice of counsel?")

Mr. Smith. My position is based upon the advice of counsel.

Mr. Garey. And you have received no further or other directions with respect to the production of these papers except the advice of your counsel?

Mr. Smith. Except as stated in my letter of July 6th to Mr. Wigglesworth.

Mr. Garey. What do you find in that letter?

Mr. Smith. (Reading:) "Proposals of this character relate directly to problems and activities of military concern which affect the national defense and conduct of the war, and the President has issued specific instructions that their contents should not be made public. The files of the Bureau relating thereto and its conclusions and recommendations thereon are considered to be confidential papers, and disclosure of them would not comport with the public interest. For the reasons stated, and for additional reasons discussed at length in the attached opinion of the Attorney General, I have been directed by the President not to make the Bureau files available to the Committee or to testify as to their contents if called as a witness."

Mr. Garey. Now let us take this last statement that you have just read:

"I have been directed by the President not to make the Bureau files available to the Committee or to testify as to their contents if called as a witness."

Did you receive from the President a direction not to produce here before this Committee the documents that you have been asked to produce?

Mr. Smith. What I have received from the President is a matter of confidence, and something as to which I cannot testify.

Mr. Garey. Mr. Chairman, this letter contains a statement that is either true or false. He has already made a statement of what the President said to him. If it is true, it is one thing; if it is not true, that is quite another thing.

The Chairman. Will you indulge me, Mr. Garey, to propound this question:

I wonder if the instructions you refer to as having received from the President were general, or were they specific? Did such instructions come to you with particular reference to this specific material that this summons called for?

Mr. Smith. They did, sir, or I would not have so stated in this letter.

The Chairman. Then the question did not involve, or did not call for making public, a confidence that you had not already voluntarily exposed?

Mr. Smith. That is so.

Mr. Garey. The Chairman understands, I think, that if anything was said to this witness by the President, he has already made disclosure of it in this letter.

The Chairman. That is what I was trying to develop.

Proceed, Mr. Garey.

Mr. Garey. I ask you, Mr. Smith, have you been directed by the President not to make available to this Committee the papers and documents enumerated in the subpoena which has been exhibited to you and which is in the record as Exhibit 3?

Mr. Smith. I repeat, my position is very clear in this letter of July 6th.

Mr. Garey. May I have this question answered, Mr. Chairman?

Mr. Hart. He states in his letter that the President has directed him not to testify.

Mr. Garey. Yes, but that is a statement not under oath, and I want that statement made under oath, Mr. Congressman, just so there may be no question about the fact.

The Chairman. No embarrassment should be involved in making response to that question, because you have already answered it in your letter.

Mr. Smith. That is right.

The Chairman. Is the answer "yes"?

Mr. Smith. The answer is "yes".

Mr. Garey. And is the opinion of the Attorney General to which you make reference in your letter the opinion which you enclosed with your letter, dated April 30, 1941 and signed by Robert H. Jackson, who was then Attorney General of the United States?

Mr. Smith. I didn't get the question.

Mr. Garey. Read the question.

(The pending question was repeated by the reporter.)

Mr. Smith. I believe the opinion was April 30, 1941. I don't know who signed it. (After examining opinion) Yes, that is right.

Mr. Garey. And you don't make reference, in your letter of July 6, 1943 to Congressman Wigglesworth, to any other opinion of the Attorney General of the United States except the one which you enclosed?

Mr. Smith. That is right.

Mr. Garey. You didn't seek the opinion of the Attorney General of the United States at the time the request was made of you by this Committee to produce these documents?

Mr. Smith. I assume counsel of the Bureau of the Budget may have done so. I am quite sure he did.

Mr. Garey. What reason have you for telling the Committee that? Is that an assumption, or is it based upon some knowledge?

Mr. Smith. I have not questioned him on that point, but I know—

Mr. Garey. Then your answer is based upon pure conjecture?

Mr. Smith. I know he consults him.

Mr. Garey. But your answer in this case is based on pure surmise and conjecture?

Mr. Smith. Yes, at the moment.

Mr. Garey. I will ask to have the opinion enclosed in Mr. Smith's letter marked and received in evidence as Exhibit 3-a.

The Chairman. It is admitted.

(The Opinion of the Attorney General of the United States, above referred to, offered and received in evidence, was marked Exhibit 3-a and is filed in connection with these proceedings.)

Mr. Garey. Do you have in the Bureau of the Budget copies of the various documents that are referred to in this subpoena?

Mr. Smith. I would have to check to be absolutely sure of the answer to that question.

Mr. Garey. Is it a practice to make a number of copies of all the documents in the Bureau of the Budget?

Mr. Smith. It has been a practice but, unfortunately, I find often that they are not made.

Mr. Garey. Mr. Smith, will you be good enough to produce for this Committee and for its information the documents enumerated in the subpoena that was served upon you and which, as you have observed, has been received and marked in evidence here as Exhibit 3?

Mr. Smith. I feel, under the position that I must take in this matter, that it will be necessary for me to refuse to produce those documents.

The Chairman. Do I understand that for the reasons you have stated you decline to produce them?

Mr Smith. Yes.

Mr. Garey. Will the Committee direct him to produce those documents in response to its writ?

(Conference between members of the Committee and the General Counsel off the record.)

The Chairman. This is an issue that has to be fought out. In order to make the record certain on the response that has been given to the subpoena, the Chairman directs the witness to produce the documents called for. Now you can make your answer.

Mr. Smith. I feel, in view of the position which I am taking on advice of counsel, that I cannot make those documents available as requested in the subpoena.

The Chairman. All right. Proceed, Mr. Garey.

Mr. Garey. And you do decline to produce them for the reasons you have stated?

Mr. Smith. I do. I see no alternative.

Mr. Garey. Do you draw any distinction between producing those documents before this Committee in a public hearing and producing them in a private hearing, or, stated in another way, before the Committee in executive session?

Mr. Smith. I am not able to draw any such distinction at the moment.

Mr. Garey. Would your position be the same, Mr. Smith, if you were asked to produce those documents before the Committee in executive session?

Mr. Smith. I would have to seek the advice of counsel on that.

Mr. Garey. Do you want to do that and appear before the Committee again?

Mr. Smith. If the Committee so wishes.

Mr. Garey. You want to seek the advice of your counsel before you take the position with respect to the production of these documents before the Committee in executive session?

Mr. Smith. I do.

Mr. Garey. I think perhaps, Mr. Chairman, we should accord that privilege to Mr. Smith so that he may take whatever consequences may be involved by his refusal into consideration after having received such advice in the premises as he deems it advisable to seek.

The Chairman. All right. If he wishes opportunity to consult with counsel on the point raised, of course it will be accorded him.

Mr. Garey. How long, Mr. Smith, do you think it will require for you to obtain such advice?

Mr. Smith. I should say in a very reasonable length of time. I don't know.

Mr. Garey. And would you be good enough to communicate with me and let me know when you are ready to make a further appearance before this Committee and state your final position?

Mr. Smith. I will be glad to; I will be glad to.

Mr. Garey. I think, then, the witness may be excused, Mr. Chairman.

Mr. Miller. I wanted to ask one question:

Mr. Smith, you were asked here in reference to certain books and papers and memoranda which you were requested to produce. If I understood you correctly, I think you stated you turned those over to a representative from the White House?

Mr. Smith. I would have to check that, because I have been out of town and something happened in my absence.

Mr. Miller. You stated you last saw them on your desk?

Mr. Smith. I never saw all these papers together at one time, but I have seen them at various times in connection with work we have done; I have seen various parts of them.

Mr. Miller. Did you see some of the papers you have been requested to produce on your desk?

Mr. Smith. Yes.

Mr. Miller. What became of them?

Mr. Smith. They were returned to the files, I assume.

Mr. Miller. Are you basing that on any information you have, or is that conjecture?

Mr. Smith. That is the usual procedure.

Mr. Miller. Maybe I am in error, but I understood you to say that a representative of the White House called and you turned certain papers and memoranda over to him. Is that correct?

Mr. Smith. I would have to check that. I don't know.

Mr. Miller. Did anyone at your direction?

Mr. Smith. Not at my direction.

Mr. Miller. Did you later learn that someone in your absence turned over any of the papers to a representative of the White House?

Mr. Smith. I am not certain. I can check that.

Mr. Miller. Didn't you consider the request of sufficient importance to check to see if the documents specified were under your control or if someone else had them under his control?

Mr. Smith. I considered it of sufficient importance, but wherever the documents are, I still felt that under the circumstances I could not produce them.

The Chairman. I think we should at this point give Mr. Smith an opportunity to consult with his counsel.

Mr. Garey. I think so too. However, I would like, with the Committee's permission, to ask Mr. Smith one or two more questions which Mr. Miller's questions have suggested to me.

The Chairman. Proceed.

Mr. Garey. Do you draw any distinction between producing documents and giving testimony with respect to them?

Mr. Smith. I think there probably is a distinction, but it is a difficult one to make, and I would like to explore it in connection with the question you earlier raised.

Mr. Garey. So that when you come before the Committee the next time, will you be good enough to state whether or not whatever position you take is predicated upon your unwillingness to produce documents or your unwillingness to testify with respect to them, or both?

Mr. Smith. I shall do so.

Mr. Garey. And will you make such search as may be regarded as adequate to determine the location of these papers, before your next appearance before this Committee?

Mr. Smith. I shall do so.

Mr. Garey. So that you can tell the Committee the present whereabouts of these documents when you next come before them?

Mr. Smith. I do not consider that the conclusion follows.

The Chairman. Let us excuse Mr. Smith.

Mr. Wigglesworth. When did you return to Washington, and how long had you been away?

Mr. Smith. I had been away about seven days. I returned Tuesday morning.

Mr. Wigglesworth. Tuesday morning—

Mr. Smith. Of this week.

Mr. Wigglesworth. Of this week?

Mr. Smith. Yes.

Mr. Wigglesworth. That would be July 6th?

Mr. Smith. I believe it was the date of this letter. Yes, I believe it was.

Mr. Wigglesworth. Were you in Washington at the time my letter on behalf of the Chairman was delivered to your office?

Mr. Smith. I think it came just before I was leaving.

The Chairman. All right.

Mr. Miller. Just one more question:

You spoke of seeing some of those papers on your desk. I will ask whether or not you saw any of those papers or memoranda on your desk after Mr. Wigglesworth had made formal request on you for them?

Mr. Smith. No. This goes back several months when I saw them on my desk, and has no relation to Mr. Wigglesworth's request.

Mr. Miller. Did you make any effort at any time to locate any of the documents you were asked to produce?

Mr. Smith. No. I assumed they could be easily located.

Mr. Wigglesworth. If these papers went to the White House, they went after this trip which you say was about the time you received my letter?

Mr. Smith. I would assume it was sometime about that time.

Mr. Wigglesworth. After you received my letter?

Mr. Smith. I don't know about that. I will have to find out. We made a complete report to the White House at someone's request.

Mr. Hart. Making a report to the White House wouldn't involve returning the papers, would it?

Mr. Smith. It might.

Mr. Garey. You did make a report on the documents I have directed your attention to, did you not?

Mr. Smith. I think the evidence would indicate that.

Mr. Garey. And you made a recommendation with respect to the request of the military establishments for the transfer of the functions of the Federal Communications Commission's Radio Intelligence Division to the Army?

Mr. Smith. I don't think I can testify on that.

Mr. Garey. You did make a report? I am not asking you at this time what that report was, but you did make a report?

Mr. Smith. That is right.

Mr. Garey. And when you come the next time I want you to be prepared to take a position before the Committee, Mr. Smith, if you will, as to whether you will or will not produce that report.

The Chairman. All right. Suppose we let Mr. Smith go. Thank you, Mr. Smith.

Mr. Miller. One more question:

Mr. Smith, did you ever at any time reach any personal or independent conclusion that in your judgment the production of those documents would involve the disclosure of secret or confidential information?

Mr. Smith. The nature of the request would naturally raise the question in my mind.

Mr. Miller. That does not answer my question. Did you yourself ever reach any independent conclusion that the production of those documents would involve the disclosure of secret or confidential information?

Mr. Smith. No.

The Chairman. Let us let Mr. Smith go. Let Mr. Garey know when it will be convenient for you to return.

(Witness excused.)

Mr. Garey. Is Mr. Fly here?

Will you swear the witness, Mr. Chairman.

(Thereupon the witness, James Lawrence Fly, was duly sworn by the Chairman.)

Sworn Testimony of James Lawrence Fly, Chairman of the Board of War Communications

Mr. Garey. Will you be good enough to state your name for the record, Mr. Fly?

Mr. Fly. James Lawrence Fly. I am here this morning as Chairman of the Board of War Communications.

The Chairman. I beg pardon, Mr. Fly?

Mr. Fly. I say I appear here this morning, sir, as Chairman of the Board of War Communications.

Mr. Garey. And you are also Chairman of the Federal Communications Commission, are you not?

Mr. Fly. I am, sir.

Mr. Garey. Mr. Chairman, I will have to demote you this morning, because we have one chairman here, and the record might be confusing if I address you as chairman, so I will call you Mr. Fly.

Mr. Fly. That is all right. I have been called lots of things.

The Chairman. You have been called lots of things, have you?

Mr. Fly. Yes, sir.

Mr. Garey. I merely wanted you to understand that, because I didn't want you to think it was a demotion I was bringing about as one Wall Street lawyer to another.

Mr. Fly. All right, sir.

Mr. Garey. It might be helpful, Mr. Fly, for the record, if at this time, on the occasion of your first appearance before the Committee, we incorporated in the record a little bit of your own background. You will recall that I wrote you a letter and transmitted to you a copy of certain biographical information respecting yourself that I culled from Who's Who in America, Volume 22,

for the years 1942-1943, at page 822 thereof, and I asked you whether or not that information was substantially accurate?

Mr. Fly. I believe so.

Mr. Garey. And you were good enough to return that to me with but one slight change, advising me that the copy as corrected was substantially correct?

Mr. Fly. Yes, sir.

Mr. Garey. With the Committee's permission I will read this into the record at this point.

Mr. Hart. What is the purpose of reading that into the record, Mr. Garey?

Mr. Garey. Just so we will know, Mr. Congressman, in connection with the various matters that come before the Committee, who Mr. Fly is and what his background is.

Mr. Hart. It is in the record that Mr. Fly is Chairman of the Federal Communications Commission and Chairman of the Board of War Communications. I think for our purposes, so far as what has thus far been developed before this Committee, that is sufficient.

Mr. Garey. I am quite willing to abide by the Committee's judgment in the matter.

The Chairman. I think if Mr. Fly has no objection to its going in, it might be incorporated in the record. Do you have any objection, Mr. Fly?

Mr. Fly. Frankly, I do not think my previous condition of servitude is a proper subject of inquiry, due to the fact that on two occasions I have been nominated by the President and confirmed by the Senate for the position I now hold. On the other hand, I cannot but feel justifiable pride in my Who's Who record, and I have no objection to its going in for the information of the Committee.

The Chairman. If he has no objection, it can go into the record. It is just a brief statement, is it not?

Mr. Garey. Just a brief statement.

The Chairman. Let it go in the record.

Mr. Garey (reading):

"Fly, James Lawrence, chairman Federal Communications Commission; lawyer; born Seagoville, Dallas County, Texas, Feb. 22, 1898; son Joseph Lawrence and Jame (Ard) Fly; graduate Dallas (Tex.) High School, 1916, U. S. Naval Academy, 1920; LL.B., Harvard, 1926; married Mildred Marvin Jones, June 12, 1923; children—James Lawrence, Sara Virginia. Began as naval officer, 1920, retired from naval service, 1923; law clerk with Burlingham, Veeder, Masten & Fearey, N. Y. City, 1925; admitted to Massachusetts and New York Bars, 1926, and practiced with White & Case, N. Y. City, until 1929; special assistant U. S. attorney general (government counsel in actions involving restraint of trade under federal antitrust laws and regulatory measures under commerce power), 1929-34; general counsel Electric Home and Farm Authority, Inc., 1934-1935; head of legal department, Tennessee Valley Authority, as general solicitor, 1934-36, as general counsel 1937-1939; chairman Federal Communications Commission since 1939, and chairman Board of War Communications (formerly Defense Communications Board) since 1940. Served as midshipman, 3 months with Atlantic Fleet, World War. Member American and Tennessee State bar associations, Association of Bar of City of New York. Democrat. Protestant. Author of articles on certain legal subjects. Clubs: Harvard (N. Y. City); Seminole of Forest Mills (N. Y.). Home: Knoxville, Tenn. Address: Federal Communications Commission, Washington, D. C."

The Chairman. Mr. Fly, had you been requested by the counsel to state your background, that, in brief, is what you would have stated?

Mr. Fly. That is the general outline, sir.

The Chairman. All right. Proceed, Mr. Garey.

Mr. Garey. Now, you have told the Committee, I think, Mr. Fly, that you are Chairman of the Board of War Communications?

Mr. Fly. That is right.

Mr. Garey. And the functions of that Board, if I have been correctly informed, are to be found in a pamphlet dated June 8, 1943. Am I correct?

Mr. Fly. Yes, that is correct.

Mr. Garey. You have seen the pamphlet, have you?

Mr. Fly. I have seen pamphlets of that kind, and I assume I have seen this precise one. I assume it is correct. There may be minor changes in committee structure, but in the main I am sure it is correct.

Mr. Garey. Those are only such changes as might have taken place since June 8, 1943.

Mr. Fly. I assume so.

Mr. Garey. This pamphlet was correct as of that date?

Mr. Fly. So far as I know.

The Chairman. Who issued the pamphlet?

Mr. Garey. The Board of War Communications, I take it. Is that right, Mr. Fly?

Mr. Fly. Yes.

Mr. Garey. The Board of War Communications was created pursuant to several Executive Orders of the President?

Mr. Fly. Yes.

Mr. Garey. And the Executive Orders dealing with that subject are found in this pamphlet?

Mr. Fly. I think so.

Mr. Garey. There is also contained in this pamphlet the organizational set-up and the membership of the Board of War Communications, together with names of committees and the members of the committees, certainly as of this date?

Mr. Fly. That is correct.

Mr. Garey. I will offer this pamphlet in evidence, if the Chairman please, and ask that it be received as Exhibit 4 and marked accordingly.

The Chairman. It is admitted.

(The pamphlet above referred to, offered and received in evidence, was marked Exhibit 4 and is filed in connection with these proceedings.)

Mr. Garey. Rather briefly, Mr. Fly, you are Chairman of that Board?

Mr. Fly. Yes, sir.

Mr. Garey. And Mr. Herbert E. Gaston, an Assistant Secretary of the Treasury, is Secretary of the Board?

Mr. Fly. And a member.

Mr. Garey. And Breckinridge Long, an Assistant Secretary of State; General Dawson Olmstead, Chief Signal Officer of the Army; and Admiral Joseph R. Redman, Director of Naval Communications, complete the Board?

Mr. Fly. That is correct, except there has been a recent change in the office of Chief Signal Officer of the Army; it is now General Ingles.

Mr. Garey. There are only four members of the Board, are there not?

Mr. Fly. There are five.

Mr. Garey. In addition to the Chairman?

Mr. Fly. Four in addition to the Chairmen, yes.

Mr. Garey. The Board has some eighteen committees?

Mr. Fly. I believe that is correct.

Mr. Garey. The Board has no appropriation, as such?

Mr. Fly. I think that each department—and, for that matter, each private company cooperating with the Board—carries its own expenses in connection with the work of the Board.

Mr. Garey. But the Board as such has no appropriation?

Mr. Fly. I believe that is true.

Mr. Garey. And the Board as such has no offices?

Mr. Fly. We have certain minor offices, and there are a few clerks who devote their time exclusively to the work of the Board.

Mr. Garey. When I used the term "offices" I meant it in its physical sense.

Mr. Fly. The answer is "no".

Mr. Garey. There are no offices for the Board of War Communications?

Mr. Fly. That is right.

Mr. Garey. The Federal Communications Commission has four or five clerks assigned to the Chief Engineer, Mr. Jett, who do the clerical work for the Board?

Mr. Fly. There are four or five clerks, I am not sure of the number, who are paid out of a special appropriation which is a part of the general appropriation to the Commission, who are assigned——

Mr. Garey. I am not asking you now who pays the clerks. Will you be good enough to answer my question so that we can move along here. The question is this: The Federal Communications Commission has assigned four or five clerks to the Chief Engineer, Mr. Jett, who do the clerical work for the Board of War Communications; is that right?

Mr. Fly. Up to the point you included Mr. Jett, that is correct. As to the second barrel of the question, that is in part the fact, but other departments have their own employees and own clerks who work on their respective ends of the work of the Board of War Communications.

Mr. Garey. Mr. Jett does all the administrative work, prepares all the agenda, and so forth, does he not?

Mr. Fly. That is not true. That is a rather involved question, Mr. Garey, but Mr. Jett is Chairman of the Coordinating Committee, which is the top ranking committee of the Board, but senior representatives of each government department participating in the work of the Board have active and continuous representation on the Board. Reports, as a rule, originate in the various committees that serve under the Coordinating Committee, and the reports from those committees are submitted through the Coordinating Committee to the Board. Mr. Jett has no authority over any other member of the Coordinating Committee or over any of the other individual representatives on those committees.

Mr. Garey. The Board meets in your office—and by "your office" I mean the office that you occupy as Chairman of the Federal Communications Commission?

Mr. Fly. That is correct.

Mr. Garey. Mr. Fly, you received a letter from me dated June 11, 1943, in your capacity as Chairman of the Board of War Communications, did you not?

Mr. Fly. I think so.

Mr. Garey. Let me show you my copy of that letter and ask you whether or not that is the letter which you received from me?

Mr. Fly. (After examining copy) I believe that is correct.

Mr. Garey. May I read the letter to the Committee?

The Chairman. Proceed.

Mr. Garey. The date I have given you, June 11, 1943. It is addressed to Hon. James Lawrence Fly, Chairman, Board of War Communications, New Post Office Department Building, Washington, D. C.

"My dear Mr. Fly:

"Please send to this Committee at your earliest convenience all of the books, minutes, records, papers and documents pertaining to a complaint that was made to the Board of War Communications (or to its predecessor, Defense Communications Board) against one Neville Miller, and which was considered and reported on by the Law Committee of said Board, including transcripts of all testimony taken during the course of such investigation by said Law Committee.

"Thanking you in advance for your anticipated prompt compliance with this request, I am

"Sincerely yours,

"Eugene L. Garey,

"General Counsel."

You made a reply to that letter by your letter dated June 18, 1943, did you not, Mr. Fly?

Mr. Fly. I think that is correct.

Mr. Garey. And the letter which I now show you is that reply?

Mr. Fly. (After examining letter) That is correct.

Mr. Garey. That letter, Mr. Chairman, is dated June 18, 1943, is addressed to me, and reads as follows:

"Dear Mr. Garey:

"This is in response to your letter of June 11 requesting various documents relating to a complaint

made to the Board against Mr. Neville Miller. The Board has directed me to say that these documents have been classified by the Board as confidential. For your information, the definition of matter classified as confidential is as follows:

"Material shall be classified 'confidential' when the divulging thereof would adversely affect the national security or injure the national prestige.

"The Board considers that the production of such documents 'would adversely affect the national security or injure the national prestige' and, therefore, it must decline your request.

"Very truly yours,

JAMES LAWRENCE FLY,

"Chairman."

That letter is on the letterhead of the Board of War Communications, and is signed as Chairman of that Board.

Now, you recall that shortly after you transmitted this letter to me we had a telephone conversation respecting the subject matter of that letter, do you not?

Mr. Fly. I think that we did. I do not recall it specifically, but I assume we did.

Mr. Garey. Well, let me see if I can refresh your recollection, Mr. Fly. Do you recall a telephone conversation which you had with me shortly after June 18, 1943, in which I protested against the position which you had taken in this letter?

Mr. Fly. I think that is true.

Mr. Garey. And do you recall that you advised me you agreed with me in the position which I took, and you thought I was entitled to this information and should receive it, but that unfortunately you were overruled by the other members of your Board?

Mr. Fly. No, sir, I didn't say any such thing.

Mr. Garey. Do you recall that in the course of that conversation you suggested to me that in view of the fact you felt I should receive this information, you would take the matter up again with the Board if I would write you a further letter, and that in presenting the matter to your Board for further consideration you would, using your own expression, "slant" my position to them, in the hope that they would reconsider this position and submit the information to me as I requested?

Mr. Fly. No.

Mr. Garey. That does not serve to refresh your recollection as to the conversation?

Mr. Fly. It not only does not serve to refresh my recollection as to the conversation, but definitely brings to my recollection that there was no such conversation or any such statement made.

(Laughter.)

Mr. Fly (continuing). I never indicated to you, Mr. Garey, that I differed with the Board.

Mr. Garey. I don't know whether you observed, Mr. Fly, that someone is enjoying your testimony back there. If you would like to have him move up closer, we will accommodate him.

I am sorry I interrupted you. Go ahead.

Mr. Fly. The thing I did say, when you urged that the matter be reconsidered, was that I would not be critical of your viewpoint; and you seemed to want to urge considerations that had not been presented before, and I assured you I would go back before the Board and present your position, and I suggested that you write a second letter setting forth your views more fully, and I would go back before the Board and represent the matter.

Mr. Garey. And that is your recollection of the conversation we had on the date we agree a conversation was had?

Mr. Fly. In substance, yes.

Mr. Garey. In any event, we can agree I did write you another letter on June 21, 1943; is that correct?

Mr. Fly. I think that is correct, and that this is a copy of that letter (indicating copy of letter handed to him by Mr. Garey).

Mr. Garey. That letter, Mr. Chairman, is dated on the date I have indicated, June 21, 1943, and addressed to Mr. Fly in his official capacity as Chairman of the Board of War Communications. "Dear Mr. Fly", it reads:

"Receipt is acknowledged of your letter of June 18, 1943, stating that the Board of War Communications had directed you to refuse the request of this Committee for access to the Board's records pertaining to a complaint made to the Board against one Mr. Neville Miller, on the ground that the furnishing of such records 'would adversely affect the national security or injure the national prestige'.

"It is my feeling that, if you have given this matter any further personal and independent consideration, you either have concluded, or must conclude, that the reason given for the refusal of the Board is altogether untenable. Certainly the desired records are pertinent to the investigation being conducted by this Committee, and are within the scope of the investigation authorized by the House of Representatives. I must, therefore, insist that the requested records be forthwith made available for examination by the Committee and its staff.

"As you have heretofore been informed, in a meeting of the Committee, it is necessary that the staff examine numerous records for the purpose of advising the Committee with respect to their subject matter and bearing upon the investigation; and, as is well understood by the Committee, its staff, and you, nothing is to be or will be disclosed which can adversely affect the war effort or other interests of the Government.

"Unless the desired records are furnished promptly, it will, of course, become necessary to require their production on a Committee subpoena; but a further reasonable time will be allowed for such reconsideration as the Board may see fit to give this matter."

The letter is signed by me.

You made a reply to that letter, did you not, Mr. Fly?

Mr. Fly. That is correct.

Mr. Garey. And that reply is evidenced by your letter dated June 22, 1943?

Mr. Fly. I think that is correct. (After examining letter) Yes.

Mr. Garey. That was a short note, Mr. Chairman, addressed to me, that reads in these words:

"This will acknowledge receipt of your letter of yesterday regarding the records pertaining to a complaint made to the Board against Mr. Neville Miller. I have forwarded a copy of your letter to the members of the Board and the matter will have its further review at the next meeting on July 1.

"Sincerely yours,

"JAMES LAWRENCE FLY,

"Chairman.

(Discussion off the record.)

Mr. Garey. You made further reply to my letter of June 21, 1943, by your letter to me dated July 8, 1943, did you not?

Mr. Fly. That is correct.

Mr. Garey. And the carbon copy which you have just handed me is a true copy of that letter?

Mr. Fly. That is right.

Mr. Garey. You understand that I have not yet received the original?

Mr. Fly. So you state, and I assume that is true, sir.

Mr. Garey. That letter, Mr. Chairman, dated July 8, 1943, and addressed to me, reads as follows:

"Dear Mr. Garey:

"This will acknowledge your letter of June 21, 1943, in which you repeat the request made in your letter of June 11 for various documents relating to a complaint made to the Board against Mr. Neville Miller. On June 18, 1943 the Board wrote declining your request upon the ground that the documents are classified as confidential.

"The Board on July 5 gave further consideration to this matter and concluded that it must decline your request both upon the ground stated in its letter of June 18, 1943 and upon the further ground that the documents you request pertain only to the affairs of the Board of War Communications and do not pertain to the activities of the Federal Communications Commission.

"Very truly yours,

"JAMES LAWRENCE FLY,

"Chairman."

Now, Mr. Chairman, in view of the statement which you find last made in that letter, it probably is important for the Committee, in its consideration of the position of the Board of War Communications, to have a brief statement made by me respecting the information which has come to the Committee's attention respecting the Neville Miller matter, and I will do so in these words:

According to information received by the Committee, there was an investigation ordered by the Board of War Communications into the conduct of Neville Miller, President of the National Association of Broadcasters, who was alleged to have breached his trust to a committee of the Board of War Communications of which he was a member, in that he was alleged to have published confidential matter before the committee before it was passed upon and publicized by the Chairman of the Board, acting for the Board; and in that his organization had made representations to the Selective Service regarding proposals for draft deferments; and in that his organization had made its own plans for the pooling of broadcasting equipment for the benefit of the industry, in opposition to or paralleling plans that were then being made by the Board of War Communications in the same field.

We are further advised that certain members of the Law Committee insisted upon a searching investigation into the facts surrounding that case, so that no action based upon inadequate investigation might jeopardize the position of Mr. Miller, and because such members did not desire to be associated with an action that was not based upon the facts.

We are further advised that when the matter came up for consideration before the Law Committee, at the very first meeting of this Committee on the matter, the Secretary of the Committee, Mr. Oscar Schachter, who was then in the employ of the Federal Communications Commission and acted as Secretary of the Law Committee, had prepared a proposed set of findings and conclusions based upon what he explained to the Law Committee that morning had been a careful investigation by himself for the Law Committee.

We are further advised that certain members of the Law Committee, being aware of certain facts and information surrounding this matter, recognized the proposed findings and conclusions to be wholly unsupported by the facts, and insisted upon a very searching examination and the taking of evidence, which was vigorously opposed by the General Counsel of the Federal Communications Commission, who was also Chairman of the Law Committee; that representatives of the Federal Communications Commission, while they did not predominate in membership on the Law Committee, they did have the chairmanship and secretariat, and therein, of course, the authority to prepare proposed reports and make them available for the Law Committee at its meetings, in order to facilitate its work; that the position of Chairman and Secretary, and the maintenance of the records and the preparation of the reports, gave a measure of control to the representatives of the Federal Communications Commission.

We are further advised that certain members of the Law Committee, being convinced that the proposed action against Mr. Miller was unwarranted upon the basis of the facts, did not desire to participate in such action unless there was adequate reason therefor.

That the original allegations against Mr. Miller in the Board of War Communications were brought by the Chairman of the Board, Mr. Fly, who was also Chairman of the Federal Communications Commission.

That when certain members of the Committee recommended that testimony be taken, the General Counsel of the Federal Communications Commission suggested that no record of the proceedings be kept; that after protest by certain members of the Committee, testimony was taken and the proceedings took place in the General Counsel's office in the offices of the Federal Communications Commission; that as a result of the hearing it was apparent that the charges were wholly unsupported by the evidence, and the recommendation of the Law Committee was three to two for holding the charges unsustained.

That there was a minority report filed by the General Counsel of the Federal Communications Commission and one other member of the Committee, although all members agreed that the main charges, involving the disclosure of confidential information, had not been sustained by the evidence; that the majority of the Committee, however, held that there had been no violation of any rules or procedures of the Board of War Communications.

The Committee is further advised, Mr. Chairman, that the action of the General Counsel of the Federal Communications Commission throughout these proceedings was dominated and controlled by Mr. Fly; that the charges preferred by Mr. Fly against Mr. Miller to the Board were oral and may be found only in the minutes of the Board; and that in succeeding weeks the minutes were changed three times in order that the charges might conform to the proof.

That the charges were brought by Mr. Fly against Mr. Miller in reprisal for opposition which Mr. Miller had voiced in his official capacity as President of the National Association of Broadcasters against certain acts and policies of Mr. Fly as Chairman of the Federal Communications Commission; and that the only reason for bringing these charges before the Law Committee was to take advantage of the opportunity presented to Mr. Fly, as Chairman of the Board of War Communications, to punish Mr. Miller for his opposition.

Now, Mr. Fly, you were asked to produce this morning before this Committee, certain records. Is that correct?

Mr. Fly. Yes. I received a subpoena ordering me to produce certain records regarding this matter.

Mr. Garey. And have you produced those records?

Mr. Fly. I have not, sir.

Mr. Garey. Will the Committee direct the witness to produce the records he was called upon by subpoena to produce?

The Chairman. Mr. Fly, you will make response to the subpoena.

Mr. Fly. May I make a brief statement before the Committee takes a final position?

The Chairman. Do you produce them, or do you decline?

Mr. Fly. I have not produced them, sir, but in declining to produce them in accordance with instructions of the Board of War Communications, I feel under a duty to make the Board's position clear to the Committee.

The Chairman. I think you should be permitted to explain why you do not produce them.

Mr. Garey. May the record show, Mr. Fly, so that there may be no question about your position, that you have refused to produce the documents?

The Chairman. Under the direction of the Committee; that is, that you have refused, the Committee having directed you to produce?

Mr. Fly. I would prefer not to jump all the hurdles.

Mr. Hart. He stated he has not produced them, and he now asks permission to make a statement as to the position he takes.

The Chairman. All right.

Mr. Fly. I have been subpoenaed to come here this morning and bring with me certain records of the Board of War Communications pertaining to a complaint made to the Board against Mr. Neville Miller with respect to his conduct as a member of Committee IV of said Board.

The Committee's Counsel first requested these records in a letter to the Board dated June 11, 1943. The Board—which is composed of the Chief Signal Officer of the Army, the Director of Naval Communications, Assistant Secretary of State Mr. Breckinridge Long, Assistant Secretary of the Treasury Mr. Herbert Gaston, and myself—considered the matter on June 17, 1943, and unanimously concluded to decline to produce the records.

In a letter dated June 21, 1943, your Counsel repeated his request. Thereupon, the Board took the matter up for a second time. Again it was the unanimous decision of the members that the documents should not be produced. The Board based this decision on two grounds, both of which are set out in its letter to your Counsel dated July 8, 1943, a copy of which has been received in evidence.

First, the Board stated that it must decline to comply with the request because the records in question are classified as "Confidential". Secondly, the Board pointed out that the records requested "pertain only to the affairs of the Board of War Communications and do not pertain to the activities of the Federal Communications Commission".

This Committee is investigating the activities of the Commission, but it is not authorized to investigate the Board of War Communications, which, as I have said, is comprised of representatives of the Army, Navy, State Department, Treasury Department, as well as the Commission.

In view of this directive of the Board, I would, even if the documents were in my custody—and it happens that they are not—have no choice but to decline to hand them over to this Committee. Being only a member of a five-man Board, I could not undertake myself to overturn the position firmly taken by the other members. As Chairman of the Board I have no choice but to abide by its decision in this matter.

Mr. Hart. Were all the members of the Board of War Communications present when that decision was reached?

Mr. Fly. That is correct, except that the Director of Naval Communications, who was abroad, as I understand

it, was represented by his senior assistant, Captain Inglis.

Mr. Garey. Mr. Fly, I would like to put in the record the subpoena that was served upon you. Will you identify it (handing subpoena to the witness)?

Mr. Fly. That is correct.

Mr. Garey. This subpoena, Mr. Chairman, directs the witness to produce and bring with him "all files, memoranda, minutes, records, reports, correspondence and papers of the Board of War Communications relating to or connected with a complaint and/or charges filed (and as changed from time to time during the hearing) before the Board of War Communications (or its predecessor Defense Communications Board) against one Neville Miller, President of the National Association of Broadcasters and the Army and Navy's opposition thereto including without limiting the generality of the foregoing the transcripts of the testimony taken at the hearing on such charges and the findings exonerating Mr. Miller; also the proposed set of findings and conclusions presented to the first meeting of the Law Committee of the Board of War Communications by Mr. Oscar Schachter, an employee of the Federal Communications Commission and Secretary of the Law Committee. Also all files, memoranda, minutes, records, reports, correspondence and papers relating to or connected with the above subject matter in the possession of the Federal Communications Commission. Also all of your personal or private files, memoranda, minutes, records, reports, correspondence and papers relating to or connected with the above subject matter."

That subpoena was directed to the witness in his capacity as Chairman of the Board of War Communications, as Chairman of the Federal Communications Commission, and individually.

I ask to have that subpoena received in evidence as Exhibit 5 and marked accordingly.

The Chairman. It is admitted.

(The subpoena for James Lawrence Fly above referred to, offered and received in evidence, was marked Exhibit 5 and is filed in connection with these proceedings.)

Mr. Garey. Mr. Fly, I observed in the statement which you made to the Committee—and you may correct me if my recollection is faulty—that you made reference to the fact that these records are not in your possession.

Mr. Fly. That is correct.

Mr. Garey. You don't attach any significance to that, do you?

Mr. Fly. I stated that for whatever it is worth to the Committee. May I explain, I am in no sense in charge of the Board of War Communications. I have one vote out of five on the Board; the Army, Navy, State Department and Treasury Department are also represented. The same is true in the Coordinating Committee, where the Commission has only one vote; and on most of the committees the Commission has only one vote out of as many as twelve, fifteen, or twenty-five members.

The Board has a Secretary, Mr. Herbert E. Gaston, who has acted continuously as Secretary of the Board, and I would assume that customarily he would be deemed custodian of the official documents. I myself have never been made custodian of any of the Board's documents. I think in this instance a goodly part of the documents are in the possession of the Law Committee, over which I do not, as an individual or as Chairman of the Commission or as Chairman of the Board, have any control.

Mr. Garey. The documents that we have called for, other than those which happen to be in your personal possession, are in the possession of Mr. Denny, the General Counsel of the Federal Communications Commission and as such Chairman of the Law Committee of the Board of War Communications; is that true?

Mr. Fly. No, that is only partly true. I assume that the different departments—the Army, Navy, State and Treasury—have certain files on the subject, either in the hands of their Board members or in the hands of their respective members on the Law Committee.

The Chairman. Why should you dissipate the files in that manner? Why would you scatter them around in that manner? Why shouldn't they be incorporated in one document?

Mr. Fly. It might be well that they should be, Mr. Chariman, but where every department is involved they naturally accumulate documents; sometimes they originate documents themselves, and with hearings, they may have copies of the hearings, copies of the proposed findings, and so forth. I think it normal that the participating departments should have such files.

Mr. Garey. I suggest that Mr. Fly step aside and that Mr. Denny take the stand. He is here.

(Thereupon the witness, Charles R. Denny, Jr., was duly sworn by the Chairman.)

Sworn Testimony of Charles R. Denny, Jr., General Counsel of the Federal Communications Commission

Mr. Garey. Mr. Denny, you are General Counsel of the Federal Communications Commission?

Mr. Denny. Yes.

Mr. Garey. And you have acted in that capacity for approximately how long?

Mr. Denny. Since October 6th last.

Mr. Garey. And you succeeded Mr. Telford Taylor, who was then General Counsel of the Federal Communications Commission?

Mr. Denny. That is correct.

Mr. Garey. And as General Counsel of the Federal Communications Commission I think you became Chairman of the Law Committee of the Board of War Communications?

Mr. Denny. The Board elected me Chairman of the Law Committee.

Mr. Garey. And you have acted in that capacity since substantially the time you became General Counsel of the Federal Communications Commission?

Mr. Denny. Yes, since the latter part of last October.

Mr. Garey. Did there come in your possession, as General Counsel of the Federal Communications Commission and as Chairman of the Law Committee of the Board of War Communications, the documents we have been dis-

cussing here with Mr. Fly and which are more particularly enumerated and specified in the subpoena which has been received in evidence here as Exhibit 5?

Mr. Denny. When Mr. Taylor left, among other things pertaining both to the Commission and to the Law Committee of the Board of War Communications which he turned over to me, he handed me a large sealed Manila envelope, on the outside of which I think is written "Neville Miller Matter". I have that envelope in my possession today. I have not opened it. I presume, Mr. Garey, that that envelope contains all of the papers which Mr. Taylor had in his possession with respect to that matter.

Mr. Garey. And if directed by Mr. Fly to deliver those documents to him, or to deliver those documents to this Committee, you would comply with that direction?

Mr. Denny. If directed to deliver those documents to this Committee, I would find myself in the same position Chairman Fly finds himself in; I would feel myself also bound by the Board's directive. I will, however, do whatever the Board directs in respect to those documents.

Mr. Garey. And if Mr. Fly directs you to deliver those papers to him, you will of course deliver them to him?

Mr. Denny. I think it fair to state that if any member of the Board of War Communications should ask the Chairman of the Law Committee, or any member of the Law Committee of the Board, for papers, those papers would be turned over to that member. It could be Mr. Fly or any other member of the Board.

Mr. Garey. That includes Mr. Fly?

Mr. Denny. I did include Mr. Fly.

Mr. Garey. And so if Mr. Fly requested you to deliver those papers to him, you would very promptly deliver them to him, would you not?

Mr. Denny. I have answered that.

Mr. Garey. I don't think there is any doubt about that, is there, Mr. Denny?

Mr. Denny. I would deliver them to any member of the Board, because I think the responsible members of the Board would follow the directives of the Board as to turning them over to this Committee. If a member of the Board asked me for them, it wouldn't be up to me to say, "I can't turn them over to you because you might turn them over to the Committee".

Mr. Garey. Mr. Fly's position on this record requires me to now ask you to produce those papers which are in your possession. Are you willing to do so?

Mr. Denny. I feel myself bound by the directive of the Board of War Communications, and must decline.

Mr. Garey. When you say you feel yourself bound by the directive of the Board of War Communications, have you had a personal directive directed to you?

Mr. Denny. No. However, I have seen the two letters written at the direction of the Board. All minutes of the Board are delivered to me as Chairman of the Law Committee, and I know what action has been taken, and, being informed of that, I feel bound thereby.

Mr. Garey. And that is your position?

Mr. Denny. That is my position.

Mr. Garey. I think Mr. Denny might stand aside. I would like to have Mr. Fly resume the stand.

(Witness excused.)

Sworn Testimony of James Lawrence Fly, Chairman of the Board of War Communications (Resumed)

Mr. Garey (to photographer). Do you want to take the witness' picture? I think you might take it now.

Mr. Fly. He might find a more appropriate moment for it later.

Mr. Garey. I think we ought to give the witness an opportunity to have a good picture taken.

Mr. Fly. I don't do any good on that. I leave him on his own. You take all the risks.

The Chairman. Proceed, Mr. Garey. Let him catch him on the wing.

Mr. Garey. Mr. Fly, you stated that there were copies of these records in connection with the Neville Miller matter in each of the several departments represented on the Board of War Communications, did you not?

Mr. Fly. I said I assumed that the different departments or their own respective members on the Law Committee had their own documents.

Mr. Garey. You know that to be true, don't you?

Mr. Fly. I assume that to be true. I have not examined their files or questioned them as to what each department has.

Mr. Garey. The member of the Law Committee representing the Federal Communications Commission is the General Counsel of the Federal Communications Commission, is he not?

Mr. Fly. The General Counsel of the Federal Communications Commission has been named by the Board as the Chairman of the Law Committee of the Board.

Mr. Garey. He is named because he is the General Counsel of the Federal Communications Commission, isn't he?

Mr. Fly. No, I am not sure that there is any requirement in the organizational set-up. There may be. I would have to look that up. It is my recollection at the moment that they were named by name.

Mr. Garey. Named by name in their respective capacities; isn't that true?

Mr. Fly. Well, they had varying capacities, and I don't think they took their capacities in other organizations in there with them. Some had no particular capacities except that they were officers in the Navy doing legal work, perhaps in communications.

Mr. Garey. Can't we be frank about that, Mr. Fly? Let me read to you from page 12 of Exhibit 4. It is captioned "Law Committee":

> "The duties of the Law Committee include the furnishing of legal opinions and advice, and the drafting of final reports and recommendations, proposed Executive Orders, proclamations, and legislation. The Law Committee will report directly to the Board but will have liaison, for purposes of advice and consultation, with the Coordinating Committee, and, as may be necessary, with other committees:

"Members:

"Chairman, Mr. Charles R. Denny, Jr., General Counsel, Federal Communications Commission."

Now, I take it that it will not be your position here before this Committee that Mr. Denny was selected for the chairmanship of that Committee, or for membership on that Committee, for any other reason, or for any other purpose, or for any other intent, except the fact that he was General Counsel of the Federal Communications Commission? Am I correct?

Mr. Fly. I think you are wrong in the implications of your statement, Mr. Garey.

Mr. Garey. All right, you straighten me out, then. You tell this Committee, if you will, whether Mr. Denny is on that Committee for any reason wholly separate and apart from the fact that he is General Counsel of the Federal Communications Commission.

Mr. Fly. These committees are formed by the delegates from each of the government departments participating in the work of the committee. It happens that from the Commission, on each occasion of a vacancy on the Law Committee, first, the original appointment, and second, the vacancy occurring when Mr. Taylor went out and Mr. Denny came in, I did nominate Mr. Denny, who was our General Counsel, to act as a member of that Committee. The Board elected him and the Board elected him Chairman of that Committee.

It may well be that on tomorrow, or at some other time, the Board will see fit to name some other lawyer for that place, or for other membership on the Law Committee. It is by no means automatic.

Mr. Garey. But if Mr. Denny were replaced, it would be by a member from the Federal Communications Commission, would it not?

Mr. Fly. I assume each department would name a member of its own department. All departments have done that.

Mr. Garey. So that we come down to the fact, which should be indisputable, that Mr. Denny is on there because he is General Counsel of the Federal Communications Commission, because he is an employee of the Federal Communications Commission, and because you nominated him?

Mr. Fly. He is on there because I nominated him, but that is not at all the controlling consideration which led me to nominate him or which led the Board to elect him as a member or elect him as Chairman. It might be that on tomorrow I would nominate him and the Board would elect another member.

Mr. Hart. Was he nominated by you because you thought at the time it would be good policy to have a man representing the Federal Communications Commission who was General Counsel?

Mr. Fly. I thought we should have the most competent and most responsible lawyer which we could have on that Committee, and it is only natural, I think, that I should have looked to Mr. Denny. At the same time, if Mr. Denny's duties should become so onerous with much litigation or legislation or a variety of other work which might arise, I would at any time feel free to withdraw his nomination and nominate another lawyer to occupy that place.

Mr. Hart. Or even if, unhappily, you found your judgment was wrong?

Mr. Fly. That is true, but I do not anticipate that.

Mr. Garey. Let us see if we can get some things straight. Mr. Denny is General Counsel of the Federal Communications Commission?

Mr. Fly. Yes.

Mr. Garey. And he is Chairman of the Law Committee of the Board of War Communications?

Mr. Fly. That is right.

Mr. Garey. And he does have possession of the papers this Committee has subpoenaed with respect to the Neville Miller matter?

Mr. Fly. He has some.

Mr. Garey. What papers does he have?

Mr. Fly. I don't know.

Mr. Garey. You said he has some, and therefore you must have answered that question with the thought in mind that some are located elsewhere. What papers does Mr. Denny have, and what papers doesn't he have, and what is the location of the papers Mr. Denny does not have?

Mr. Fly. I don't know precisely what papers Mr. Denny has.

Mr. Garey. Do you want to change your answer, then?

Mr. Fly. Nor do I know what papers the State Department has or the Treasury Department has or the Army and Navy have. I would assume Mr. Denny has as comprehensive a file as any department.

Mr. Garey. Do you want to change your answer? You don't know anything about the matter; is that your testimony?

Mr. Fly. I would like to strike that out if I did utter those words.

Mr. Garey. You recall that you stated Mr. Denny has some of them?

Mr. Fly. Yes.

Mr. Garey. Now are you prepared to direct Mr. Denny to submit those papers to the Committee?

Mr. Fly. I am bound by the instructions of my Board.

Mr. Garey. And that is your position here?

Mr. Fly. That is the Board's position.

Mr. Garey. As a lawyer, you know that position has no foundation in law against the writ of this Committee, don't you?

Mr. Fly. Would you like to hear my opinion on that?

Mr. Garey. I would. I have heard a good deal about your legal opinions, and I would like to hear it.

Mr. Fly. I think you are wrong.

Mr. Garey. If there has been any doubt about it in the past, Mr. Chairman, I think we are right now.

Mr. Fly. I think we agree on that.

Mr. Garey. One or two more matters then we will be through with you for the present.

You did make a complaint to the Board of War Com-

munications against Neville Miller as President of the National Association of Broadcasters, did you not?

Mr. Fly. I did not.

Mr. Garey. Did you transmit to that Board a letter from a man named "Scoop" Russell?

Mr. Fly. I believe there, if it please the Committee, I am bound by the Board's instructions.

Mr. Garey. This relates to a matter, Mr. Chairman, before it ever got before the Board of War Communications, and of course it is absurd for the witness to take that stand.

The Chairman. Let us stop spreading this cloak of confidential information over everything. Here is a question that relates to a matter that arose before it got to the Board. How could it fall within that classification?

Mr. Fly. It did not arise anywhere except within the Board. The complaint which was made to me was made to me in my capacity as Chairman of the Board.

Mr. Garey. And based upon that complaint received from "Scoop" Russell, did you then prefer charges against Neville Miller?

Mr. Fly. No, I did not, but I must ask that I not be requested to give piecemeal the very testimony which the Board has directed me not to give.

Mr. Garey. You refuse to answer that question, Mr. Fly?

Mr. Fly. I have answered it.

Mr. Garey. What is your answer?

Mr. Fly. I said that I gave you a part of the facts there, but I asked you not to request me to violate the instructions of my Board and to give the testimony which the Board has instructed me not to give.

Mr. Garey. In some capacity you received a letter from "Scoop" Russell, did you not?

Mr. Fly. I think I am bound by the instructions of my Board there, sir.

Mr. Garey. Do you refuse to answer that question?

Mr. Fly. I don't think I can answer that question unless the Board authorizes me to do so.

Mr. Garey. Will the Committee direct the witness to answer the question?

The Chairman. Of course I think the question is perfectly proper, and I see nothing of a confidential nature involved, certainly nothing that could be called a war secret. The Committee directs the witness to answer.

Mr. Fly. The witness regrets to inform the Committee that he feels bound by the instructions of the Board of War Communications, instructing him not to present this testimony.

Mr. Garey. And do you refuse to answer the question?

Mr. Fly. I have answered it.

Mr. Garey. Do you refuse to answer the question?

Mr. Fly. I have answered it.

The Chairman. Is it fair to state you decline to answer on the grounds stated?

Mr. Fly. Yes. I can't come here and overrule the Board. I can't go anywhere and overrule the Board.

Mr. Garey. Before you received this letter from "Scoop" Russell, did you have any talk with him about it?

Mr. Fly. I must give the same response to that question.

Mr. Garey. Before you received this letter from "Scoop" Russell—I want you to understand this question—did you have any discussion with him about the Neville Miller matter?

Mr. Fly. I give the same answer to that question that I did to the preceding question.

Mr. Garey. Will the Committee instruct the witness to answer the question?

The Chairman. You are instructed to answer.

Mr. Garey. Do you now decline to answer the question after the Committee's direction?

Mr. Fly. I give the same answer to this question as to the preceding question.

Mr. Garey. Did you request Mr. Russell to write that letter to you?

Mr. Fly. Same answer.

Mr. Garey. Will the Committee direct the witness to answer the question?

The Chairman. The Committee directs the witness to make a responsive answer.

Mr. Fly. Same answer.

Mr. Garey. Wasn't the transmission of that letter to you by "Scoop" Russell made pursuant to an agreement that you and Mr. Russell arrived at in Chicago prior to the date that this letter was transmitted to you?

Mr. Hart. May I suggest something, Mr. Garey?

Mr. Garey. Yes, Mr. Congressman.

Mr. Hart. There is nothing in the record to indicate that Mr. Fly is acquainted with anyone having the euphonious name of "Scoop" Russell.

Mr. Garey. Let us have an answer to my last question, then, Mr. Congressman, we will ask him whether or not he knows "Scoop" Russell.

Do you want the question read?

Mr. Fly. Yes.

(The pending question was repeated by the reporter as follows:

"Wasn't the transmission of that letter to you by 'Scoop' Russell made pursuant to an agreement that you and Mr. Russell arrived at in Chicago prior to the date that this letter was transmitted to you?")

Mr. Fly. I am in a difficult position here, Mr. Chairman. I am tempted, in order to avoid the serious innuendoes and implications of a question like that, to meet the issue squarely.

The Chairman. That is for your determination.

Mr. Fly. But I am obligated by the direction of my Board, and I think I am forced to make the same answer to that question as to the preceding questions.

Mr. Garey. It has been suggested, Mr. Fly, that inquiry be made of you to find out if you know a man by the name of "Scoop" Russell. Do you know him?

Mr. Fly. Frank Russell is vice president of the National Broadcasting Company. I know him well.

Mr. Garey. You also know him by the name of "Scoop" Russell?

Mr. Fly. Everybody knows him as "Scoop". He is noted as "Scoop".

Mr. Garey. And you have known him for a long period of time?

Mr. Fly. I have known him, I suppose, since I have been Chairman of the Commission.

Mr. Garey. Mr. Hauser suggests that this record may not be complete in that the question just preceding these which I put to the witness relating to his conversation with "Scoop" Russell in Chicago, had no direction from the Committee to the witness to answer.

The Chairman. The witness is directed by the Committee to make answer.

Mr. Fly. I think I made my answer, but I will say, to save time, same answer.

Mr. Garey. Is there anything on the subject of Neville Miller and the talks you had with "Scoop" Russell prior to the time this letter was transmitted by Russell to you and by you to the Board of War Communications, that you are willing to testify to before this Committee?

Mr. Fly. Will you read that question?

(The pending question was repeated by the reporter.)

Mr. Fly. If that question pertains to this matter that is exclusively a matter of the Board of War Communications, then to that extent I am obligated to abide by the direction of my Board.

The Chairman. If you met Mr. Russell in Chicago and you did have a conversation with him in reference to the Miller matter, were you at that time acting as a member of the Board of War Communications, or were you acting in your individual capacity as Mr. Fly, or were you acting as Chairman of the Federal Communications Commission? Just how do you bring that in under the claim that it is confidential?

Mr. Fly. I might say, Mr. Chairman, that that question is like asking me what I am doing in New York City at this moment.

The Chairman. I was not asking you about New York City. I was asking you about an alleged conversation you had with Mr. Russell in Chicago. If you had such conversation, were you conversing with him as Mr. Fly, as Chairman of the Board of War Communications, or as Chairman of the Federal Communications Commission?

Mr. Fly. The only thing I know of that is at all related to this matter—and I wouldn't mention that if it were not a distant thing and outside the scope, but it bears on the innuendoes as to Mr. Russell—I do happen to have information that Mr. Russell, in a meeting of the Board of Directors of the National Association of Broadcasters, was in a position to cast the deciding vote which would have eliminated Mr. Miller as President of that Association, and as I understand it Mr. Russell did not cast that vote, and Mr. Miller remained as President.

Mr. Garey. Were you present at that convention?

Mr. Fly. No, that is post St. Louis.

Mr. Garey. Were you present in Chicago?

Mr. Fly. No.

Mr. Garey. You were present in St. Louis, were you not?

Mr. Fly. A year or two earlier.

Mr. Garey. Did you at that time discuss any matters relating to Neville Miller with "Scoop" Russell? Just answer the question "yes" or "no" so that we don't have too long a record on a matter which you are determined to take a position on.

Mr. Fly. I don't think Mr. Russell was in St. Louis, and I don't think I had any conversation at all with him there. If I did, I didn't have any about Mr. Miller.

Mr. Carey. How frequently do you see Mr. Russell?

Mr. Fly. I suppose once in two months.

Mr. Garey. And where do you see him?

Mr. Fly. In my office.

Mr. Garey. Are there occasions when you see him more frequently than what you have indicated?

Mr. Fly. Of course. In the train of human events you do not see people you are acquainted with and have business with at regular intervals; but I have never seen Mr. Russell at frequent intervals over any extended period of time.

Mr. Garey. I think, Mr. Chairman, in view of this witness's position, which, as I have advised the Committee, has no foundation in law, the only ground upon which this witness can refuse to answer the questions put to him by this Committee would be on the ground it would tend to incriminate or degrade him.

Mr. Fly. I do not take that ground, and I do not want you to make the implication I am refusing on that ground.

Mr. Garey. My remarks are addressed to the Chairman as my opinion of the only ground upon which the witness can refuse to answer any questions or refuse to produce documents requested by the Committee; and this might not be good as to the production of documents.

I think the matter of the course to be taken by this Committee is one that should be considered by the Committee in executive session, and I think we can excuse this witness at this time.

Mr. Miller. It is not clear in my mind, Mr. Fly, when you say you had this conversation with Mr. Russell in Chicago.

Mr. Fly. Let us get that clear. I didn't have any such conversation.

Mr. Miller. Did you see Mr. Russell in Chicago at or about the time mentioned?

Mr. Fly. I don't think so.

Mr. Miller. Did you attend the meeting referred to in Chicago?

Mr. Fly. No. I was in Washington at that time.

Mr. Miller. May I ask what was the source of your information as to the fact that Mr. Russell could have cast the deciding vote that would have ousted Mr. Miller from his job?

Mr. Fly. Everybody in the industry knew it.

Mr. Miller. That doesn't answer the question. What was the source of your information?

Mr. Fly. I don't know. I am sure I didn't get it from Mr. Russell.

The Chairman. While you deny you had a conversation with Mr. Russell in Chicago, did you have a conversation with him prior to his writing this letter?

Mr. Fly. On that I must make the same answer I have heretofore made. I have tried to keep my testimony within the direction from the Board.

The Chairman. If you had such conversation and you entered into such an understanding as has been intimated, where did it take place?

Mr. Fly. Well, of course, I can't go along with the implications, Mr. Chairman, and of course I must give you the same answer as I have heretofore given.

The Chairman. Is there anything further from Mr. Fly, Mr. Garey?

Mr. Garey. I think we can excuse Mr. Fly at this time.

Mr. Fly. I would like to make one further brief statement, and this is on my own, and I am not now speaking as Chairman of the Board of War Communications, but I do want to stress to this Committee the great importance of the complete preservation of the secrecy of documents that are confidential and secret in nature, and particularly those that are so branded by the military.

I do not want to be hypercritical of this Committee, I have tried to cooperate with the Committee in every way, but I think you have all seen the publicity building up—

The Chairman. Oh, Mr. Fly, it is not proper that you should make a speech here to the Committee. The Committee wants to accord you every courtesy. I thought what you wanted was an opportunity to make further explanation as to why you have declined to produce documents and as to why you have refused to answer questions. We can't make this hearing a sounding board.

Mr. Fly. I just wanted to inform the Committee of one thing, and that is the grave danger—

The Chairman. You must not use this Committee as a vehicle for broadcasting your views. You have facilities by which you can do that, and by which you do do that. Why not content yourself with the use of those facilities and not impose on this Committee?

Mr. Fly. I would be derelict if I did not state to the Committee that I have in my pocket a confidential document from the Joint Chiefs of Staff which completely refutes the grave charge made in the letters broadcast by this Committee. I have felt that I am bound by the rules governing secret documents, and by the Espionage Act, and am unable to bring out facts of that kind. I think it wise to point to the dangers of that publication.

Mr. Miller. I believe in one of your letters to the General Counsel of the Committee you defined confidential matter as material the divulging of which would adversely affect the national security or prestige. Is that substantially your definition?

Mr. Fly. I quoted the definition arrived at by the Board itself, and I believe that is correct.

Mr. Miller. What is your definition or conception of the national prestige as used in that definition?

Mr. Fly. I have no definition of it myself. I imagine it takes its ordinary connotation. I didn't write the definition. I imagine it was written by the Army or Navy.

Mr. Miller. Does it have any political significance?

Mr. Fly. None at all. It has to do with the efficiency of the war agencies of the government.

Mr. Garey. In this conversation I had with you after receipt of your letter of June 18, 1943, didn't you point out to me that what was meant by the term to which Congressman Miller has directed your attention was that we would bring the Board of War Communications into disrepute or a lack of public confidence if these documents were produced, and that thereby the national prestige would be endangered?

Mr. Fly. I don't think I attempted to define it.

Mr. Garey. You will recall we discussed it, and I asked in what respect the national prestige could possibly be involved. Do you recall that?

Mr. Fly. I recall a conversation generally along those lines.

Mr. Garey. And do you remember your statement to me that the national prestige would be involved if the Board of War Communications were brought in such a position that the public might lose confidence in it?

Mr. Fly. I think what I did was quote you the rule which the Board had laid down, and tell you that the Board felt that this matter not merely was classified by the Board as confidential—and always has been classified as confidential—but the Board felt the production of these documents would be a violation of that rule.

Mr. Garey. It may take me a long time to get the answer, but—

Mr. Fly. It will take you a long time to get the answer you want.

Mr. Garey (continuing)—I want you to answer the question put to you.

Mr. Fly. No.

Mr. Garey. Read the question so that the witness will know what he is saying "no" to.

(The pending question was repeated by the reporter as follows:

"And do you remember your statement to me that the national prestige would be involved if the Board of War Communications were brought in such a position that the public might lose confidence in it?")

Mr. Fly. In so far as my answer conforms to the implications from your question, "yes"; otherwise, "no".

Mr. Garey. What do you mean by "implications"? Are you still avoiding making an answer?

Mr. Fly. I have answered it. I told you that so much of your question as was in accord with my affirmative statement was true; otherwise it was incorrect. I don't know why I should repeat it.

Mr. Garey. Suppose we let the Committee know what did take place. Did we discuss that rule?

Mr. Fly. I think undoubtedly I drew your attention to the rule.

Mr. Garey. Did we discuss the rule or didn't we?

Mr. Fly. I think I drew your attention to it.

Mr. Garey. Then why don't you say so instead of saying "undoubtedly"? Did you discuss the rule with me or didn't you?

Mr. Fly. Undoubtedly.

Mr. Garey. Let me have that letter, please. I will give you another opportunity to say "undoubtedly". In your letter of June 18, 1943, among other things, you state:

> "For your information, the definition of matter classified as confidential is as follows:
>
> "Material shall be classified 'confidential' when the divulging thereof would adversely affect the national security or injure the national prestige."

Do you not so state in your letter of June 18, 1942? You can answer that "undoubtedly" if you want to.

Mr. Fly. You have the document. I will assume that is correct.

Mr. Garey. I will let you look at it.

Mr. Fly. Quote: "Material shall be classified 'confidential' when the divulging thereof would adversely affect the national security or injure the national prestige."

Mr. Garey. Do you remember that in this conversation which you and I had we discussed those words?

Mr. Fly. Yes.

Mr. Garey. And do you remember that I asked you whether there was anything in the Neville Miller papers that would adversely affect the national security?

Mr. Fly. I think you argued with me about the Board's conclusion, and undoubtedly you asked some such question.

Mr. Garey. And do you remember your answer to me was "no", that you would not so claim?

Mr. Fly. I remember I did not make such answer.

Mr. Garey. Is it your position that there is anything in the Neville Miller papers that would adversely affect the national security?

Mr. Fly. My position here is the position of my Board. The position of my Board is that the production of the proposed evidence is in violation of the rule which is quoted and would adversely affect the national security or injure the national prestige.

Mr. Garey. My question is, did you tell me in that telephone conversation to which I have made reference that there was nothing in the Miller papers that we were discussing that would adversely affect the national security? Did you tell me that or didn't you?

Mr. Fly. I did not.

Mr. Garey. All right. I have that established so far as your testimony goes.

Mr. Fly. Will you read that question, please?

(The last question and the answer thereto were repeated by the reporter.)

Mr. Garey. Did you tell me that the only manner in which the rule could be applied, in your opinion, was under the second clause of that rule, namely, that the disclosure of the Neville Miller proceedings and the matters connected therewith would injure the national prestige?

Mr. Fly. No.

Mr. Garey. You did not say that to me?

Mr. Fly. I did not.

Mr. Garey. Will you deny, Mr. Fly, that when I asked you in what respect, or in what manner, you could possibly take that position, you told me that the showing that would be made by the Miller papers of the dissension existing within the Board, of the position of the Federal Communications Commission in relation to it, and of the decision in the matter exonerating Neville Miller, would bring the Board of War Communications into public disgrace?

Mr. Fly. I did not say anything even approximating that.

Mr. Garey. Let us find out whether or not in your present opinion the production of the Neville Miller papers would adversely affect the national security?

Mr. Fly. I think in accordance with the position that I must take here, responsive to the direction of my Board, that it would—May I see that letter?

Mr. Garey. Which letter? This one (handing letter to the witness)?

Mr. Fly. That is right.

The Chairman. Now, Mr. Fly, you realize what you are doing, do you not? You have been claiming a privilege and you are now giving it away.

Mr. Fly. I am talking about a telephone conversation, sir.

The Chairman. Go ahead.

Mr. Fly. If you don't want it, I don't care to go ahead with it.

The Chairman. Go ahead and answer the question.

Mr. Fly: I am content not to go ahead. This has nothing to do with the merits. This has to do with a telephone conversation.

The Chairman. Go ahead.

Mr. Garey. You don't seem to understand the question. I am asking for your opinion now, as you sit there in that witness chair, as to whether the production of the Neville Miller papers that this Committee has called for would adversely affect the national security?

Mr. Fly. The national security or the national prestige.

Mr. Garey. Which, in your opinion, would be affected?

Mr. Fly. I have not delineated, nor has the Board delineated.

Mr. Garey. I am asking you to delineate as a witness whose personal opinion is asked.

Mr. Fly. I am not here in a personal capacity nor as an expert in those things, nor am I authorized to go into the merits of this matter.

Mr. Garey. May we have it clear on the record that the witness is purposely evading questions. Let us get the record clear.

Mr. Fly, in your opinion, would the production of the documents called for in the subpoena which has been served upon you adversely affect the national security?

Mr. Fly. That is the position of my Board, and that

is the position I must take here, and therefore that is the position I do take.

Mr. Garey. The witness, Mr. Chairman, has not answered my question. Will the Committee direct the witness to answer?

The Chairman. Mr. Fly, is it not possible for you to make a responsive answer?

Mr. Fly. I will answer the question "yes".

Mr. Garey. Why, in your opinion, would it adversely affect the national security?

Mr. Fly. I thought you would go into that. If you are going to proceed, I do not want to violate the instructions of my Board.

Mr. Garey. I think the time has come when we should control this record. I suggest that there be physically stricken from the record Mr. Fly's answer to my question, so that the record will not be encumbered with his speeches, and that the Chairman direct the witness to make a responsive answer.

Mr. Fly. I think from my point of view, and from the public point of view, it would be very unfortunate if this Committee ever gagged any witness who came before it and who was trying to do a good job for the Committee and for the country.

Mr. Garey. Read the question.

(The pending question was repeated by the reporter as follows:

"Why, in your opinion, would it adversely affect the national security?")

The Chairman. Mr. Fly, the answers you have given will remain in the record, but hereafter we would like, if possible, to get responsive answers to direct questions.

Mr. Fly. Mr. Chairman, I shall be only too happy to fully cooperate with this Committee in the future as I have in the past. We have a long line of extensive cooperation, but any time I feel I have the duty of giving information to this Committee, I am going to ask the privilege of giving that information to the Committee, and I don't think the Committee wants to injure itself by placing a gag on me.

The Chairman. The Committee's record will answer that.

Mr. Garey. Read the question again.

(The pending question was repeated by the reporter as follows:

"Why, in your opinion, would it adversely affect the national security?")

Mr. Fly. I answered that question, Mr. Chairman.

The Chairman. The Committee directs you to answer. Do you decline to answer the question?

Mr. Fly. I give the same answer, responsive to my duty to the Board, which I have given to comparable questions.

Mr. Miller. Do I understand the record shows the witness declines to answer the question?

The Chairman. That is what the record shows. Proceed, Mr. Garey.

Mr. Garey. In your opinion, Mr. Fly, would the disclosure of the documents called for in the subpoena which has been served upon you, in the Neville Miller matter, injure the national prestige?

Mr. Fly. That, I am confident, is the opinion of the Board—

The Chairman. Mr. Fly, can't you give a responsive answer to a direct question?

Mr. Fly (continuing)—and my opinion is in accord with that.

Mr. Garey. Then it is your opinion that the disclosure of these documents would injure the national prestige?

Mr. Fly. Yes.

Mr. Garey. Well, we got an answer finally.

Now will you tell us why, in your opinion, the national prestige would be injured?

Mr. Fly. Same answer.

The Chairman. The Committee directs you to make answer. The Chairman understands him to say he declines.

Mr. Garey. Do you have any objection to producing these documents and giving such testimony as you are able to give respecting them, at a hearing of this Committee sitting in executive session?

Mr. Fly. I don't know, in the light of the Committee's past handling of secret and confidential documents—

The Chairman. Strike that from the record. Mr. Fly, this is no place for you to assault the Committee.

Mr. Fly. I am sorry, Mr. Chairman.

The Chairman. We want amicable relations maintained here.

Mr. Fly. I do too, sir.

The Chairman. Between the Committee and all witnesses, and particularly yourself.

Mr. Fly. I do too.

The Chairman. We want to be as kind and as considerate in our relations with you as possible, and let us not be hurling charges against each other in the hearing, in the public hearing.

(Laughter.)

The Chairman. Do you not agree with me that that is the proper course?

Mr. Fly. Yes, I do, sir, and I think you will agree with me that the only light I have to guide my feet in the future is from the lamp of experience.

The Chairman. Well, does that make you happy?

Mr. Fly. I object to that, Mr. Chairman.

The Chairman. Strike that, please. I will leave your comment in the record. I strike my comment.

Mr. Fly. So that when the Board comes to decide this new question as to how, under different circumstances, it would proceed, it would have, I take it, the same consideration plus the experience it has gained in these proceedings to guide its judgment. I wouldn't want to commit the Board on what it would decide.

Mr. Garey. Did you understand my question to be your position? I didn't ask about anybody else's position. What is your position?

Mr. Fly. I can't vote on that question outside of a

vote before the Board of War Communications when the question is properly presented.

Mr. Garey. I am asking what your position is.

Mr. Fly. I am taking no position now. That question hasn't been presented.

Mr. Garey. Are you willing to present the documents you have been called upon to produce before this Committee sitting in executive session?

Mr. Fly. I will comply with the instructions of my Board in that regard.

Mr. Garey. Are you willing to produce the documents you have been subpoenaed to produce before this Committee sitting in executive session?

Mr. Fly. I will comply with the instructions of my Board.

Mr. Garey. Will the Chairman direct the witness to answer the question?

The Chairman. The witness is directed to answer the question.

Mr. Fly. I don't know. I am not running the Board of War Communications, and I am not running it down here.

Mr. Hart. I think that is going a little too far with this witness.

Mr. Garey. I think we can excuse the witness.

Mr. Hart. Mr. Fly, Mr. Garey put certain questions to you as to a certain telephone conversation, as to whether you had stated certain things, and you said you had not. Will you tell the Committee now what you did state in that conversation?

Mr. Fly. I didn't make any record of the conversation, sir, but when Mr. Garey called me he was inquiring in a somewhat complaining mood, and he wanted more specific information, and I think I read him the rule of the Board, stated what the Board had done, and even went so far as to state that on each occasion the Board, composed of the Army, Navy, State and Treasury Departments, as well as the Commission, had voted unanimously; that I was sorry, but I was not criticizing his view, and if he thought it should be pressed further I would take it back to the Board and ask them to consider it further; and I told him I didn't want to take it up orally, and would he write a letter which I could take to the Board. Mr. Garey accordingly wrote that letter and I took it back to the Board.

Mr. Garey. Have you any further questions, Congressman, of this witness?

Mr. Hart: No.

Mr. Garey. I think we can excuse the witness.

The Chairman. The witness is excused. Thank you, sir.

Mr. Fly. Thank you for your courtesy, Mr. Chairman.

(Witness excused.)

Mr. Garey. Mr. Chairman, the Committee will recall that on the occasion of our last hearing I advised the Committee that I had had no reply to my letters to the Secretaries of War and Navy dated June 25th.

Since the last hearing I am in receipt of a letter signed by Robert P. Patterson as Acting Secretary of War, dated July 2, 1943, replying to my letter in these words:

"DEAR SIR:

"Receipt is acknowledged of your letter of June 25 in which you request the appearance before the Select Committee to Investigate Federal Communications Commission of the Secretary of War and several Army officers, and also request the production of certain documents described in the letter.

"The President directs that the Committee be informed that he, the President, refuses to allow the documents to be delivered to the Committee as contrary to the public interests. For the same reason, I am unable to permit the witnesses to appear.

Yours sincerely,

"ROBERT P. PATTERSON,
"Acting Secretary of War."

Now, the Committee will observe that the direction of the President relates to the documents, and that the Acting Secretary of War assumes personal responsibility for his inability to permit the witnesses to appear. In other words, part of that letter is based upon a direction of the President, and part of it is based upon the position or judgment of the Secretary of War.

I also received a letter from James Forrestal, as Acting Secretary of the Navy, dated July 3, 1943, replying to my letter to the Secretary of the Navy in these words:

"SIR:

"Reference is made to your letter dated June 25, 1943, requesting the presence of the Secretary of the Navy and certain naval officers before the House Select Committee to Investigate the Federal Communications Commission. Request was also made in your letter that the Committee be furnished with certain documents and papers from the files of the Navy Department.

"I must decline to permit the appearance of the naval officers, active or inactive, before your Committee as such appearance would be incompatible with the public interest.

"The President of the United States authorizes me to inform the Committee that he, the President, refuses to allow the documents described in your letter to be delivered to the Committee, as such delivery would be incompatible with the public interest.

"Very truly yours,

"JAMES FORRESTAL,
Acting."

Mr. Miller. Mr. Garey, I ask at this time if you will advise the Committee whether or not, from the staff's investigation, the production and disclosure of the evidence denied the Committee would be contrary to the public interest?

Mr. Garey. Congressman, our investigation does not indicate that the information sought by the Committee will disclose any secret military information or that such disclosure would be incompatible with the public interests.

The contrary appears from our investigation, and I am of the opinion that the public disclosure of this evidence

is very decidedly in the public interest and will aid the Congress in determining whether remedial legislation is needed.

I am sure that if the President had been aware of the information in the possession of this Committee, he would not have reached the conclusion stated in these letters. The text of these letters, however, raises a grave constitutional question. This issue far transcends the investigation of the Federal Communications Commission.

To legislate intelligently, the Congress must be informed. It can only be informed through and after full inquiry. This power has always been recognized as a constitutional attribute of the legislative process.

The Federal Communications Commission performs legislative functions primarily—functions which, under our system of Government, only the Congress has power to perform. Because the Congress has not the time to do such work, it has delegated to the Commission its powers so to do. Hence, the Commission is purely a creature of the Congress, exercising certain of its powers.

The Congress has now directed the Commission to render an accounting of its stewardship. I know of no lawful power which can prevent such an inquiry being made, through whatever channels and through whatever sources the Committee desires to pursue its investigation.

Mr. Miller. Will you advise the Committee whether or not the production of the evidence denied it would involve the disclosure of secret military information which should only be divulged in executive session?

Mr. Garey. It would not, Mr. Congressman, and you will observe that the two letters I have just read to you from the Navy and War Departments do not decline to produce the documents sought or to refuse to permit the witnesses to appear on the ground that to do so would disclose secret military information.

Mr. Miller. During the course of the staff's investigation, has any officer declined to give any information requested on the ground it might disclose secret military information?

Mr. Garey. No, sir.

Mr. Wigglesworth. In your letters to the Secretaries of War and Navy you specifically recite that the testimony to be presented at the public hearings will not call for the disclosure of any secret military information.

Mr. Garey. That is correct, Mr. Congressman.

Mr. Hart. I desire to interpose my thought on this particular question. It has nothing to do with constitutional principles which may or may not be involved.

It seems to me it is impossible for anybody to dogmatically state that the information asked for will or will not reveal secret military information. That is a matter of opinion. Perhaps it is a matter of judgment.

By the suffrage of the people of the United States the ultimate exercise of that judgment lies, not within this Committee, not in the Congress, certainly not in Counsel for this Committee, but in the Commander in Chief of the military forces of this country. He has given his view. I don't think we have a right to assume he has given expression to that view without having before him proper information that the disclosure of the information requested would be disclosure of secret military information.

I think the Committee is bound, if not constitutionally, practically, under present conditions particularly, to abide by that decision.

The Chairman. As it relates to the military establishments.

Mr. Hart. The information now under discussion.

Mr. Garey. Mr. Chairman, as Counsel for the Committee there have come into my possession for the Committee's consideration two documents:

One is a "Memorandum" (dated May 14, 1942) "Regarding Undesirability of Chairmanship of Defense Communications Board Being Vested Ex-Officio in Chairman of Federal Communications Commission, Especially During Wartime." It was submitted to the Secretary of the Navy by Rear Admiral Stanford C. Hooper, U. S. N. (Retired).

The other is a statement prepared in the War Department respecting the testimony of Admiral Hooper given to the Committee in private hearing.

I had intended to have Admiral Hooper present today to testify fully in respect of the reasons underlying each of the several objections enumerated in the memorandum prepared by him. However, I am advised by Admiral Hooper that, although retired and not on active duty, he has been directed by the Navy not to testify before this Committee in response to the subpoena which I have caused to be served on him. The Admiral advises me he would be quite willing to appear and give his testimony were it not for these orders. He understands, and so informs me, that violation of such orders will subject him to military discipline.

I had also intended to present the testimony of the person in the War Department who prepared the text of the other paper. The letter of the Acting Secretary of War, however, prevents such action.

In these circumstances, may I have the direction of the Committee as to whether it desires to have me incorporate these two documents in the records of the Committee's public hearings?

The Chairman. They are a substantial part of the material that was introduced on the previous hearing, are they not?

Mr. Garey. No. They relate to matters discussed therein.

The Chairman. Will you pass them up to me?

Mr. Garey. I don't have them with me, Mr. Chairman. You have seen them.

The Chairman. I think the Committee has seen them.

Mr. Garey. The Committee has.

The Chairman. As Chairman of the Committee, I grant you leave to incorporate them in the record.

Mr. Garey. And I am directed to do so?

The Chairman. That is correct.

Mr. Garey. Because I haven't the documents with me, may I make them a part of this record within the next twenty-four hours?

The Chairman. That may be done.

(The documents above referred to are hereinafter incorporated in the record.)

Mr. Garey. I am prepared to proceed with further testimony, but since an appropriate time to recess has arrived, and since the Committee will desire to consider in executive session the course it desires to pursue in respect to the refusal of witnesses to answer questions propounded and produce documents requested of them, may I ask that the Committee adjourn subject to call of the Chair?

The Chairman. The Committee will recess subject to the call of the Chair or a majority of the members of the Committee.

(Thereupon, at 12:45 p. m., the Committee recessed.)

(Pursuant to the direction of the Chairman (p. 187) the following matter was subsequently submitted:)

Mr. Garey. Mr. Chairman, pursuant to the direction of the Committee I will now read into the record a "Memorandum" (dated May 14, 1942) "Regarding Undesirability of Chairmanship of Defense Communications Board Being Vested Ex-Officio in Chairman of Federal Communications Commission, Especially During Wartime," which was submitted to the Secretary of the Navy by Rear Admiral Stanford C. Hooper, U. S. N. (Retired):

"The Navy Department considers as undesirable the present situation of having the Chairmanship of the Defense Communications Board vested ex-officio in the person of the Chairman of the Federal Communications Commission, especially during wartime. This decision is based not only on the general principles involved, but on the fact that the functioning of the Defense Communications Board during the past months has been unsatisfactory to the Department to the extent that it believes the successful prosecution of the war is being jeopardized thereby.

"Specifically, the following points bear on the matter:

"1. The Defense Communications Board has failed to take any action on the written recommendation of the Secretary of the Navy that certain committee members were believed to be disloyal to the United States.

"2. The Federal Communications Commission had refused to turn over its file of fingerprints and confidential information bearing on the loyalty of commercial communications companies to the Federal Bureau of Investigation, without restrictions which would render the work of the latter agency ineffective.

"3. The Chairman of the Federal Communications Commission has frequently taken it upon himself to speak for national defense, thereby exposing his ignorance of the subject.

"4. The Chairman of the Defense Communications Board, by action and by public utterance, has shown that this primary interest is in keeping the support of the C.I.O. Communications Union, which has constantly opposed our interests, and not national defense.

"5. The Chairman of the Federal Communications Commission and the Defense Communications Board has had no previous experience in the field of communications.

"6. The Chairman has failed to take energetic action to speed up or reorganize the cumbersome and slow procedure and organization of the Defense Communications Board. This causes serious and unwarranted delay in the war effort.

"7. The Chairman of the Federal Communications Commission has devoted too much of the time and energy of that Commission to trust-busting, to the detriment of its other duties. This is no time for such, as friendly unity of all interests is necessary in war.

"8. The Chairman of the Defense Communications Board opposed legislation permitting wire-tapping which would have permitted checking of the telephone to Japan before Pearl Harbor, and might have prevented the disaster.

"9. The Chairman of the Defense Communications Board opposed stopping Japanese language broadcasts in Hawaii, a factor which led to the disaster.

"10. The Chairman of the Defense Communications Board has consistently opposed any move to assure the loyalty of personnel in communications.

"11. The Chairman of the Federal Communications Commission has consistently opposed the stand of the Armed Services on the question of mergers.

"12. The Chairman of the Federal Communications Commission gives out too much publicity on defense matters. This should come from the War and Navy Departments.

"13. The present set-up has too much duplication of effort, for example, preparation and distribution of information, lack of coordination of direction finding work, investigation of communication security.

"Due to the realization that many matters must be handled directly by the Armed Services, these have already been transferred to their jurisdiction. The effort to obtain transfer takes valuable time.

"Other matters under the Defense Communications Board are being handled by the War and Navy Departments without regard to the Defense Communications Board, because time is the essence. This is becoming confusing."

As the Chairman is aware, Admiral Hooper was examined by this Committee and a transcript of his testimony taken. That transcript was examined by the War Department and a resume of Admiral Hooper's testimony prepared. Pursuant to the Committee's direction I now read into the record those portions of that written resume made by the War Department respecting Admiral Hooper's testimony, as follows:

"In a great number of examples Admiral Hooper is correct, and testimony under oath by any others connected with these matters can only substantiate his story. Among these latter are:

"*a*. F.C.C. penetration into the field of radio intelligence and direction finding.

"*b*. F.C.C. refusal to collaborate with interested

government departments in preparing recommendations to Congress on the subject of international merger.

"*c*. The insidious steps by which Mr. Fly injected himself into the Army-Navy plan for control of communications in wartime, emerging with the Board of War Communications which he and his organization dominate.

"*d*. The difficulty in making wartime arrangements for military communication facilities through the Board of War Communications as opposed to direct action due to F.C.C. domination.

"*e*. Attempts by the F.C.C. to obtain domination and control of the IRAC.

"*f*. Refusal by Mr. Fly to transmit the new IRAC constitution to the President without comment.

"*g*. Mr. Fly's disposition to speak for the Army and Navy due to his BWC connection.

"*h*. Mr. Fly's attempt to assume BWC power over communication facilities of other government departments—which must include those of the Army and Navy.

"*i*. Mr. Fly's insistence on reopening the Consent Decree and refusing to renew RCAC licenses in spite of protests from the Army and Navy.

"*j*. Mr. Fly's insistence on reducing telephone toll rates over the objection of the Army and Navy due to the saturated condition of the telephone system.

"*k*. Mr. Fly's refusal to approve operation of miniature broadcast stations at isolated combat outposts if the stations are to be soldier operated.

"*l*. The F.C.C.'s insistence that no commercial company can permit the war or Navy Departments to take over and operate a transmitter without a license from the Commission."

Since Admiral Hooper refers in his testimony to the situation existing in Hawaii prior to Pearl Harbor, I will now read into this record from Senate Document No. 159, 77th Congress, 2d Session, being "Report of the Commission Appointed by the President of the United States to Investigate and Report the Facts Relating to the Attack Made by Japanese Armed Forces upon Pearl Harbor in the Territory of Hawaii on December 7, 1941", paragraph numbered XVI, which appears on page 12 of that Report, in these words:

"There were, prior to December 7, 1941, Japanese spies on the island of Oahu. Some were Japanese consular agents and others were persons having no open relations with the Japanese foreign service. These spies collected and, through various channels transmitted, information to the Japanese Empire respecting the military and naval establishments and dispositions on the island.

"In Hawaii the local Army Intelligence Service has always devoted itself to matters pertaining to Army personnel and property; and the local Naval Intelligence Service to matters pertaining to Navy personnel and property. In addition, prior to the establishment of an office of the Federal Bureau of Investigation in Hawaii, Naval Intelligence investigated enemy activities amongst the civil population. When the Bureau's office was established it was agreed by the three governmental agencies that the Bureau should take over and become primarily responsible for investigation of matters connected with the civil population, and that the three services should cooperate with each other. Efforts were made by the Bureau to uncover espionage activities in Hawaii. The United States being at peace with Japan, restrictions imposed prevented resort to certain methods of obtaining the content of messages transmitted by telephone or radio telegraph over the commercial lines operating between Oahu and Japan. The Bureau and the local intelligence staffs were unable, prior to December 7, to obtain and make available significant information respecting Japanese plans and fleet movements in the direction of Hawaii.

"In the summer of 1941 there were more than 200 consular agents acting under the Japanese consul, who was stationed in Honolulu, T. H. The naval district intelligence office raised a question with the Federal Bureau of Investigation, and with the intelligence officer of the Hawaiian Department of the Army, whether these agents should not be arrested for failing to register as agents of a foreign principal as required by statutes of the United States. In conferences respecting this question, the commanding general, Hawaiian Department, objected to the arrest of any such persons at least until they had been given notice and an opportunity to register, asserting that their arrest would tend to thwart the efforts which the Army had made to create friendly sentiment toward the United States on the part of Japanese aliens resident in Hawaii and American citizens of Japanese descent resident in Hawaii and create unnecessary bad feeling. No action was taken against the agents.

"It was believed that the center of Japanese espionage in Hawaii was the Japanese consulate at Honolulu. It has been discovered that the Japanese consul sent to and received from Tokyo in his own and other names many messages on commercial radio circuits. This activity greatly increased toward December 7, 1941. The contents of these messages, if it could have been learned, might have furnished valuable information. In view of the peaceful relations with Japan, and the consequent restrictions on the activities of the investigating agencies, they were unable prior to December 7 to obtain and examine messages transmitted through commercial channels by the Japanese consul, or by persons acting for him.

"It is now apparent that through their intelligence service the Japanese had complete information. They evidently knew that no task force of the United States Navy was anywhere in the sector northeast, north, and northwest of the Hawaiian Islands. They evidently knew that no distant airplane reconnaissance was maintained in any sector. They evidently knew that up to December 6 no inshore airplane patrol was being maintained around the periphery of Oahu. They knew, from maps which they had obtained, the exact

location of vital air fields, hangars, and other structures. They also knew accurately where certain important naval vessels would be berthed. Their flyers had the most detailed maps, courses, and bearings, so that each could attack a given vessel or field. Each seems to have been given a specified mission."

The Chairman. I think it appropriate for me to incorporate in the record at this point a statement which I have issued today as Chairman of the Committee and on its behalf, in view of the situation that has been presented to the Committee in the testimony this morning.

I made public the following statement:

"A situation has arisen in connection with the inquiry of the Congressional Select Committee to Investigate the Federal Communications Commission which involves such fundamental issues as to require a statement of the Committee's position concerning them.

"The Committee's Counsel had requested certain information from the War and Navy Departments. The Committee had also requested the attendance of military officers to testify concerning the information sought from the War and Navy Departments. The Committee is now in receipt of advice from the War and Navy Departments, each stating that the respective Secretaries have been informed that the President refuses to furnish the Committee with the documents it requires.

"It should be clearly understood that the Committee did not ask, did not seek, and would not have accepted for public exposure any secret military information because the responsibility for safeguarding such information would have been greater than the Committee would want to assume. Therefore, no information or testimony was requested by the Committee that would reveal any secret military information.

"The Committee is advised by these letters from the War and Navy Departments that the President bases his refusal to allow the documents to be delivered to the Committee on the ground that *'it would be contrary to the public interests,'* thereby recognizing that the documents would not reveal secret military information.

"Thus emerges a question so fundamental as to involve the entire structure of our Government under our Constitution, based upon its underlying concept of three coordinate independent branches.

"The Committee believes it the wisest policy not to press this *incident* at this time, but it cannot pass the *issue* presented because it is too fundamental.

"If it is possible and appropriate for the Chief Executive thus to limit the investigations of a Select Committee of the Congress, and to impede its work on the ground of his determination of the public interest, then it would follow logically that he or some other Chief Executive could so interfere with the functions of a standing committee of either house.

"The Committee has consulted and carefully deliberated on this action of the President. Without conceding the right anywhere to limit the constitutional powers of the Congress, the Committee has determined, for the time being, to refrain from insisting upon the appearance of officers of the Army and Navy, or to press for the production of memoranda and records called for in those departments. However, as to all other departments and agencies the Committee takes no such position. It has neither the disposition nor the authority to deviate from the direction of the House in this investigation. It is important to note that in letters from the Army and Navy Departments it is stated that the President's order is put upon the ground that to furnish the Committee the documents called for, would be contrary to the public interests. This raises the question: Where rests the power to determine what the public interest is? Is it a power that belongs to the Government, or to only one branch of the Government? Is Congress to be rendered powerless to determine for itself what is or is not in the public interest? If this be so, then who is to legislate in the public interest—or is there to be no legislation at all? Thus we are brought face to face with possible congressional frustration.

"It scarcely need be said that the whole concept of our American system of Government under our Constitution rests upon the fundamental principle that each of the three coordinate independent branches of the Government, although checked and balanced each by the other, cannot be subject to domination by the others without the whole structure crumbling.

"Thus is presented an issue in which there is involved no question of personalities whatsoever, but a fundamental issue of the proper exercise of the appropriate constitutional functions of each of the three branches of Government.

"Unless this Select Committee, which is the agent of the House of Representatives, insists upon its authority and its right to determine, within the limits set by the House of Representatives, how it should proceed, then this Committee will have failed to maintain the dignity and the Constitutional authority of the House of Representatives. This Committee means to maintain and defend that dignity and that authority.

"The Committee desires to emphasize that this investigation involves no persons anywhere in the Government insofar as malfeasance or misfeasance in office may be found.

"If the Committee finds itself too seriously handicapped by the present situation, it will feel called upon to refer the matter back to the House of Representatives for action.

"It is deeply to be regretted that exception must be taken to the action of the President. It is with great reluctance and due respect that the Committee does so. But the issue is so fundamental, the conflict of authority is so clear, the duty of the Committee to the House of Representatives so paramount, and the issues of Constitutional processes so completely involved, that the Committee is left no other course to pursue."

National Association of Broadcasters
1760 N STREET, N. W. ★ ★ ★ ★ ★ ★ ★ WASHINGTON 6, D. C.
July 16, 1943 SPECIAL LEGISLATIVE BULLETIN No. 11

F.C.C. INVESTIGATION SINCE JULY 9TH

Eugene L. Garey, General Counsel to the Select Committee of the House of Representatives to Investigate the Activities of the Federal Communications Commission, pursuant to the direction of the Committee at its hearing on July 9, 1943, read into the record the following Memorandum, dated May 14, 1942, "Regarding Undesirability of Chairmanship of Defense Communications Board Being Vested Ex-Officio in Chairman of Federal Communications Commission, Especially During Wartime", which was submitted to the Secretary of the Navy by Rear Admiral Stanford C. Hooper, U.S.N. (Retired):

"The Navy Department considers as undesirable the present situation of having the Chairmanship of the Defense Communications Board vested ex-officio in the person of the Chairman of the Federal Communications Commission, especially during wartime. This decision is based not only on the general principles involved, but on the fact that the functioning of the Defense Communications Board during the past months has been unsatisfactory to the Department to the etxent that it believes the successful prosecution of the war is being jeopardized thereby.

"Specifically, the following points bear on the matter:

"1. The Defense Communications Board has failed to take any action on the written recommendation of the Secretary of the Navy that certain committee members were believed to be disloyal to the United States.

"2. The Federal Communications Commission has refused to turn over its file of fingerprints and confidential information bearing on the loyalty of commercial communications companies to the Federal Bureau of Investigation, without restrictions which would render the work of the latter agency ineffective.

"3. The Chairman of the Federal Communications Commission has frequently taken it upon himself to speak for national defense, thereby exposing his ignorance of the subject.

"4. The Chairman of the Defense Communications Board, by action and by public utterance, has shown that his primary interest is in keeping the support of the C. I. O. Communications Union, which has constantly opposed our interests, and not national defense.

"5. The Chairman of the Federal Communications Commission and the Defense Communications Board has had no previous experience in the field of communications.

"6. The Chairman has failed to take energetic action to speed up or reorganize the cumbersome and slow procedure and organization of the Defense Communications Board. This causes serious and unwarranted delay in the war effort.

"7. The Chairman of the Federal Communications Commission has devoted too much of the time and energy of that Commission to trust-busting, to the detriment of its other duties. This is no time for such, as friendly unity of all interests is necessary in war.

"8. The Chairman of the Defense Communications Board opposed legislation permitting wire-tapping which would have permitted checking of the telephone to Japan before Pearl Harbor, and might have prevented the disaster.

"9. The Chairman of the Defense Communications Board opposed stopping Japanese language broadcasts in Hawaii, a factor which led to the disaster.

"10. The Chairman of the Defense Communications Board has consistently opposed any move to assure the loyalty of personnel in communications.

"11. The Chairman of the Federal Communications Commission has consistently opposed the stand of the Armed Services on the question of mergers.

"12. The Chairman of the Federal Communications Commission gives out too much publicity on defense matters. This should come from the War and Navy Departments.

"13. The present set-up has too much duplication of effort, for example, preparation and distribution of information, lack of coordination of direction finding work, investigation of communication security.

"Due to the realization that many matters must be handled directly by the Armed Services, these have already been transferred to their jurisdiction. The effort to obtain transfer takes valuable time.

"Other matters under the Defense Communications Board are being handled by the War and Navy Departments without regard to the Defense Communications Board, because time is the essence. This is becoming confusing."

And pursuant to like direction there was read into the record of the Committee's hearing on July 9, 1943, a resume made by the War Department in respect of the

testimony of Admiral Stanford C. Hooper, U.S.N. (Retired), taken by the Committee in private hearing. The pertinent portions of that resume read as follows:

"In a great number of examples Admiral Hooper is correct, and testimony under oath by any others connected with these matters can only substantiate his story. Among these latter are:

"*a*. F.C.C. penetration into the field of radio intelligence and direction finding.

"*b*. F.C.C. refusal to collaborate with interested government departments in preparing recommendations to Congress on the subject of international merger.

"*c*. The insidious steps by which Mr. Fly injected himself into the Army-Navy plan for control of communications in wartime, emerging with the Board of War Communications which he and his organization dominate.

"*d*. The difficulty in making wartime arrangements for military communication facilities through the Board of War Communications as opposed to direct action due to F.C.C. domination.

"*e*. Attempts by the F.C.C. to obtain domination and control of the IRAC.

"*f*. Refusal by Mr. Fly to transmit the new IRAC constitution to the President without comment.

"*g*. Mr. Fly's disposition to speak for the Army and Navy due to his BWC connection.

"*h*. Mr. Fly's attempt to assume BWC power over communication facilities of other government departments—which must include those of the Army and Navy.

"*i*. Mr. Fly's insistence on reopening the Consent Decree and refusing to renew RCAC licenses in spite of protests from the Army and Navy.

"*j*. Mr. Fly's insistence on reducing telephone toll rates over the objection of the Army and Navy due to the saturated condition of the telephone system.

"*k*. Mr. Fly's refusal to approve operation of miniature broadcast stations at isolated combat outposts if the stations are to be soldier operated.

"*l*. The F.C.C.'s insistence that no commercial company can permit the War or Navy Departments to take over and operate a transmitter without a license from the Commission."

FCC STATEMENTS

Commenting upon the documents released today by the Cox Committee, James Lawrence Fly, Chairman of the Federal Communications Commission, issued the following statement:

The documents made public today are but irresponsible charges which the Cox Committee has handed out in a bid for publicity. We are still waiting for a public hearing. Meanwhile, as to the charge that I oppose using the war as an excuse for monopolies to extend their hold on the country, I plead guilty. I also plead guilty to the charge of believing that the C.I.O., along with the A. F. of L. and the other unions of this country are not disloyal, but are composed of as patriotic a group of citizens as can be found anywhere and that their council and advice is a valuable contribution to our war effort.

As to the remainder of the charges collected by the Committee's staff in star chamber sessions, the public should know that they are utterly without foundation. If such a Committee can be depended upon to give us an opportunity, we will prove each of them false.

FOR SECRETARY OF WAR

Washington, July 10—Chairman James Lawrence Fly of the Federal Communications Commission stated tonight: "The Acting Secretary of War has authorized me to release the following statement by him:

'The release given by Mr. Garey, Counsel for the Cox Committee, refers to "a resume made by the War Department" with respect to Admiral Hooper's testimony. The paper consisted merely of notes made in May by an Army officer to whom the Navy had loaned a copy of Admiral Hooper's testimony. The notes do not express the view of the War Department, but merely this officer's own comment. They were not furnished by any officer in the Army or anyone in the War Department to the Cox Committee.' "

FROM NAVY DEPARTMENT

"The memorandum written by Rear Admiral S. C. Hooper (Retired), dated May 14," an official Navy news statement says, "which as quoted by Eugene L. Garey, general counsel of the Select Committee of the House of Representatives to investigate the activities of the FCC, was not an official statement by the Navy Department and expresses the personal views of Admiral Hooper."

FLY NEWS CONFERENCE

FCC Chairman James Lawrence Fly has received no answer to the letter he sent to members of the Cox Investigating Committee last week, he said at a news conference on Monday. He said that he regretted this. Fly said that the Cox proceedings are a cheap type of publicity. The origin of the investigation, he said, was irresponsible. Everybody, Fly told the news men, is shocked by the conduct and methods of the committee, but no one who has watched the situation is at all surprised.

The Chairman said that it is hard to over-estimate the importance of Congress as an investigating force, but its value must not be impaired. Congressional investigations should be responsible and fair.

Fly refused to answer questions regarding the reappointment of George Henry Payne as a member of the Commission. He said that he had no idea who would

succeed Payne and that the commissionership would probably be open for a time, at least.

The Chairman said that he has no intention of answering the statement of Admiral Hooper in detail, but if the committee gives him a chance to appear he will answer that and all the other statements that are being made. Fly said that seemingly the conclusions of the committee have already been made and published and expressed the opinion that the committee has already done its worst. The committee's final conclusions, he said, must be modified. Fly said that "Garey serves the purpose of this committee very well."

The Chairman told the conference that the President's order refusing to allow Army and Navy officers to appear before the committee were based on an adequate record, which the President had.

The Chairman discussing post war problems in the radio industry said that the industry will have a plan shortly which everyone can agree to.

July 15, 1943.

Chairman James Lawrence Fly of the Federal Communications Commission, commenting upon the published reports of the Cox Committee's plans for the conduct of its proceedings in relation to newspaper publicity, said today:

"The real character of the 'impartial and wholly constructive' investigation which Chairman Cox at the opening hearing publicly assured the Commission, the Congress and the people is now clear.

"The memorandum from the Wall Street counsel to the members of the Cox Committee merely confirms and formalizes the plan adopted by the Committee in assembled meeting on July 6. It is to be noted that this plan which was prepared by a representative of the International News Service sets forth 'principles' to govern the Committee's public proceedings. These 'principles' are carefully designed to accomplish two results:

1. The seizure of the headlines.
2. By adroit use of the gavel, the effectuation of the principle that the Committee must keep the Commission's side of the case from reaching the public.

"I cannot believe that the House of Representatives of the United States ever intended to authorize its delegated representatives to

'Decide what you want the newspapers to hit hardest and then shape each hearing so that the main point becomes the vortex of the testimony. Once that vortex is reached, *adjourn*.'

Nor can the House of Representatives have meant to authorize an investigation which, in the first instance, would treat the Commission as 'the opposition,' and then would formally adopt a plan "to preclude 'the opposition' from the 'opportunity to make . . . replies.'

"It is difficult to believe that the Congress meant to delegate to Congressman Cox as Chairman of the Committee the arbitrary power to swing the gavel and recess or adjourn the hearings so that he would 'keep the proceedings completely in control so far as creating news is concerned.'

"Nor can one easily come to believe that the Congress wanted this so-called investigative Committee to smother out the statements of 'witnesses which might provide news that would bury the testimony which you want featured.'

"There is nothing new in the procedures for creating publicity with scandalous and unsupportable charges and then promptly shutting off any possible opportunity for the Commission to be heard on those charges, or even to present its case to the press. Ultimately, the greater injury here must be to the Committee itself when Congressman Cox and his Wall Street counsel have the temerity to adopt procedures which abuse the great Congressional power of investigation by a calculated bid for headlines and by a deliberate plan to avoid any hearing on the charges until after a startling publicity has taken its toll.

"Despite the unhappy auspices under which this so-called investigation was given birth, I cannot believe that the United States House of Representatives has ever fully understood what its Committee is doing in star chamber proceedings, in the secret eliciting of 'testimony' in the downtown hotels of the City of Washington, and in the now publicly confirmed unfair principles governing its conduct of public hearings."

July 7, 1943.

Memo to all Members of the Committee:

Annexed hereto for your information is a copy of suggestions that were written out by a press representative with reference to principles that should come within our presentation. The man who wrote these suggestions is Bob Humphreys of International News Service. It is the same memorandum that I read to the Committee at its meeting yesterday.

E. L. G.

Enclosure:

Honorable E. E. Cox.
Honorable Richard B. Wigglesworth.
Honorable Warren G. Magnuson.
Honorable Edward J. Hart.
Honorable Louis E. Miller.

1.—Decide what you want the newspapers to hit hardest and then shape each hearing so that the main point becomes the vortex of the testimony. Once that vortex is reached, *adjourn*.

2.—In handling press releases, first put a release date on them, reading something like this: "For release at 10:00 A.M., EWT, July 6", etc. If you do this, you can give releases out as much as 24 hours in advance, thus enabling reporters to study them and write better stories.

3.—Limit the number of people authorized to speak for the committee, to give out press releases or to provide the press with information to the *fewest number possible*. It plugs leaks and helps preserve the concentration of purpose.

4.—Do not permit distractions to occur, such as extraneous fusses with would-be witnesses, which might provide news that would bury the testimony which you want featured.

5.—Do not space hearings more than 24 or 48 hours apart when on a controversial subject. This gives the opposition too much opportunity to make all kind of counter-charges and replies by issuing statements to the newspapers.

6.—Don't ever be afraid to recess a hearing even for five minutes, so that you keep the proceedings completely in control so far as creating news is concerned.

7.—And *this is most important:* don't let the hearings or the evidence ever descend to the plane of personal fight between the Committee Chairman and the head of the agency being investigated. The high plane of a duly-authorized Committee of the House of Representatives *examining* the operations of an Agency of the Executive Branch for constructive purposes should be maintained at all costs.

National Association of Broadcasters
1760 N STREET, N. W. ★ ★ ★ ★ ★ ★ ★ WASHINGTON 6, D. C.
July 30, 1943 SPECIAL LEGISLATIVE BULLETIN No. 12

Hearings Before the Select Committee to Investigate Federal Communications Commission, House of Representatives, U. S. Seventy-Eighth Congress

(The following reports are written in news style in digest form because the volume of material transcribed has grown to proportions beyond the means of NAB to reprint verbatim. This digest is objective and contains the full sense of each day's hearings. Should any station manager wish the full transcript of the hearings, information as to cost may be obtained from Althea Arceneaux, Shorthand Reporter, 1060 National Press Bldg., Washington, D. C.)

Committee sitting: Representatives E. E. Cox, chairman, Edward J. Hart, Richard B. Wigglesworth and Louis E. Miller. Representative Magnuson not present.

MONDAY, JULY 19, 1943

Counsel Eugene Garey opened the session by entering on the record a number of letters from the personnel files of the Navy Department bearing on the high qualifications of Admiral Stanford C. Hooper in the field of radio communications with particular reference to military communications.

The letters established beyond all doubt Admiral Hooper's extreme capability to comment on all phases of radio communications, Mr. Garey concluded for the record as he entered the letters, which were from high government and military officers.

Mr. Garey then entered a listing of the appropriations for the FCC from the years 1935 to 1943 inclusive and made the point that in the 1943 appropriations figure given to the Select Committee by the FCC there was a variance of $205,500—namely that the FCC listing showed a $7,892,135 appropriation for 1943 and the Select Committee counsel totaled $7,686,635 as being given FCC by Congress and the President. Garey also said the FCC received $205,330 from other government agencies for services rendered them by FCC and recommended that such sum should have been added to the appropriations figure for 1943.

Included in the schedules entered on the record by Mr. Garey was the sum of $6,172,388.71 expended by FCC for the Radio Intelligence Division, which Mr. Garey said indicated "an expenditure for a useless Division, a Division duplicating services rendered by the Army and Navy. . . ."

Big Rise in RID Personnel

Mr. Garey next entered into the record the fact that the number of employes in the Radio Intelligence Division, FCC, (called National Defense Operations Section of the Field Division of the Engineering Department prior to June 1, 1942) rose from 16 in July, 1940, to 815 in May, 1943.

After this, Mr. Garey called on Harry S. Barger, Select Committee chief investigator, who testified he had obtained a copy of the FCC "Oath of Allegiance and Secrecy" in which FCC employes swear allegiance to the nation and also promise not to tell anyone about anything relating to national defense providing such information is "secret, confidential or restricted." Mr. Garey developed through testimony given by Mr. Barger that this "Oath" was contrary to the U. S. Code, title 5, section 652, August 24, 1912, which provides government employes the right to furnish information to Congress or any member or committee thereof.

Further testimony by Mr. Barger showed that the Radio Intelligence Division, FCC, was not set up either by executive order or by Congress, but was created by FCC and financed by an original grant of $1,600,000

from the President's emergency fund and thereafter financed by Congressional appropriation.

Philip C. Hamblet, assistant director of overseas operations, OWI, was put on the stand and in lengthy questioning, Mr. Garey attempted to show through Mr. Hamblet's testimony that FCC's Foreign Broadcast Intelligence Service was duplicating service rendered by OWI. The testimony showed that FBIS preceded OWI and had considerably more equipment and a far greater number of employes and consequently was doing a much bigger job than OWI. Mr. Garey tried to show that OWI, if all FBIS funds and personnel were transferred to it, could do the same job and still reduce the number of employes and the overall cost that both agencies are now doing. Mr. Hamblet did admit that some material reduction could be effected, but was not sure about reducing the number of employes.

RID is FCC's Biggest Function

Following luncheon recess, Mr. Barger resumed the stand and under questioning brought out that he had determined that the RID was approximately 41% of the total FCC activity and that RID and FBIS combined made up more than two-thirds of the FCC functions.

It further was brought out by Mr. Barger that the Army, Navy and Air Force did not desire the services of either FBIS or RID, as certain officers of these services had informed him.

A considerable section of the following testimony by Mr. Barger brought out the history of the establishing of the FBIS, with the point made that the original purpose was to listen in on foreign broadcasts and to give interested government departments the substance of them—and not to branch out as a news service.

Mr. Garey frequently introduced testimony of FCC Chairman James Lawrence Fly before the Costello committee in which Mr. Fly repeatedly denied that FBIS or RID duplicated functions of the Army, Navy or OWI with respect to radio communications intelligence or monitoring.

The day's hearings were closed with Mr. Garey and Mr. Barger showing that a budget appropriation (supplemental) of $558,000 made to the FCC in 1942 to hire 148 additional persons was contraverted shortly after the funds were made available to other purposes not stipulated in the grant, such contraversion being the hiring of only 31 new employes and the raising of salaries of many others. This matter, Mr. Barger testified, was handled without knowledge of the Bureau of the Budget.

TUESDAY, JULY 20

FCC "Seizes Pretext"

Mr. Garey opened the day's hearings by continuing his introduction of material and evidence relating to the previous day's investigation of the FCC request for supplemental funds for the FBIS—said material and evidence consisting of further reports on salary raises and changes in positions of personnel of the FBIS, including further testimony from Mr. Barger.

Mr. Garey also developed through reading of several cablegrams that "the U. S. Army about two weeks after it entered North Africa desired to have the benefit of civilian technicians for monitoring purposes" and the Army contacted FCC for this purpose. Mr. Garey said "The Commission saw in it (the Army's request) an opportunity to extend its jurisdiction and authority, immediately seized the opportunity and readily agreed" to the Army's conditions.

The "opportunity" developed, Mr. Garey pointed out, not as an Army project but as a "full-fledged FBIS unit" which "serves as an illustration of the Communications Commission's ability to seize upon any pretext to gain additional authority, dignity and prestige for itself to cloak itself with another fold of the flag as an essential war agency. . . . "

Next order of business was an exposition of how the matter of labelling material "confidential" got started so far as government agencies were concerned and it was developed that it started out of memorandum issued by OWI in November, 1942. Sharp comments by Chairman Cox ensued in which he asked Mr. Garey if the prohibitions contained in that memorandum would prevent Congress from "intelligently legislating on any subject" if such prohibitions denied Congress access to certain documents and information. Mr. Garey answered "I do not see how it (Congress) could, Congressman. It certainly could not legislate intelligently or effectively. It would become a mere rubber stamp." Mr. Garey concluded that if "this assault" (Congressman Miller's words) on the legislative authority of Congress is successful one of the three great branches of Government (legislative) would have practically been "abolished."

Commissioner Craven Takes Stand

Following this Mr. Garey entered a list of the newspapers of the nation to which the FCC subscribed and it was brought out that several FCC commissioners got their "home" newspapers delivered to them at government expense.

After some brief references to the relations between the FCC and the FBI with introductions of material showing FBI radio personnel and salaries, Mr. Garey put FCC Commissioner Tunis A. M. Craven on the stand.

Commissioner Craven began his testimony with the remarks that he had been informed by FCC Chairman Fly that inasmuch as he (Craven) was "cooperating" with the Select Committee that Fly wanted Craven to know he (Fly) and the President regarded as important to the welfare of the country the preservation of the security of confidential and secret matters. Commissioner Craven in a prepared statement said he was "subject to this Committee's direction" and added that he had "nothing to fear or hide."

First questions put to Commissioner Craven after the usual brief biographical material had been recorded concerned the Commissioner's stand on the FCC charges that the military was trying to control communications. Commissioner Craven not only said he dissented from those views of the FCC but further added that the "Commission should stay out of the headlines, the country has enough to worry about."

Returning to biographical material, Mr. Garey established that Commissioner Craven had had long service

as a Naval officer, especially in the field of radio, and was well acquainted with Admiral Hooper whom he characterized as "one of the most outstanding radio men the Navy ever had." Admiral Hooper succeeded Commissioner Craven as Fleet Radio Officer.

Further testimony dealt with the early history of broadcasting in which Commissioner Craven brought out the fact that he, as a Naval representative, participated in most early national and international radio conferences, particularly those which led to the U. S. Communications Act of 1927.

It is interesting to note that Commissioner Craven was "loaned" to the Federal Radio Commission soon after it was established, relieving Admiral Hooper as supervisor of engineering. The FRC was replaced by FCC in 1934. Mr. Craven returned to FCC as chief engineer in 1935, his previous service having been only one year. He served two years as chief engineer, then was appointed commissioner in 1937 to succeed Irwin Stewart.

Balance of the day's testimony by Mr. Craven concerned an exposition of his duties as chief engineer.

WEDNESDAY, JULY 21

Craven Resumes Testimony

Mr. Garey asked Mr. Craven to read the three letters introduced into exhibit, being correspondence between Mr. Fly and the War Department relative to the request by the Army for the withdrawal of "civilians" from North Africa, including suggestions to FCC that the Army did not desire FCC monitoring services in North Africa. Mr. Garey then asked if he knew about or had a part in authorizing the sending of FCC personnel to North Africa to operate monitoring equipment and Mr. Craven said he knew nothing about the personnel being in Africa, the hiring of them or the purchase of equipment for them to use.

The committee counsel then developed through Mr. Craven's testimony that the situation on the Commission with respect to the authority exercised by Mr. Fly in the particular matter of the North African monitoring service, which had not been brought before the FCC, was part of a condition "not satisfactory" to Mr. Craven as a commissioner.

Further questioning of Mr. Craven drew from him that although the powers of the seven FCC commissioners are equal under law Mr. Fly has assumed what Mr. Garey termed a "dominating position" and Mr. Craven a "leading part" on the commission even though the title "chairman" confers no additional powers. Mr. Garey later got Mr. Craven to admit the "domination."

In answer to a direct question, Mr. Craven admitted that the FCC had not been granted any authority by Executive order or Congressional act to establish activities engaged in by FBIS.

Mr. Craven told the committee that his opposition to the "one-man" control of FCC stemmed from procedures current before Mr. Fly's tenure when the then FCC chairman, Mr. McNinch, privately requested Mr. Craven to give him (McNinch) Mr. Craven's "proxy" in matters of FCC policy in return for which Mr. McNinch would "go along with (Mr. Craven) on engineering matters." Mr. Craven refused.

Craven's Memorandum Read

Mr. Garey then read a memorandum Mr. Craven had submitted to his colleagues on the Commission in November, 1938. The memorandum contained the following passage:

"However, I know of no existing law which confers upon the Commission the power to change the method of control of the nation's communication systems from that prescribed by Congress. . . . "

The memorandum read consisted of three main parts: 1. The Responsibility and Independence of Individual Commissioners, 2. The Responsibility and Independence of the Entire Commission, and 3. Internal Organization of the Commission, in which the entire FCC functions were carefully delineated by Mr. Craven. Long and frequent interruptions occurred during Mr. Garey's reading of this memorandum, most of which concerned questions and answers on topics related to the memorandum's content.

Mr. Craven told the committee that the conditions outlined in the memorandum were practically the same currently as existing in 1938.

A principal point brought out in the supplemental questioning to the reading of the memorandum was that Mr. Craven is "fervently" in favor of clarification of the present Radio Act because of the recent Supreme Court decision of May 10, 1943.

Another sidelight was the admission by Mr. Craven that the functions of FBIS should not be engaged in by the FCC.

The dismissal of Counsel Hampton Gary, of FCC, because of his refusal to lend his "intellect, his integrity and his services to purposes the Commission desired to have served" was cited and Mr. Craven said the Commission was "outrageously wrong." Mr. Gary was dismissed without proper hearing, Mr. Craven added.

The memorandum also asked for the protection of Civil Service for most FCC employes, including "lawyers, examiners" and other personnel. It contained numerous procedure recommendations and cautions on the need for independence of action and thought by the Commission as a body and as individuals. (The functions of "examiners" are now handled by the FCC law department. Mr. Craven said he vigorously opposed abolishing of examiners' positions.)

Craven's Resolutions

The memorandum listed a series of proposed resolutions, first of which was one asking the Commissioners to vote on matters according to his independent and honest judgment and not surrender any integrity of thought or action to the chairman or any other commissioner. Mr. Craven said this resolution "broke up the meeting" and was tabled.

Five other resolutions designed to protect employes under Civil Service and to urge the rightful independence of the Commission and the several commissioners to vote and to act without outside or internal influence were all tabled.

Following reading of the memorandum, Mr. Garey and Chairman Cox decided in discussion that the FCC licensing power has been used to destroy free radio and free speech and is moving to affect free press.

Remainder of the day's testimony concerned Mr. Craven's technical report and discussions on the radio or electromagnetic spectrum.

THURSDAY, JULY 22

Craven Stopped "Fighting"

As the hearings opened, Mr. Garey referred to the November, 1938, memorandum of Mr. Craven, which was read the previous day and the counsel asked Mr. Craven if it were not true that after his resolutions were tabled by the Commission that he "stopped fighting" on those subjects. Mr. Craven said he stopped fighting the question of control by the FCC chairman.

Mr. Craven did tell the committee that he had submitted a number of memoranda over the years while he was an FCC commissioner, most bearing on the same subjects as contained in his 1938 paper.

Testimony brought out the three types of meetings FCC holds—1. Regular Commission Meetings, 2. Semi-Executive Session (concerned mostly with discussions of personnel), and 3. Full Executive Session (deals with policies and confidential organization and administration matters).

Lengthy testimony then occurred around the subject (again) of Mr. Fly's dominance of the Commission and his assumption of many actions as chairman, which he had no right to assume legally but which he assumed by non-opposition acquiescence of the Commissioners. Mr. Craven would not answer Mr. Garey's question that this recalcitrance on the Commissioners' part was due to "a lack of integrity and character . . .?"

The hearing then switched to the value of the FBIS with Mr. Garey drawing from Mr. Craven the admissions that Mr. Craven wasn't too familiar with the FBIS set-up and that he thought FBIS information publications of monitored and other news were valueless and should be discontinued.

Charles Denny, FCC counsel, introduced 20 letters from Army, Navy and other governmental agencies and individuals which acknowledged the value of FBIS services to the persons and agencies authorizing the letters. The committee refused to accept the letters, requesting instead that Mr. Denny give them the list of authors of the letters who would then be called to testify.

An exchange between Mr. Garey and Mr. Craven on the functions and background of the FCC's RID (Radio Intelligence Division) was abruptly terminated by appointment of Congressmen Hart and Wigglesworth to conduct hearings in New York as a Select Committee subcommittee. Adjournment of the Select Committee was effected to August 9.

The White-Wheeler FCC Bill

78TH CONGRESS
1ST SESSION

S. 814

IN THE SENATE OF THE UNITED STATES

MARCH 2 (legislative day, MARCH 1), 1943

MR. WHITE (for himself and MR. WHEELER) introduced the following bill; which was read twice and referred to the Committee on Interstate Commerce

A BILL

To amend the Communications Act of 1934, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3 of title I of the Communications Act of 1934 be amended by adding after paragraph (aa) of said section the following:

"(bb) The term 'license', 'station license', or 'radio-station license' means that instrument of authorization required by this Act, or the rules and regulations of the Commission enacted pursuant to this Act, for the use or operation of apparatus for the transmission of energy, or communications, or signals by radio, by whatever name the same may be designated by the Commission."

SEC. 2. Amend paragraph (b) of section 4 of said title I by striking out the last sentence of said paragraph and by inserting in lieu thereof the following: "Not more than four members of the Commission and not more than two members of either division thereof shall be members of the same political party."

SEC. 3. Amend section 5 of said title I by striking out the whole of said section and by inserting in lieu thereof the following:

"(a) The members of the Commission, other than the Chairman, shall be organized into two divisions of three members each, said divisions to be known and designated as the Division of Public Communications and the Division of Private Communications, and no member designated or appointed to serve on one division shall have or exercise any duty or authority with respect to the work or functions of the other division, except as hereinafter provided. The President shall designate the Commissioners now in office who shall serve upon a particular division, but all Commissioners other than the Chairman subsequently appointed shall be appointed to serve upon a particular division and the Chairman subsequently appointed shall be appointed to serve in that capacity.

"(b) The Division of Public Communications shall have jurisdiction over all cases and controversies arising under the provisions of this Act and the rules and regulations of the Commission enacted pursuant to this Act relating to wire and radio communications intended to be received by the public directly, and shall make all adjudications involving the interpretation and application of those provisions of the Act and of the Commission's regulations.

"(c) The Division of Private Communications shall have jurisdiction over all cases and controversies arising under the provisions of this Act and the rules and regulations of the Commission enacted pursuant to this Act relating to wire and radio communications by a common carrier or carriers, or which are intended to be received by a designated addressee or addressees, and shall make all adjudications involving the interpretation and application of those provisions of the Act and of the Commission's regulations.

"(d) The whole Commission shall have and exercise jurisdiction over the assignment of bands of frequencies to the various radio services; over all matters arising under the provisions of part 2 of title III of this Act, as amended; over all signals and communications of an emergency nature, including distress signals by ships at sea and communications relating thereto, signals and communications by police and fire departments and other like emergent signals and messages; over all signals and communications by and between amateur stations; over the qualifications and licensing of all radio operators; over the adoption and promulgation of all rules and regulations of general application required or authorized by this Act, including procedural rules for the Commission and the Divisions thereof; over the selection and appointment of all officers and other employees of the Commission and the Divisions thereof; and generally over all matters with respect to which authority is not otherwise conferred by other provisions of this Act. In any case where a conflict arises as to the jurisdiction of the Commission or any Division thereof, such question of jurisdiction shall be determined by the whole Commission.

"(e) The Chairman of the Commission shall be the chief executive officer of the Commission. It shall be his duty to preside at all meetings and sessions of the whole Commission, to represent the Commission in all matters relating to legislation and legislative reports, to represent the Commission or any Division thereof in all matters requiring conferences or communications with representatives of the public or other governmental officers, departments, or agencies, and generally to coordinate and organize the work of the Commission and each Division thereof

in such manner as to promote prompt and efficient handling of all matters within the jurisdiction of the Commission. The Chairman of the Commission shall not be a member of or serve upon either of said Divisions, except that in the case of a vacancy or the absence or inability of any Commissioner appointed to serve thereon, the Chairman may temporarily serve on either of said Divisions with full power as a member thereof until the cause or circumstances requiring said service shall have been eliminated or corrected.

"(f) Each Division of the Commission shall choose its own chairman, and, in conformity with and subject to the foregoing provisions of this section, shall organize its membership and the personnel assigned to it in such manner as will best serve the prompt and orderly conduct of its business. Each Division shall have power and authority by a majority thereof to hear and determine, order, certify, report, or otherwise act as to any of said work, business, or functions over which it has jurisdiction. Any order, decision, report made, or other action taken by either of said Divisions with respect to any matter within its jurisdiction, shall be final and conclusive, except as otherwise provided by said Communications Act of 1934 as hereby amended. The secretary and seal of the Commission shall be the secretary and seal of each Division thereof.

"(g) In the case of a vacancy in the office of the Chairman of the Commission or the absence or inability of the Chairman to serve, the Commission may temporarily designate and appoint one of its members to act as Chairman of the Commission until the cause or circumstance requiring said service shall have been eliminated or corrected. During the temporary service of any such Commissioner as Chairman of the Commission, he shall continue to exercise the other duties and responsibilities which are conferred upon him by this Act.

"(h) The term 'Commission', as used in this Act, shall be taken to mean the whole Commission or a Division thereof as required by the context and the subject matter dealt with. The term 'cases and controversies', as used herein, shall be taken to include all adversary proceedings whether judicial or quasi-judicial in nature, and whether instituted by the Commission on its own motion or otherwise, and the term 'adjudications' means the final disposition of particular cases, controversies, applications, complaints, or proceedings involving named persons or a named res.

"(i) The Commission or either Division thereof is hereby authorized by its order to assign or refer any portion of its work, business, or functions to an individual Commissioner, or to a board composed of an employee or employees of the Commission, to be designated by such order for action thereon, and by its further order at any time to amend, modify, or rescind any such order or reference: *Provided, however,* That this authority shall not extend to duties specifically and exclusively imposed upon the Commission, either Division thereof, or the Chairman of the Commission, by this or any other Act of Congress. Any order, decision, or report made or other action taken by any such individual Commissioner or board in respect of any matter so assigned or referred shall have the same force and effect and may be made, evidenced, and enforced as if made by the Commission or the appropriate Division thereof: *Provided, however,* That any person affected by any such order, decision, or report may file a petition for review by the Commission or the appropriate Division thereof, and every such petition shall be passed upon by the Commission or that Division."

SEC. 4. Amend paragraph (a) of section 308 of title III of said Act by striking out all appearing before the first proviso clause in said paragraph and by inserting in lieu thereof the following:

"The Commission may grant instruments of authorization entitling the holders thereof to construct or operate apparatus for the transmission of energy, or communications, or signals by radio only upon written application therefor received by it."

Further amend paragraph (a) of said section 308 by adding at the end of said paragraph the following: *"And provided further,* That (1) in cases of emergency found by the Commission involving danger to life or property, or (2) during the continuance of any war in which the United States is engaged and when such action is necessary for the national defense or security or otherwise in furtherance of the war effort, the Commission or either Division thereof may grant and issue authority to construct or operate apparatus for the transmission of energy or communications or signals by radio during the emergency so found by the Commission or either Division thereof or during the continuance of any such war in such manner and upon such terms and conditions as it shall by regulation prescribe, and without the filing of a formal application."

SEC. 5. Amend section 309 of said title III by striking out paragraph (a) thereof; by relettering present paragraph (b) as paragraph (d); and by inserting in lieu of paragraph (a) as deleted the following:

"(a) If upon examination of any application provided for in section 308 hereof the Commission shall determine (1) that public interest, convenience, or necessity would be served by the granting thereof, and (2) that such action would not aggrieve or adversely affect the interest of any licensee or applicant, it shall authorize the issuance of the instrument of authorization for which application is made in accordance with said findings.

"(b) If upon examination of any such application the Commission is unable to make the findings specified in

paragraph (a) hereof, it shall designate the application for hearing and forthwith notify the applicant and other parties in interest of such action and the grounds or reasons therefor. Any hearing subsequently held upon such application shall be a full hearing in which the applicant and all other parties in interest, whether originally notified by the Commission or subsequently admitted as interveners, shall be permitted to participate. Such hearings shall be preceded by a notice to all such parties in interest specifying with particularity the matters and things in issue and not including issues or requirements phrased generally or in the words of the statute.

"(c) When any instrument of authorization is granted by the Commission without a hearing, as provided in paragraph (a) hereof, such grant shall remain subject to protest as hereinafter provided for a period of thirty days. During such thirty-day period, any person who would be entitled to challenge the legality or propriety of such grant under the provisions of section 402 of this Act may file a protest directed to such grant, and request a hearing on said application so granted. Any protest so filed shall contain such allegations of facts as will show the protestant to be a proper party in interest and shall specify with particularity the matters and things in issue but shall not include issues or allegations phrased generally or in the words of the statute. Upon the filing of such protest, the application involved shall be set for hearing upon the issues set forth in said protest and heard in the same manner in which applications are heard under paragraph (b) hereof. Pending hearing and decision upon said protest, the effective date of the Commission's action to which said protest is directed shall be postponed to the date of the Commission's decision after hearing unless the authorization involved in such grant is necessary to the maintenance or conduct of an existing service, in which event the Commission shall authorize the applicant to utilize the facilities or authorization in question pending the Commission's decision after hearing on said protest.

"(d) Such station licenses as the Commission may grant shall be in such general form as it may prescribe, but each license shall contain, in addition to other provisions, a statement of the following conditions to which such license shall be subject: (1) The station license shall not vest in the licensee any right to operate the station nor any right in the use of the frequencies designated in the license beyond the term thereof nor in any other manner than authorized therein; (2) neither the license nor the right granted thereunder shall be assigned or otherwise transferred in violation of this Act; (3) every license issued under this Act shall be subject in terms to the right of use or control conferred by section 606 hereof."

SEC. 6. Amend paragraph (b) of section 310 of said title III striking out the whole of said paragraph and by inserting in lieu thereof the following:

"No instrument of authorization granted by the Commission entitling the holder thereof to construct or operate radio apparatus and no rights granted thereunder shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such instrument of authorization, to any person except upon application to the Commission and upon a finding by the Commission that the proposed transferee or assignee possesses the qualifications required of an original permittee or licensee and is capable of constructing or operating under such instrument of authorization in the public interest, convenience, and necessity. The procedure to be employed in the handling of such applications shall be that provided in section 309 of said title III, as amended."

SEC. 7. Amend section 315 of said title III by striking out the whole of said section and by inserting in lieu thereof the following:

"SEC. 315. If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcast station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcast station, and the Commission shall make rules and regulations to carry this provision into effect. No obligation is hereby imposed upon any licensee to allow the use of its station by any such candidate."

SEC. 8. Amend section 326 of said title III by inserting before the first sentence thereof a new sentence so that as amended said section shall read as follows:

"Nothing in this Act shall be understood or construed to give the Commission the power to regulate the business of the licensee of any radio broadcast station and no regulation, condition, or requirement shall be promulgated, fixed, or imposed by the Commission, the effect or result of which shall be to confer upon the Commission supervisory control of station programs or program material, control of the business management of the station or control of the policies of the station or of the station licensee. Nothing in this Act shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication. No person within the jurisdiction of the United States shall utter any obscene, indecent, or profane language by means of radio communication."

SEC. 9. Add to said title III the following new section:

"SEC. 330. No licensee of any radio-broadcast station shall permit the use of such station for the discussion of any public or political question whether local, State, or National in its scope and application, unless the person or persons using such station shall, prior to such use, disclose in writing and deliver to the licensee the name or names of the person or persons or organization upon whose instance or behalf such broadcast is to be made or conducted. Upon the making of any such broadcast the name of the speaker or speakers using the station, together with the other information required by this section, shall be announced both at the beginning and at the end of such broadcast. Public officers, speaking as such, whether local, State, or National, and whether elective or appointive, shall be relieved of compliance with the foregoing provisions, but in all cases the licensee shall cause an announcement to be made both at the beginning and at the end of the broadcast, stating the name of the speaker, the office held by him, whether such office is elective or appointive, and by what political unit or public officer such power of election or appointment is exercised. Where more than one broadcasting station or a network of such stations is used as herein provided, the requirements of this section will be met by compliance therewith at the station which originates such broadcast."

SEC. 10. Add to said title III the following new section:

"SEC. 331. In all cases where public officers other than the President of the United States use a radio-broadcast station for the discussion of public or political questions, the licensee of any station so used shall afford a right of reply to any person designated by the accredited representatives of the opposition political party or parties. In all cases the right of reply herein provided shall be afforded upon the same terms and conditions as the initial discussion and the Commission shall make such rules and regulations as are necessary to carry this provision into effect."

SEC. 11. Add to said title III the following new section:

"SEC. 332. No licensee of any radio-broadcast station nor the Commission shall have the power to censor, alter, or in any way affect or control the political or partisan trend of any material broadcast under the provisions of sections 315, 330, and 331 hereof: *Provided, however,* That no licensee shall be required under the provisions of this section or otherwise to broadcast any material for or upon behalf of any person or organization which advocates the overthrow of government by force or violence, and that no licensee shall be required to broadcast any material which is slanderous or libelous or which might subject the licensee or its station to any action for damages or to a penalty or forfeiture under any local, State, or Federal law or regulation. In all such cases the licensee shall have the right to demand and receive a complete and accurate copy of the material to be broadcast a sufficient time in advance of its intended use to permit an examination thereof and the deletion therefrom of any material necessary to conform the same to the requirements of this section, and the Commission shall make rules and regulations to carry this provision into effect."

SEC. 12. Amend section 402 of title IV by striking out the whole of said section and by inserting in lieu thereof the following:

"(a) The provisions of the Act of October 22, 1913 (38 Stat. 219), as amended, relating to the enforcing or setting aside of orders of the Interstate Commerce Commission are hereby made applicable to suits to enforce, enjoin, set aside, annul, or suspend any order of the Commission under this Act (except those appealable under the provisions of paragraph (b) hereof), and such suits are hereby authorized to be brought as provided in that Act. In addition to the venues specified in that Act, suits to enjoin, set aside, annul, or suspend, but not to enforce, any such order of the Commission may also be brought in the District Court for the District of Columbia.

"(b) Appeals may be taken from decisions and orders of the Commission to the United States Court of Appeals for the District of Columbia in any of the following cases:

"(1) By an applicant for any instrument of authorization required by this Act, or the regulations of the Commission enacted pursuant to this Act, for the construction or operation of apparatus for the transmission of energy, or communications, or signals by radio whose application is denied by the Commission.

"(2) By any party to an application for authority to assign any such instrument of authorization or to transfer control of any corporation holding such instrument of authorization whose application is denied by the Commission.

"(3) By any applicant for the permit required by section 325 of this Act or any permittee under said section whose permit has been modified, revoked, or suspended by the Commission.

"(4) By any other person who is aggrieved or whose interests are adversely affected by any order of the Commission granting or denying any application described in subparagraphs (1), (2), and (3) hereof.

"(5) By the holder of any instrument of authorization required by this Act, or the regulations of the Commission enacted pursuant to this Act, for the construction or operation of apparatus for the transmission of energy, or communications, or signals by radio, which instrument has been modified, revoked, or suspended by the Commission.

"(6) By any radio operator whose license has been revoked or suspended by the Commission.

"(c) Such an appeal shall be taken by filing a notice of appeal with the court within thirty days after the entry of the order complained of. Such notice of appeal shall contain a concise statement of the nature of the proceedings as to which appeal is taken; a concise statement of the reasons on which the appellant intends to rely, separately stated and numbered; and proof of service of a true copy of said notice and statement upon the Commission. Upon the filing of such notice, the court shall have exclusive jurisdiction of the proceeding and of the questions determined therein and shall have power, by order, directed to the Commission or any other party to the appeal, to grant such temporary relief as it may deem just and proper. Orders granting temporary relief may be either affirmative or negative in their scope and application and may be such as to permit either the maintenance of the status quo in the matter in which the appeal is taken or the restitution of a position or status terminated or adversely affected by the order appealed from and shall, unless otherwise ordered by the court, be effective pending hearing and determination of said appeal and compliance by the Commission with the final judgment of the court rendered in said appeal.

"(d) Upon the filing of any such notice of appeal, the Commission shall, not later than five days after date of service upon it, notify each person shown by the records of the Commission to be interested in said appeal of the filing and pendency of the same and shall thereafter permit any such person to inspect and make copies of said notice and statement of reasons therefor at the office of the Commission in the city of Washington. Within thirty days after the filing of an appeal, the Commission shall file with the court a copy of the order complained of, a full statement in writing of the facts and grounds relied upon by it in support of the order involved upon said appeal, and the originals or certified copies of all papers and evidence presented to and considered by it in entering said order.

"(e) Within thirty days after the filing of an appeal any interested person may intervene and participate in the proceedings had upon said appeal by filing with the court a notice of intention to intervene and a verified statement showing the nature of the interest of such party, together with proof of service of true copies of said notice and statement, both upon appellant and upon the Commission. Any person who would be aggrieved or whose interests would be adversely affected by a reversal or modification of the order of the Commission complained of shall be considered an interested party.

"(f) The record upon which any such appeal shall be heard and determined by the court shall contain such information and material and shall be prepared within such time and in such manner as the court may by rule prescribe.

"(g) At the earliest convenient time the court shall hear and determine the appeal upon the record before it and shall have power upon such record to enter judgment affirming or reversing the order of the Commission. As to the findings, conclusions, and decisions of the Commission, the court shall consider and decide, so far as necessary to its decision and where raised by the parties, all relevant questions of (1) constitutional right, power, privilege, or immunity; (2) the statutory authority or jurisdiction of the Commission; (3) the lawfulness and adequacy of Commission procedure; (4) findings, inference, or conclusions of fact unsupported, upon the whole record, by substantial evidence; and (5) administrative action otherwise arbitrary or capricious.

"(h) In the event that the court shall render a decision and enter an order reversing the order of the Commission, it shall remand the case to the Commission to carry out the jugdment of the court and it shall be the duty of the Commission, in the absence of proceedings to review such judgment, to forthwith give effect thereto, and unless otherwise ordered by the court, to do so upon the basis of the proceedings already had and the record upon which said appeal was heard and determined.

"(i) The court may, in its discretion, enter judgment for costs in favor of or against an appellant, or other interested parties intervening in said appeal, but not against the Commission, depending upon the nature of the issues involved upon said appeal and the outcome thereof.

"(j) The court's judgment shall be final, subject, however, to review by the Supreme Court of the United States as hereinafter provided:

"(1) An appeal may be taken direct to the Supreme Court of the United States in any case wherein the jurisdiction of the court is invoked, or sought to be invoked, for the purpose of reviewing any decision and order entered by the Commission in proceedings instituted by the Commission which have as their object and purpose the revocation, modification, or failure to renew or extend an existing license. Such appeal shall be taken by the filing of an application therefor or notice thereof within thirty days after the entry of the judgment sought to be reviewed, and in the event such an appeal is taken the record shall be made up and the case docketed in the Supreme Court of the United States within sixty days from the time such an appeal is allowed under such rules as may be prescribed. Appeals under this section shall be heard by the Supreme Court at the earliest possible time and shall take precedence over all other matters not of a like character.

"(2) In all other cases, review by the Supreme Court of the United States shall be upon writ of certiorari on petition therefor under section 240 of the Judicial Code, as amended, by the appellant, by the Commission, or

by any interested party intervening in the appeal or by certification by the court pursuant to the provisions of section 239 of the Judicial Code, as amended."

SEC. 13. Amend section 405 of said title IV by striking out the whole thereof and by inserting in lieu thereof the following:

"SEC. 405. After a decision, order, or requirement has been made by the Commission or any Division thereof in any proceeding, any party thereto or any other person aggrieved or whose interests are adversely affected thereby may petition for rehearing. When the decision, order, or requirement has been made by the whole Commission, the petition for rehearing shall be directed to the whole Commission; when the decision, order, or requirement is made by a Division of the Commission, the petition for rehearing shall be directed to that Division; petitions directed to the whole Commission requesting a rehearing in any matter determined by a Division thereof shall not be permitted or considered. Petitions for rehearing must be filed within thirty days from the entry of any decision, order, or requirement complained of and except for those cases in which the decision, order, or requirement challenged is necessary for the maintenance or conduct of an existing service, the filing of such a petition shall automatically stay the effective date thereof until after decision on said petition. The filing of a petition for rehearing shall not be a condition precedent to judicial review of any such decision, order, or requirement, except where the party seeking such review was not a party to the proceedings before the Commission resulting in such decision, order, or requirement, or where the party seeking such review relies on questions of fact or law upon which the Commission has been afforded no opportunity to pass. Rehearings shall be governed by such general rules as the Commission may establish. The time within which an appeal must be taken under section 402 (b) hereof shall be computed from the date upon which the Commission enters its order disposing of all petitions for rehearing filed in any case, but any decision, order, or requirement made after such rehearing reversing, changing, or modifying the original determination shall be subject to the same provisions as an original order."

SEC. 14. Amend paragraph (a) of section 409 of said title IV by striking out the whole of said paragraph and by inserting in lieu thereof the following:

"(a) In all cases where a hearing is required by the provisions of this Act, or by other applicable provisions of law, such hearing shall be a full and fair hearing. Hearings may be conducted by the Commission or a Division thereof having jurisdiction of the subject matter or by any member or any qualified employee of the Commission when duly designated for such purpose. The person or persons conducting any such hearing may sign and issue subpenas, administer oaths, examine witnesses, and receive evidence at any place in the United States designated by the Commission. In all cases, whether heard by a quorum of the Commission or a Division thereof or by any member or qualified employee of the Commission, the person or persons conducting such hearing shall prepare and file an intermediate report setting out in detail and with particularity all basic or evidentiary facts developed by the evidence as well as conclusions of fact and of law upon each issue submitted for hearings. In all cases the Commission, or the Division having jurisdiction thereof, shall, upon request of any party to the proceeding, hear oral argument on said intermediate report or upon such other and further issues as may be specified by the Commission or the Division and such oral argument shall precede the entry of any final decision, order, or requirement. Any final decision, order, or requirement shall be accompanied by a full statement in writing of all the revelant facts as well as conclusions of law upon those facts."

SEC. 15. Amend the Act by adding thereto as a new section 417 the following:

"SEC. 417. (a) The Commission shall have the power to issue declaratory rulings concerning the rights, status, and other legal relations of any person who is the holder of or an applicant for a construction permit or license provided for in this Act or by the rules and regulations of the Commission enacted pursuant to this Act.

"(b) Upon the petition of any such person and when necessary to terminate a controversy or to remove a substantial uncertainty as to the application of the terms of this Act or of Commission regulations enacted pursuant to this Act to such person, the Commission may hear and determine the matters and things in issue and may enter a declaratory ruling which shall, in the absence of reversal after appropriate judicial proceedings, have the same force and effect and be binding in the same manner as a final order of the Commission. When a petition for declaratory ruling is entertained by the Commission, all persons shown by the records of the Commission to have or claim any interest in the subject matter shall be ordered by the Commission to be made parties to the proceeding and no such ruling shall bind or affect the rights of persons who are not parties to such proceeding.

"(c) In all proceedings instituted by the Commission and which have as their object and purpose the revocation, modification, or failure to renew or extend an existing construction permit or license, the Commission shall be required to entertain any petition for declaratory relief which is filed within a period of ten days after the institution of any such proceedings, and such proceedings so instituted by the Commission shall be held in abeyance until all petitions for declaratory rulings involving the same parties and the same subject matter have been heard

and determined and the results thereof made subject to judicial review as herein provided.

"(d) Any party to a proceeding in which the Commission has entered a declaratory ruling may appeal from such ruling and any party to a proceeding arising under paragraph (c) hereof in which the Commission is requested to issue a declaratory ruling may appeal from such ruling or from the Commission's failure to issue such ruling to the United States Court of Appeals for the District of Columbia, and that court shall have jurisdiction to hear and determine any such appeal in the same manner and to the same extent as in the case of final orders of the Commission appealable under section 402 (b) of this Act, as amended."

• SEC. 16. Add to said title IV the following new section:

"SEC. 418. Penalties, denials, prohibitions, and conditions other than those expressly authorized by statute shall not be enacted, enforced, or demanded by the Commission in the exercise of its licensing function or otherwise and no sanctions not authorized by statute shall be imposed by the Commission upon any person. Rights, privileges, benefits, or licenses authorized by law shall not be denied or withheld in whole or in part where adequate right or entitlement thereto is shown. The effective date of the imposition of sanctions or withdrawal of benefits or licenses shall, so far as deemed practicable, be deferred for such reasonable time as will permit the persons affected to adjust their affairs to accord with such action or to seek administrative reconsideration or judicial review.

National Association of Broadcasters
1760 N STREET, N. W. ★ ★ ★ ★ ★ ★ ★ WASHINGTON 6, D. C.
August 20, 1943 SPECIAL LEGISLATIVE BULLETIN No. 13

New York City Hearings of the Select Committee Sub-Committee to Investigate the Federal Communications Commission

Representatives Edward J. Hart and Richard B. Wigglesworth sitting for the House of Representatives, Seventy-Eighth Congress.

(The following reports are written in news style in digest form because the volume of material transcribed has grown to proportions beyond the means of NAB to reprint verbatim. The digest is objective and contains the full sense of each day's hearings. Should any station manager wish the full transcript of the hearings, information as to cost may be obtained from Althea Arceneaux, Shorthand Reporter, 1060 National Press Building, Washington, D. C.)

TUESDAY, AUGUST 3, 1943

Counsel Eugene Garey opened the hearings by reading a letter from Harold D. Smith, director, Bureau of the Budget, who declined, because of orders from the President, to testify or to furnish any information to the Select Committee.

Mr. Garey then read letters he had sent to Mr. Smith and to Acting Secretary of War Robert Patterson and Secretary Frank Knox of the Navy citing President Roosevelt's letter to all government department and agency heads to the effect that no restrictions were to be placed on their furnishing material in answer to Congressional inquiries. Replies were unanimous, Mr. Garey reported, to the effect that the persons so addressed by him still would and could not comply.

James Alfred Guest, senior field attorney, FCC New York office, was then placed on the stand. He testified that his work was devoted to the former War Problems Division of the FCC, which was concerned with foreign language broadcast stations with particular reference to the New York area.

A letter from Marcus Cohn, chief, field section, WPD, to Alan M. Fenner, FCC attorney in New York, was then introduced by Counsel Garey. This missive, dated December 11, 1942, informed Mr. Fenner that complaints had been received about Station WOV program personnel, indicating some staff members had Fascist sympathies. Personnel named in the letter included: Igino A. Mannechia, James Capozuchi, Rino Colla-Negri, Ralph Nardella, Guiseppe Sterni, Dino Bolognese, Diana Baldi and Frank A. Polemeni. Mr. Cohn requested more information about these persons in his letter, and detailed procedure for investigating them—procedure which followed thorough and recognized police methods, including obtaining of statements and documentary material.

House Recommends Cutting Off WPD

Mr. Garey then drew from Mr. Guest the admission that most FCC offices throughout the country devoted a majority of time to the work of the WPD. An excerpt of the House Committee on Appropriations report, Feb. 9, 1943, on the Independent Offices Appropriation Bill

for 1944, citing $206,160 for a war problems division under the law department and $27,840 for a hemisphere communications unit, was read into the record by Mr. Garey. The excerpt further stated: "it (the Appropriations Committee) does regard the value of such projects with some skepticism and recommends that the Commission carefully consider the desirability of discontinuing them."

Having obtained testimony from Mr. Guest that his office had grown from a staff of two persons to six persons since last December, Mr. Garey then read a letter from FCC Chairman James Lawrence Fly to Rep. Clifton A. Woodrum, chairman, Independent Offices Subcommittee, House Appropriations Committee, in which Mr. Fly wrote that "pursuant to the request contained in the report of the House Appropriations Committee . . . (cf above) . . . the War Problems Division is being discontinued . . ."

The letter, dated April 2, 1943, further reported transfers of WPD personnel as a result of the action. Mr. Garey then made the point that perhaps the FCC was not entirely frank with the Appropriations Committee in light of this letter and the testimony of Mr. Guest when Mr. Fly gave the Appropriations Committee the advice contained in the letter.

A field memorandum sent all FCC attorneys by Mr. Cohn on Feb. 18, 1943, detailing a foreign language survey of broadcasting stations, personnel, program sponsors, etc., was next read into the record. The memorandum quoted Elmer Davis, OWI director, to the effect that it was of "deepest concern" to OWI that station licenses in the foreign language field fall into hands of persons thoroughly sympathetic with America's war effort and the democratic cause.

OWI Joins FCC In Survey

The survey was to be conducted by personal interviews by FCC field attorneys, according to the memorandum, and the OWI was to act as co-sponsor, Mr. Guest said.

Mr. Garey reported on an interview a Select Committee staff member had had with David Cohn, head of the Budget Bureau's statistical division, in which Mr. Cohn was quoted as saying that indications were that FCC had dipped into the field of censorship, which it is forbidden to do.

The Office of Censorship had also been asked to assist in sponsoring the foreign language survey. J. Harold Ryan, OC director, replied that it would not participate because OC avoided the questionnaire method in its dealings and, besides, OC had all the information necessary to apply censorship to foreign language broadcasts.

Under strong questioning by Mr. Garey to determine whether the survey was designed to "get people off the air," Mr. Guest answered that his only duty was to report information gathered to Washington, and that he or any member of his staff had never made any effort to have people regarded as objectionable put off the air.

The case of Stefano Luotto, who broadcast over Station WHOM on May 16, 1943, was taken up. Mr. Luotto was reported to be a member of the Dante Alighieri Society. Around this point swirled Mr. Garey's charge that FCC through Mr. Guest had tried to put Mr. Luotto off the air, and Mr. Guest's denials that such was the case. OC in a letter to Joseph Lang, general manager of WHOM, had cleared Mr. Luotto and Mr. Garey pressed the point that inasmuch as OC was the only legally constituted body having power to remove Mr. Luotto from the air why FCC was interested in the matter. Representative Hart interjected the remark that the Jersey City Dante Alighieri Society was a cultural and loyal, patriotic American group. Subsequent comments by Mr. Garey reporting a favorable testimonial on behalf of Mr. Luotto by one of the persons who later stated a complaint against him brought an answer from Mr. Guest that the investigation of Mr. Luotto has not been completed, although he was off the air.

Questioned on his investigations of WHOM, WOV and WBNX, Mr. Guest said he was concerned with WHOM only as to foreign language broadcasts whereas the other two investigations were in connection with temporary licenses.

WEDNESDAY, AUGUST 4, 1943

Mr. Guest resumed the stand. He had previously said he had not questioned personnel of the stations he was investigating about their Communistic tendencies because there had been no complaints on that point. Mr. Garey resumed his questioning on Communism, asking for Mr. Guest's definition of a Communist, which he gave as one who is a member of the Communist Party.

Mr. Garey then told Mr. Guest of Elmer Davis' definition at OWI which was that a Communist is determined by his behavior between August 22, 1939, when Germany and Russia signed their non-aggression pact, and June 22, 1941, when Germany attacked Russia. A Communist is one who slavishly agreed with the pact, then immediately turned against it when Germany violated it, Mr. Davis suggested by drawing the reverse inference.

Mr. Guest said he agreed with Mr. Davis' definition. Mr. Garey in detailed questioning then developed that Mr. Guest had hired one Guiseppe Lupis, publisher of an Italian magazine, *Il Mondo,* to make some translations from Italian papers. Mr. Guest said the Italian publisher was hired because he appeared to be well qualified to make translations and he was not asked by Mr. Guest about his possible Fascist or Communist affiliations. Mr. Garey drew from Mr. Guest that clippings supplied by Mr. Lupis on broadcast people had been placed in FCC files without checking.

Mr. Guest under questioning was forced to admit that he had sent a copy of his reports to Gaetano Salvemini, professor of Italian history and political science at Harvard University, as a "matter of interest" because Professor Salvemini was an outstanding anti-Fascist, although the reports were presumably confidential government material.

A short exchange on the purpose of FCC in hiring Frances Keene of Short Wave Research, Inc., to analyze certain Italian material and German broadcasts in connection with foreign language broadcasts was engaged in between Mr. Garey and Mr. Guest. Mr. Garey obtained the admission from Mr. Guest that Miss Keene had offered to submit names of persons to replace personnel discharged from foreign language stations, and that Miss Keene operated an "employment agency" for alien refugees.

Back to Mr. Luotto

Mr. Garey switched his questioning back to Mr. Luotto and told Mr. Guest that he knew that Mr. Luotto had brought a libel action against Girolamo Valenti, owner of *La Parola,* and had had Mr. Valenti arrested, and Mr. Garey asked Mr. Guest why he had had personnel from his staff attend the hearings on the case. to which Mr. Guest answered to see what material developed against Mr. Luotto.

Mr. Fenner attended the hearing and later questioned the presiding judge to develop "certain information we didn't have," Mr. Guest stated, adding that the suggestion he or some member of his staff attend the hearing came from Washington.

Mr. Valenti was held for the Grand Jury with bail set at $1,000, the testimony revealed, and Mr. Garey charged that Mr. Guest's office was interested in defeating the libel action against Valenti, which Mr. Guest denied on oath.

Mr. Garey asked Mr. Guest what business it was of the Commission to attend this hearing on Mr. Valenti to obtain information on Mr. Luotto when Mr. Luotto was not a broadcaster at the time and Mr. Guest said he was told to do so from Washington and that was the extent of his responsibility. Mr. Guest then was excused.

Gene Dyer Takes the Stand

Mr. Garey then called Gene T. Dyer, vice-president of stations WGES, WAIT and WSBC, the former two of which are foreign broadcast stations, Chicago, to the stand.

Mr. Dyer said that after Mr. Luotto had been an announcer on two of his stations during a seven-year period, Mr. Luotto was taken off the air on November 1, 1942, together with another announcer named Conti because of a letter written Mr. Dyer's brother by Arnold B. Hartley, WGES program director, following a trip to Washington by Mr. Hartley in October, 1942.

Mr. Hartley wrote that "Luotto and Conti will have to go . . ." and further indicated that if they didn't go station WGES would lose its temporary license on a couple of technical points, Mr. Garey pointed out through reading the letter.

Mr. Hartley wrote that "our license is stuck in their department (War Problems Division under Nathan David) . . . if we want to sleep at night Luotto and Conti will have to . . . get off the air."

Mr. Garey developed through questioning of Mr. Dyer that FCC didn't dare make an issue of Mr. Luotto, but if FCC was compelled to proceed against WGES it would do so on the two technical charges against WGES equipment and bookkeeping, which Mr. Dyer said were all right as far as he knew.

Using the words "coercing, threatening and intimidating" Mr. Garey asked if that wasn't the way FCC could accomplish its will over WGES and Mr. Dyer said "yes." Mr. Dyer said his license was renewed two months after he put Mr. Conti and Mr. Luotto off the air. Subsequently for the same reasons, Mr. Garey showed, Lucca Alfedi was discharged.

A letter of Mr. Dyer's to the Office of Censorship requesting a ruling in the Luotto case was answered by Mr. Ryan in December, 1942, clearing Mr. Luotto and stating that Mr. Luotto's record was clear so far as OC was concerned.

Although discharge of Mr. Luotto, Mr. Alfedi and Mr. Conti resulted in loss of about $18,000 annually, they were not reinstated when OC cleared them because Mr. Dyer said he was afraid to lose his license.

Testimony of Dr. John A. Dyer, manager of station WGES, corroborated that of his brother in all respects.

Testimony of Joseph Lang

Next witness was Joseph Lang, general manager of station WHOM, New York. (Mr. Lang testified he was chairman of the NAB foreign language committee until May, 1942, when it was disbanded.)

Mr. Carey developed that Mr. Lang was very familiar with American foreign language broadcasts and stations through committees and other contacts, and that station WHOM had an outstanding record of voluntary public service use of its facilities in the war program.

In explaining the functions of the NAB committee, Mr. Lang said part of its plan was to establish a code by which foreign language stations could operate and part of the code would call for empowering the committee to remove personnel not compatible with the American war aims.

After several meetings, Mr. Lang testified, the committee decided to eliminate that part of the code calling for this removal of personnel power. This was objected

to by the FCC and OWI, Mr. Lang said, and Mr. Carey said this objection implied that FCC and OWI wanted station managers to remove personnel on their say-so and not on the independent judgment of the station managers and Mr. Lang agreed.

Mr. Lang further reported that in his dealings with the War Problems Division of FCC, personnel of that division advised him that no reasons would be given Mr. Lang as to why WPD wanted someone removed from the air.

The present voluntary code of censorship now administered by OC was a direct result of the inability of the NAB committee to satisfy FCC and OWI, Mr. Lang said, agreeing without qualification to the statement as given in a question by Mr. Garey.

FCC Foreign Language Broadcast Policy Explained; Fly Brands Select Committee Charges As 'False'

(The following two documents were released by the Federal Communications Commission in connection with the Select Committee hearings in New York, the first two days of which are reported above.)

Foreign language broadcasts in the United States assumed increasing significance and importance after the outbreak of war in Europe in 1939. Certain groups affiliated with foreign organizations were attempting to use broadcasting as a medium of propaganda to create Axis sympathies and to promote anti-British sentiment among foreign speaking groups in this country. It was around this time that complaints to the Commission against such activities multiplied.

The Commission's responsibility in this field was clear. It had granted the licenses which provided the legal basis for the operation of the stations over which these broadcasts were being made. As early as October 1, 1938, the Commission's staff had concerned itself with the problem of foreign language broadcasting. At that time, a survey made by the international section of the engineering department showed that about one hundred fifty stations were carrying such programs. As the problem was intensified due to the advent of war, it became obvious that increasing activity in this field was essential. A similar feeling was prevalent in the industry itself, as is manifested by the interest taken by the National Association of Broadcasters in such problems in the middle of 1940.

In the Fall of 1940, the Commission inaugurated the most complete survey it had attempted in this work up to that time. At the same time, recordings and analyses of foreign language broadcasts were being made by the Commission's staff expanding from very modest beginnings. As the work went forward, cooperative arrangements with other interested government departments, such as the Department of Justice, were set up. The work continued in this general manner until Pearl Harbor.

Survey Is Made

Immediately prior to Pearl Harbor, a new survey was inaugurated by a questionnaire addressed to all standard broadcast stations. While after we entered the war there was a decided change in the temper of many stations, the Commission's investigation disclosed that many questionable programs still remained. In view of the extreme importance of proper supervision of this activity in time of war, it was decided to expand the Commission's work in this field somewhat, and in the Fall of 1942 funds were obtained through Congress for this purpose.

In correspondence with the FBI, the Commission learned that they were not in a position to assume responsibility for this work. In this connection, it should be noted that as the work progressed the Commission cooperated closely with the FBI as well as with Military and Naval Intelligence, the Office of War Information and the Office of Censorship.

Here are a few examples of the type of persons who caused the Commission so much concern in this foreign language field. In Boston, there was UBALDO GUIDI, who conducted an Italian program. He was reported to be a member of the OVRA, the Italian Secret Police, and was interned as a dangerous enemy alien on the day after Pearl Harbor. Also interned with him was BIAGIO FARESE, a broadcaster, who had been the editor of a Fascist paper in Canada, which he left to serve with the Italian Army in Ethiopia before coming to Boston. Also, on the same station FRANCO GALLUCI was conducting a radio program. Galluci was the head of the Dopolovaro, which was a key group in the Fascist organizational network. When the FBI raided Dopolovaro club headquarters, they found huge quantities of vicious subversive

literature, and Galluci's picture in the uniform of a Captain in the Italian Army. A petition to denaturalize Galluci was recently filed by the U. S. Attorney in Boston.

Other Aliens Listed

In New York the same picture was presented. DOMENICO TROMBETTA was conducting a radio program on which he spread vicious propaganda. Trombetta has been denaturalized and interned as a dangerous alien enemy and recently was indicted for failing to register as an agent of the Italian Government. Likewise, PIETRO GAROFALO, who had registered with the State Department as an agent of the Italian government, was broadcasting in the same vein. He too was interned immediately after Pearl Harbor as an enemy alien. Other Italian radio announcers and time brokers in New York who were interned were: ANGELO GLORIA, IGINO MANNECHIA, FAVOINO DI GIURA. One of the group who escaped internment was VINZO COMITO who fled the country after Pearl Harbor and is now broadcasting Axis propaganda to the United States from Tokio.

The situation was similar in Philadelphia. GEORGE J. GERHARDI, who had conducted a German program there, had returned to Germany where he is now broadcasting propaganda from Berlin beamed to the United States. Incidentally, KURT GEPPERT, a fellow Philadelphia German broadcaster, was recently banished from the Eastern part of the United States on orders of General Hugh A. Drum, as a menace to the security of the area's defenses. Broadcasts were also made by REV. E. MOLZAHN in German. It will be recalled that this former German hero of World War I was recently convicted of espionage for communicating defense information to Germany and Japan, and has been sentenced to ten years imprisonment.

FCC Chairman James Lawrence Fly has branded as false statements made by counsel for the Cox Select Committee at hearings in New York denying the authority of the Federal Communications Commission to keep an eye on the operation of our foreign language broadcast stations. Mr. Fly drew attention to the fact that neither he nor any other representative of the Commission has been permitted to take the witness stand to give to the Committee or the public the full facts regarding these matters. Mr. Fly said:

"These irresponsible charges of the Cox Committee counsel follow the pattern of 'judicial' conduct which has characterized this whole proceeding. It is somewhat startling to see the Cox Committee counsel step out publicly in favor of pro-fascist broadcasts in this country and, at the same time, charge this Commission with endeavoring to force its 'political' beliefs on the broadcasters.

"The Commission would be derelict in its duties as provided in the Communications Act, especially in time of war, if it did not check on these domestic stations broadcasting in the enemy's own language. The reason for this obligation is obvious. With one hundred seventy stations broadcasting foreign language programs—many in enemy tongues and directed at the millions of our people of foreign origins—it is imperative for the national security that the Federal Government exercise some degree of caution to guard against the use of the public's own airways to promote the interests of our enemies.

Further Bulletins Containing Digests of the New York Select Committee Hearings Are Being Prepared And Will Be Forwarded So Soon As Ready.

The stations, almost without exception, have welcomed this service as a protection to themselves and as an assistance in their efforts to promote war activities and have cooperated wholeheartedly. The Commission has never censored any program of any broadcasting station, and it is a fortunate circumstance that it has not found it necessary to revoke a single station license to prevent these grave abuses.

"This latest line of attack is typical of the reckless methods that have characterized the whole Cox investigation up to date. Mr. Garey's statement is simply a reiteration of the conclusions announced in advance of a hearing and which, after a week, he has utterly failed to prove."

The Latest Word from Fly

Because the War Problems Division of the Federal Communications Commission has been abolished it does not mean, Chairman James Lawrence Fly said at his

press-radio conference August 16, that the Commission is not going to watch the foreign language stations in the United States very carefully. It is now apparent, said the Chairman, that the fear in the American broadcast industry regarding the license renewals has sprung from this foreign work which the Commission is doing. The average broadcast station, he said, has no need to fear for the continuity of its station license.

The Chairman called attention to the fact that in September he has been with the Commission for four years and there are 900 stations; therefore, for 3600 years not a single broadcast station has been off the air because of its program.

Mr. Fly said that he is getting many letters of sympathy from Members of Congress in connection with the Select Committee investigation.

National Association of Broadcasters
1760 N STREET, N. W. ★ ★ ★ ★ ★ ★ ★ WASHINGTON 6, D. C.
August 27, 1943 SPECIAL LEGISLATIVE BULLETIN No. 14

New York City Hearings of the Select Committee Sub-Committee to Investigate the Federal Communications Commission

Representatives Edward J. Hart and Richard B. Wigglesworth sitting for the House of Representatives, Seventy-Eighth Congress.

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THURSDAY, AUGUST 5, 1943

Testimony of Joseph Lang, general manager, Station WHOM, resumed.

Mr. Lang testified he had had a meeting with Mrs. Hilda Shea and Alan Cranston, the former of FCC's War Problems Division and the latter head of the Foreign Language Division of OWI, in New York at his office at which time the two government officials discussed "censorship" of Polish language broadcasts on the Russian matter of the alleged killing of 10,000 Polish officers by Russians. Mr. Lang was consulted as head of the Foreign Language Radio Wartime Control committee and the particular situation mentioned was in Detroit. Counsel Eugene Garey drew from Mr. Lang an affirmative answer to the question: "they (Mrs. Shea and Mr. Cranston) wanted to know what you could do about getting program content on those Detroit stations to conform to their views on what should be put over the air in the United States about the Russian situation?"

Mr. Garey further developed that Office of Censorship was not represented at the meeting and that the attempted censorship of program content by the two persons involved was completely out of either FCC or OWI jurisdiction.

Next testimony centered around a meeting Mr. Lang had with Lee Falk (Leon H. E. Falk) of OWI at which Nathan David, of FCC, and several station men attended, at which Mr. Lang said Mr. Falk suggested, in conversations after the meeting, that Mr. Lang do no more business with three specifically named advertising agencies because they might possibly employ persons with Fascist leanings to appear on their programs. The agencies mentioned are: Commercial Radio Service (Andre Luotto), Pettinella Advertising Company (F. Pettinella) and the Carlo Vinti Advertising Company. Mr. Garey again pointed out in questioning that Mr. Falk had no jurisdictional right to make these suggested requests.

Lang Fired Several Employes

Mr. Garey switched to a discussion of personnel on Mr. Lang's station and Mr. Lang said that between 1934 and 1940 he removed a number of employes for cause, but stated none of the firings were because of any governmental requests or suggestions. Firings included George Brunner, who appears in later testimony.

However, in June, 1942, Mr. Lang said he fired Elsa Maria Troja at the suggestion of Mr. Falk of OWI, who indicated that the woman had Nazi inclinations. Mr. Lang said he dismissed Miss Troja because he determined she was not an enthusiastic supporter of the war

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However, in June, 1942, Mr. Lang said he fired Elsa Maria Troja at the suggestion of Mr. Falk of OWI, who indicated that the woman had Nazi inclinations. Mr. Lang said he dismissed Miss Troja because he determined she was not an enthusiastic supporter of the war

effort, but admitted the hints by Mr. Falk carried some weight in the decision. An investigator paid by Mr. Lang failed to find any evidence supporting the OWI charges against Miss Troja, Mr. Garey's questioning revealed. Discharge of Miss Troja cost his station $6,000 annually in contracts, Mr. Lang said.

Further testimony showed that Mr. Falk had submitted to Mr. Lang a list of names to be "blacklisted" from broadcasting, some names of persons who might seek employment at Mr. Lang's station and two names of persons, one of whom was in Mr. Lang's employ and who was removed because of Mr. Falk's "blacklist" and one who was not hired by Mr. Lang for the same reason, so Mr. Lang testified. The "blacklist" was of persons Mr. Falk told Mr. Lang had Fascist leanings, but was supported by no facts of such charges.

There occurred at this point lengthy questioning of Mr. Lang about Giuseppe Lupis, a WHOM employe, and Mr. Lupis' connections with OWI, FCC and as publisher of *Il Mondo,* an Italian newspaper. Mr. Lang said he did not know of Mr. Lupis' connections with FCC and OWI during the time he was employed on WHOM.

Who Is Investigating WHOM?

Mr. Garey asked Mr. Lang a series of questions relating to what government agencies were or are investigating his station and Mr. Lang said FCC was the only one he knew of, although the FBI had asked him questions at various times about certain of his personnel.

Mr. Lang said FCC began investigating his station on April 24, 1943, the "first I knew . . ." He said Mr. Fenner of the FCC New York staff had come to him with a series of questionnaires and asked him to fill them out at once, but Mr. Lang said he couldn't as he was going to attend the NAB War Conference in Chicago to discuss foreign language program censorship.

Mr. Lang testified that Mr. Fenner interpreted his request for time in filling out the forms as a "refusal" to fill them out. Mr. Lang said the questionnaires waited until May 10 when he returned from the West, and on the day after his return Mr. Fenner came to see him.

The questionnaires then were filled out and Mr. Lang said Mr. Fenner undertook an investigation of his entire station personnel and also time brokers doing business with WHOM while the WHOM staff was preparing material to fill out the forms.

Following a recess for luncheon, Mr. Garey returned to quizzing Mr. Lang concerning Mr. Lupis and his background while with WHOM, with Mr. Lang finally making the point that he regarded Mr. Lupis as the "dean of all anti-Fascists that I knew. . . ."

WHOM Has License Troubles

Mr. Garey asked Mr. Lang whether the fact WHOM had not been able to get its license renewed on a permanent basis had affected the station's revenue and Mr. Lang said it had to between $15,000 and $20,000 a year. Mr. Lang undertook to determine why his license was not being renewed permanently and discovered it was because FCC was investigating his station.

A query to his lawyers for assistance resulted in Mr. Lang being told the same thing he himself had discovered, but the lawyers asked him if he had two employes named Walter Kohler and Ilse Intrator, who were supposed to be concerned in the investigation.

Mr. Lang said he had employed Mr. Kohler, but had used Ilse Intrator on a sustaining program after she had been recommended to him by Messrs. Cranston and Falk of OWI.

In mid-winter of 1943, Mr. Lang said Messrs. Guest and Fenner of the FCC called on him and asked him about the foreign language situation with particular reference to the German situation, and "they were very friendly," Mr. Lang said. Later "they" asked Mr. Lang to come to FCC New York headquarters and for three hours the men discussed the German situation thoroughly and "towards the end of the discussion Mr. Fenner seemed to indicate to me that I wasn't telling him all I knew," Mr. Lang testified. Some time after this, Mr. Lang said, Mr. Fenner asked him for some information on the Italian program traffic on WHOM and after having a secretary spend four days compiling the information Mr. Fenner "didn't even want it?" Mr. Garey questioned and Mr. Lang replied affirmatively.

Mr. Garey then read into the record the private testimony taken from Mr. Lang by the Select Committee legal staff concerning Mr. Fenner's conduct in the dealings with WHOM on the FCC questionnaires in which Mr. Lang's testimony today was borne out that Mr. Fenner was discourteous, "stupid and ungentlemanly." An attitude on the part of Mr. Fenner that Mr. Lang further characterized as "dictatorial, impatient, disagreeable."

(Mr. Denny, FCC counsel, during the testimony, had asked several times to be heard and had interrupted occasionally, but was silenced by Representative Hart, who acted as chairman.)

FCC Inquiries "All Verbal"

Mr. Garey asked Mr. Lang if he had had many interviews with FCC personnel and Mr. Lang affirmed so, adding the interviews were "all . . . verbal," with most questioning of Mr. Lang about his personnel being concerned with their possible pro-Nazi or pro-Fascist leanings.

It was brought out that Mr. Lang hired two people on the recommendation of Charles Berry of OWI, after Mr. Fenner had referred Mr. Lang to Mr. Berry, a move Mr. Garey insinuated might have been made by Mr. Lang to "curry favor" with Mr. Fenner. Mr. Lang denied this.

Mr. Lang further denied Mr. Garey's postulate that the reason Mr. Lang allowed the FCC "carte blanche" (utmost freedom) in investigating WHOM personnel was because Mr. Lang may have feared the consequences to his station license.

FRIDAY, AUGUST 6, 1943.

Joseph Lang, manager of WHOM, resumed testimony.

Counsel Eugene Garey, for the Select Committee, opened the sessions with reading back to Mr. Lang portions of the private testimony taken from him by the Select Committee counsel staff which dealt with statements Mr. Lang made about FCC and OWI and their dealings with the NAB Foreign Broadcasters Control Committee, of which Mr. Lang was chairman.

Mr. Garey was making the point that Mr. Lang had

appeared to forget some of his testimony and so Mr. Garey called Harry S. Barger, Select Committee chief investigator, to the stand.

The particular point involved in calling Mr. Barger to the stand was a question put to Mr. Lang in the private testimony to wit: "They (FCC and OWI) took exception to the Balbo Oil Company because it was named after Balbo, the Italian aviator? A. (by Mr. Lang) Yes. It was just about as sensible to make that objection as to object to Lord & Thomas because they are Republicans."

Mr. Lang denied making the above answer. Mr. Barger asserted the transcript was accurate. Mr. Lang on resuming his testimony then said he had made the statement.

Next topic concerned the relation of a man named Riccardo Ascarelli with Mr. Lang. Mr. Ascarelli came to Mr. Lang seeking employment, the record shows, and bore four letters of reference from OWI executives. Mr. Lang said he interviewed Mr. Ascarelli, then asked Mr. Lupis about him and Mr. Lupis hinted that hiring Mr. Ascarelli might not be a good idea and so Mr. Lang, as he testified, did not hire Mr. Ascarelli. This led Mr. Garey to his point—namely that Mr. Lang then was referred to Mr. Berry of the OWI Italian section by Mr. Fenner, FCC New York counsel, as being a person who could recommend persons for employment.

"Bricklayer or Mason?"

There occurred at this point an exchange between Mr. Lang and Mr. Garey on whether Vincent Bertolini, whom Mr. Lang hired after talking to Mr. Berry, was a "mason" as he called him or a "bricklayer" as Mr. Garey termed him. Mr. Garey showed Mr. Lang a WHOM employe questionnaire in which Mr. Bertolini was classed as a "bricklayer." Mr. Lang hired him as an announcer and program censor.

After some discussion as to the duties of a censor on his station, Mr. Lang was asked about Giulia Ascarelli, who is an announcer, newscaster and censor on WHOM. It was established that Ascarelli came to America in 1939 and a "few weeks" later "looked in the telephone book" for the address of WHOM, went there and was hired as an announcer. In 1941 he became a censor and still was not an American citizen, as Mr. Garey established by questioning Mr. Lang and reading from private testimony taken from G. Ascarelli.

Mr. Lang, in answer to questions about G. Ascarelli's duties, agreed that a censor's duties on his station are to delete from the script material not in the public interest and to see the material left in scripts is "pro-democratic." Mr. Garey read into the record part of G. Ascarelli's private testimony which showed him to be a member of the Fascist party at the time he was in Italy.

Mr. Garey also asked Mr. Lang about Joseph Lefredi and Erberto Landi, announcers. Mr. Garey's questioning showed Landi, a free-lance announcer, used by Mr. Lang as an announcer, was a member of the Fascist party. Asked about Aldo Colombo, another WHOM employe, Mr. Lang testified he had been recommended for employment by Mr. Lupis and Mr. Garey developed that A. Colombo was also not a U. S. citizen and had arrived in the U. S. A. in 1939. Mr. Garey then made the point that practically all censorship, monitoring and newscasting on WHOM is "in control of people who are not citizens of the United States."

"Swamp of Fascist Rattlesnakes"

The name of Anania Manfredi, a former broadcaster on WHOM, who was on the air briefly in 1939 and then who applied for a job again in the fall of 1942, entered the testimony. It developed that there appeared a series of articles in the Italian paper *La Parola* in which stations WHOM, WOV and WBNX were called "swamps of Fascist Rattlesnakes" by an Ettore Manfredi, who is also Anania Manfredi. Mr. Lang turned down Mr. Manfredi's request for a job after Mr. Manfredi had threatened Mr. Amauli of WHOM with further publicity about WHOM if he, Manfredi, weren't given work.

An exchange of questions and answers concerning censoring of broadcast material unfavorable to Russia was next involved with relation to how WHOM would handle such news or broadcasts. Mr. Garey hammered questions on the line that he wanted to know if he wished to broadcast a speech uncomplimentary and critical to Russia over WHOM whether he would be permitted to make the speech. Mr. Lang parried the questions and gave no direct answers, stipulating the content of the subject matter would be the deciding factor.

The name of Robert Richards, chief, Foreign Language Division, Office of Censorship, was brought up and Mr. Garey asked Mr. Lang about a meeting he had had with Mr. Richards—then discussion switched to questioning about an Italian news program recommended to Mr. Lang by his employe, Giuseppe Lupis.

It appears that this program was broadcast on the Bulova stations (WOV, WPEN and WCOP), but on no other foreign broadcast stations. Mr. Lang called Lee Falk of OWI and asked to get the program. Mr. Garey's questioning set up the fact that Mr. Lang had thought Mr. Falk had a tie-up with Arnold Hartley of WOV.

Lang Chastised Falk Via Mail

Mr. Garey then read a letter into the record written by Mr. Lang to Mr. Falk concerning the Italian program and the general situation in which Mr. Lang wrote he could not understand the mystery of why there was "exclusivity" on issuance of the particular program and further wrote that Mr. Falk's belligerent attitude toward Mr. Lang was "ridiculous." The letter was dated July 30, 1943.

Mr. Lang then said it had been indicated to him that Mr. Falk and Mrs. Hilda Shea and Nathan David, of the FCC's War Problems Division, were "behind" Mr. Hartley. He further observed that the Supreme Court decision of May 10 "justified" the "expansive powers" assumed by WPD, even though he thought them rather "broad" before the decision was rendered.

Mr. Garey asked Mr. Lang that if in the private testimony taken from Mr. Lang on August 2, 1943, if he had said that the War Problems Division operated with a "mailed fist?" Mr. Lang denied making this statement.

The testimony turned to Stefano Luotto, who had been discharged by station WGES in Chicago (see previous days' hearings). Mr. Luotto's brother, Andre, wished to use him on a broadcast over WHOM and Mr. Lang wrote to Mr. Richards of OC to get clearance, to which

Mr. Richards replied favorably. Stefano Luotto subsequently appeared on the Balbo Oil musical program.

Mr. Fenner, on May 17, 1943, the day after S. Luotto appeared on WHOM as a stand-by announcer of the Balbo show, was at WHOM going over the questionnaires FCC was having WHOM fill out and he noticed S. Luotto's name and objected to Mr. Lang to S. Luotto being on the air, giving no reasons for the objection, Mr. Lang said. Then after Mr. Lang showed Mr. Fenner the OC letter, Mr. Fenner said S. Luotto shouldn't be on the air because he was a member of the Dante Aligheri society.

Much Ado About S. Luotto

Mr. Lang said he didn't know there was any differences in the make-up of the various Dante Aligheri societies in the U. S. A., but considered it one group—an outlet of Fascist propaganda.

He testified further that he visited OC in Washington the next day and spoke to Mr. Richards and Arthur Simon about Mr. Fenner's objections to S. Luotto. Mr. Simon told Mr. Lang that Mrs. Shea also was "very much disturbed" (as Mr. Garey's question put it) about S. Luotto.

Then Mr. Lang had a meeting with Mrs. Shea, Mr. Simon and Rosel Hyde, FCC assistant general counsel, in Mr. Hyde's office. Mr. Lang said the net result of the meeting was that Mrs. Shea wanted S. Luotto off the air "to the best interests of all concerned."

Persistent questioning by Mr. Garey drew from Mr. Lang the admission that the renewal of Mr. Lang's license for WHOM was at that time resting in Mrs. Shea's hands. He also admitted that he removed S. Luotto from the air at the "insistence of the FCC?" Mr. Lang was dismissed from the stand.

Charles Baltin, program director, station WHOM, was next called to the stand.

Mr. Garey asked him about the first time he had had any direct dealings with representatives of the FCC and Mr. Baltin answered in May, 1943, when Mr. Fenner requested the filling out of certain questionnaires. Mr. Baltin described the questionnaires (forms 850-51-52), which together asked for complete details related to the station's operations, programs, personnel, etc.

This work took three to four weeks, Mr. Baltin testified, and he affirmed that during that time Mr. Fenner "made himself pretty much to home" in his offices. (The quotes are from Mr. Garey's question.)

Fenner Gives WHOM Full Attention

Mr. Baltin was asked about Mr. Fenner's movements around the station during the weeks when the questionnaires were being compiled and Mr. Baltin said Mr. Fenner "assumed he had a right to go anywhere and talk to anyone to gain knowledge." He said Mr. Fenner went into the control room, took scripts from monitors when they were on duty and was not too prompt in keeping appointments with station personnel.

Mr. Baltin said that in the early part of June he was subjected to a three-hour examination by Mr. Fenner at FCC headquarters on many details of WHOM's program set-up and other matters. This concluded Mr. Baltin's testimony. Hearings adjourned until Tuesday, Aug. 10.

TUESDAY, AUGUST 10, 1943

(Representative E. E. Cox joined Representatives Edward J. Hart and Richard B. Wigglesworth on the bench to conduct the hearings. Representative Hart continued as chairman of the Select Committee Sub-committee.)

Mr. Garey summed up previous testimony taken as being likened to a "jig-saw" puzzle and observed that all pieces must be in their proper places before a complete picture can be seen.

The substance of Mr. Garey's summary was that most foreign broadcast stations are staffed by aliens or by persons owing their positions to the OWI with approval of the FCC, and that FCC compelled obedience to its directives because of its licensing powers.

He likened the War Problems Division of the FCC to a "real gestapo." He charged that alien "wearers of the Black Shirt" were censoring programs, but that other persons suspected of being pro-Fascist were removed from the air without proof or trial.

The Temporary License Situation

Mr. Garey read into the record correspondence he had had with the FCC concerning stations which operated on temporary licenses between June 1, 1941, and May 31, 1943. The list as received by him showed 457 stations. Also listed were the 169 stations (in addition) which broadcast either full or part-time in foreign languages. A subsequent communication read into the record showed that six stations had been removed from the temporary license list as of May 31, 1943, making the total 451.

Mr. Garey said he had written these stations requesting information as to why they had been issued temporary licenses and the replies indicated: because renewal application had not been received in time, because information in the renewal application was inadequate or incomplete, because accounting information was insufficient, because of various technical reasons or because inasmuch as the Commission desired permanent licenses given as of a certain date and hence certain stations were given temporary licenses until that date.

Mr. Garey made the point that there is nothing in the Communications Act of 1934 which authorizes issuance of temporary licenses and charged that such an action was created by the Commission "to take unto itself the powers of Congress."

He further added that in discussions he had with FCC representatives on this point that they had told him the basis for issuance of temporary licenses was an "administrative interpretation" by FCC of the Act.

Mr. Garey then read to the Committee a complaint directed against a broadcast commentator on station WQXR in which the complainant charged the commentator lied on a matter concerning Russia and religious tolerance and directed in the complaint addressed to the FCC that the FCC take action or be charged with misfeasance. FCC replied that under section 326 of the Act of 1934 that FCC had no power of censorship over radio communications or signals nor could it interfere with the right of free speech via radio.

Richards of OC Takes Stand

Robert K. Richards, chief, Foreign Language Broadcast Division, Office of Censorship, was called to the stand.

Mr. Garey opened questioning of Mr. Richards on the matter of his interview with David Truman, of the FCC, in August, 1942, which was the time OC began to interest itself in the foreign language broadcast picture. The OC section was called "Monitoring and Analysis Section" as against the "Foreign Broadcast Intelligence Service" of the FCC. Mr. Richards said Mr. Truman objected to OC setting up its M & A section.

Mr. Garey determined then through questioning of Mr. Richards that OC was the only government agency empowered to censor broadcasts and, if necessary, to remove broadcast personnel from the air—a power corroborated by the U. S. Attorney General. FCC did not have this power.

Mr. Richards filed a memorandum on his interview with Mr. Truman and in it, as it was read to the Committee, Mr. Richards wrote that he had made one mental "observation or reservation"—a tendency by FCC to "take its work too seriously" or "a faint whiff of that old alley cat; government interference in free enterprise."

Mr. Richards' memo further concluded that "briefly, FBIS is offering facilities and advice," and "we should use the facilities . . . and file the advice."

Mr. Garey then read a record of Mr. Richards' report on his interview with Mr. Sidney Spear of the FCC legal staff. In this report Mr. Richards told of Mr. Spear's comments about Lee Falk, of OWI, in which Mr. Spear said Mr. Falk had taken on the job of removing unsavory personnel from foreign language stations because Mr. Falk believed such a job had to be done and no one else seemed to want to do it. . . ."

The "Conspiracy" Thickens

The report continued to quote Mr. Spear as saying "we worked it this way" and pointed out that if Mr. Falk found a fellow doing "funny business" he told Mr. Spear about it then "we waited until the station applied for a license renewal, citing station WBNX for example and for "funny business" the name of broadcaster Leopold Hurdski (a fictional person).

Mr. Spear's conversation went on to say that when the station applied for the renewal, Mr. Falk would be "tipped off" and he would drop in to see the station manager and tell him that he (Mr. Falk) believed the station manager ought to "fire Leopold Hurdski." After a couple of weeks if the station manager did not comply, he would notice then that he was having trouble getting his license renewed. A couple of weeks more he would then take two and two and make four and Leopold Hurdski would get fired and the license would be renewed. Mr. Spear said this "was a little extra-legal . . . and I had to wrestle with my conscience" and then he offered Mr. Richards the same kind of cooperation, Mr. Richards' report concluded.

Mr. Richards' answer to this was that OC did not believe it would need much help, but that OC did want to use the facilities of FBIS. He also mentioned in his report the surveys Mr. Spear's organization had made of foreign broadcast stations' personnel and programs and reported that Mr. Spear recommended that OC should undertake similar surveys supplementing this information.

Mr. Garey amplified his reading of these reports by making the statement that the reports showed the intention of FCC to expand its activities and control beyond its lawful scope.

Richards Interviews Falk

Mr. Garey then produced a memorandum written by Mr. Richards following his talk with Lee Falk, chief, radio division, Foreign Language Section, OWI. Mr. Falk was revealed as the author of two "eminently gruesome comic strips," THE PHANTOM and MANDRAKE THE MAGICIAN, and "I believe it is with some misgivings that he relinquishes his investigative efforts in the foreign language broadcasting field," Mr. Richards' report read, an opinion he admitted forming following his interview with Mr. Falk.

Mr. Falk told Mr. Richards "something fishy" was going on because "broadcasters held to be suspect were operating in a subtle fashion." Mr. Falk concluded there was only one way to arrest this possible subversive activity and that was by conducting exhaustive investigations of personnel.

Mr. Falk further told Mr. Richards that "you can listen to these broadcasters day after day for months and not get enough on them . . . you must find out what their past associations have been, and if they're open to suspicion, convict them . . . and take them off the air. . . ."

Mr. Falk further asked Mr. Richards "to notify OWI of any plans we (OC) had to take an individual off the air" so OWI could have a chance to line up "some candidates to replace the man. . . ."

Mr. Richards answered that by "wondering how a station manager would look on such procedure and Mr. Falk said the station manager would appreciate it, because that's the manager's complaint—that he can't replace personnel."

Mr. Falk also expressed dissatisfaction with the Foreign Language Wartime Control Committee of NAB headed at that time by Mr. Simon of WPEN—and said the code drawn up by the FLWC had no teeth in it because they "had been extracted by Neville Miller of NAB in a rewrite job."

Censorship Acted on Two Cases

Mr. Falk turned over a dossier on five persons to Mr. Richards and recommended that two of the persons named be removed from the air at once. Mr. Richards' report showed that he notified his chief that evidence was not sufficient yet to remove the two from the air.

Under questioning, Mr. Richards said OC has taken action against only two persons since the President's directive was issued creating OC in December, 1941. Details of these cases were not given.

The two men mentioned in Mr. Falk's dossier as marked for "immediate removal" were Michelle Fiorillo and Raffaele Biorelli of WPEN. Mr. Richards said that in the case of Fiorillo the OC investigation did not support the charge and OC did not act for his removal.

Mr. Richards' interview with W. C. Alcorn, general manager, and W. I. Moore, commercial manager, WBNX, was next introduced.

The case of Lido Belli, an Italian language broadcaster employed by Mr. Alcorn, was discussed. Mr. Belli was picked up as an enemy alien and interned on Ellis Island on December 17, 1941, and released 11 days

later signed over to Mr. Alcorn as his sponsor. Mr. Belli resumed broadcasting. On July 23, 1943, Mr. Falk sent a memorandum to his chief, Alan Cranston, that Mr. Belli be taken off the air.

The report showed that Mr. Cranston wrote Mr. Ennis, of the Department of Justice, and suggested that Mr. Ennis effect Mr. Belli's discharge from WBNX, but Mr. Ennis demurred saying he had no such authority, but on Mr. Cranston's insistence Mr. Ennis asked Mr. Alcorn to remove Mr. Belli, such action having been effected when Mr. Richards arrived.

Alcorn Objects to Belli Removal

Mr. Richards said in his report that Mr. Alcorn objected to the removal of Mr. Belli without any opportunity for the station or the accused to offer a defense. Mr. Richards attached a letter from Mr. Alcorn to Neville Miller which cited the George Brunner case, which was similar to that of Mr. Belli.

The next interview brought before the Committee was that between Mr. Richards and Mr. Simon of WPEN and Mr. Lang of WHOM.

Mr. Richards' memorandum in this interview stated that Mr. Lang and Mr. Simon both said they were greatly dissatisfied with OWI's handling of the foreign language problem and accused Mr. Falk of getting personal publicity via use of foreign language programs. They both said Mr. Falk had told them that "OC was going to 'clean up the situation by removing wholesale those employes who are not wanted.' "

Mr. Simon told Mr. Richards that he had fired two men at the insistence of Mr. Falk and that if OC didn't back up this action of OWI he (Mr. Simon) would take the matter to the press.

Mr. Lang mentioned his removing Else Maria Troja at Mr. Falk's suggestion. Mr. Garey drew from Mr. Richards the admission that the spirit of cooperation with OC exhibited by Mr. Simon and Mr. Lang was of the "finest."

It was reiterated by Mr. Richards on repeat questioning by Mr. Garey that OC applies the voluntary censorship method—that is, it suggests procedure to station managers and newspaper editors and lets the station managers and newspaper editors be responsible for material and personnel after receiving definitions from OC.

Mr. Garey then introduced a letter to J. Harold Ryan, assistant director, OC, from Robert Leigh, director, FBIS, suggesting that OC's new foreign section was a duplication of FBIS service and offering full FBIS services to OC as being ready and capable of doing the job OC wanted done.

FBIS is OC Stumbling Block

In a memorandum to Mr. Ryan dated September 15, 1942, Mr. Richards summarized that OC was stopped from moving "with all vigor" in the foreign language broadcast picture and that factor was whether OC would or would not cooperate 100% with FBIS. Mr. Richards said Doctor Leigh had several times made appeals against Mr. Richards' firm resolve not to pass to any other government agency any powers of censorship.

Mr. Richards' memorandum further admitted that the program analyses sent over by FBIS from time to time were of no value to OC. Then Mr. Garey brought out a memorandum of Mr. Richards delineating an interview September 18, 1942, with Doctor Leigh.

Mr. Richards said Doctor Leigh's temperature "ran pretty high" as he protested OC's decision to analyze programs transmitted by domestic stations in German and Italian. Doctor Leigh intimated this was evidence of "bureaucracy" and said it was duplication of FBIS work. After a long "argument" during which Doctor Leigh continued to insist FBIS should do the program analyses, Mr. Richards suggested that Doctor Leigh see Byron Price, as he had first said he would do, but Doctor Leigh said he had changed his mind.

Another letter from Doctor Leigh to Mr. Richards dated October 1, 1942, was read into the record. In this Doctor Leigh said he had talked with Mr. Price and had been turned down on suggesting a "three-way" arrangement among OC, OWI and FBIS to handle program analyses and so he recommended that OC and FBIS get together and do the job.

OC Refuses to Help Sponsor 850-51-52

Mr. Garey next took up the matter of OC assisting OWI and FCC in sponsoring FCC questionnaire forms #850-51-52. Mr. Ryan's refusal to aid in this was read into the record as a letter addressed by Mr. Ryan to Mr. Slowie, FCC secretary, December 19, 1942.

Mr. Garey then asked Mr. Richards if OC had seen any reason "to this date" why S. Luotto, Lido Belli or Else Troja should not be broadcasting, even in light of the fact that OC had inspected all evidence FCC had on these people? Mr. Richards said there was no reason apparent to OC.

Mr. Slowie's letter asking Mr. Ryan to "reconsider" on sponsoring the questionnaires—letter dated January 16, 1943—was read by Mr. Garey, followed by Mr. Ryan's second letter of refusal dated February 8, 1943. Part of a letter to Mr. Price urging such cooperation sent by FCC Chairman James Lawrence Fly dated January 19, 1943, was also read by Mr. Garey.

Following a recess, Andre Luotto, of the Commercial Radio Service, was placed on the stand. Mr. Luotto read a brief history of his life, main facts of which were that he was born in Italy in 1895, served in the "International" Navy in World War I on convoy service for the Allies, came to America in 1920 to establish permanent residence, has three children all born here and the eldest now in the American Air Force, was a member of the Italian Seamen's Federation and the Garibaldi Cooperative Steamship Company—opponents of Fascism—and represented the Cooperative in New York until Fascism liquidated it, became a newspaperman on an Italian daily and friend of Mayor Fiorello La Guardia of New York and then became editor of the La Guardia Publishing Co. for two years, which published a magazine *"L'Americolo."*

Mayor La Guardia became godfather to Mr. Luotto's second child. Following demise of the magazine, Mr. Luotto related he became manager of the Italian department of United States Lines here for two years, receiving good references when he left. Mr. Luotto also said he was a good friend of Professor Gaetano Salvemini of Harvard.

Becomes Citizen in 1929

Mr. Luotto became a citizen of the United States in 1929 and reported he had taken active part in the congressional campaigns of 1924-26-28 of Mayor La Guardia. Also in 1929 he became a writer for the Italian newspaper *Il Progresso,* a position from which he resigned when the paper opposed Mayor La Guardia's campaign for mayor. Shortly later Mr. Luotto opened his own advertising agency which he now operates.

He participated in Mayor La Guardia's successful campaign for mayor in 1933 and was next year appointed secretary of the Department of Licenses of New York City. He resigned a year later to return to his advertising business. During the years covered in his report since 1920, Mr. Luotto said he had returned to Italy briefly three times, twice on family matters and once on business. His report was interspersed with letters from business acquaintances and friends attesting to his capabilities as a worker and citizen, including letters from Mayor La Guardia. Mr. Garey read a letter he had received from Mayor La Guardia in answer to an inquiry about Mr. Luotto and the Mayor again attested to Mr. Luotto's patriotism.

Questioning of Mr. Luotto concerning his brother, Stefano, next took place which developed that S. Luotto was connected with A. Luotto in the advertising business in New York and Chicago.

It was then brought out that A. Luotto had acted as negotiator between Arde Bulova and the Mester Brothers of Brooklyn for the purchase of station WOV for the latter firm in 1942, with the understanding that if the transaction were completed, Mr. Luotto would become station manager.

Mr. Luotto testified that it was his intention to obtain only American citizens of high repute as program director and censor of WOV when he took over and to discharge known Fascist sympathizers on the station.

Luotto Meets Lupis

Mr. Lupis, ten days after Pearl Harbor, was censor at WHOM, and Mr. Luotto met him at that time following a meeting called by Mr. Lang concerning foreign language station problems and policies during wartime.

Mr. Lupis, according to Mr. Luotto, opened the conversation by asking Mr. Luotto why he hadn't contacted Mr. Lupis about the WOV transaction as Mr. Lupis allowed he could be of a great deal of help to Mr. Luotto, who volunteered to the Committee that Italian circles discussed Mr. Lupis as a "paid informer" of the FCC.

In July, Mr. Luotto said the first intimation that his application before FCC would not be approved came from Harold H. La Fount of the Bulova interests. Mr. La Fount told Mr. Luotto the WOV application "was stuck" in FCC because Mr. Luotto was "a Fascist." Mr. La Fount, as Mr. Luotto testified, told him to get some references from Italian community leaders.

Mr. Luotto got the letters from New York City government officials and sent them to Chairman Fly. After further inaction Mr. Luotto said he went to Mr. Bulova "good and sore" and asked him to forget the deal, "but I should be given a day in court." Mr. Bulova agreed.

Mr. Luotto went with Mr. La Fount and Mr. Lohnes to see Telford Taylor, FCC general counsel. Mr. Luotto said a few inconsequential questions were asked and when he asked about the application being held up because he "was the obstacle," Mr. Taylor said Mr. Luotto was not a party to the application "good-bye."

Mr. Luotto then went to the Attorney General's staff and asked for action. Hugo Carusi, of the Attorney General's staff, called Mr. Taylor and Mr. Taylor arranged an appointment with Nathan David for Mr. Luotto.

Luotto Gets David Brush-Off

Mr. Luotto testified that when he got to Mr. David's office he was not even asked to sit down, but he and Mr. David remained standing. Mr. Luotto said he was willing to forego any interest in the management of station WOV but he did want to know the nature of the "offensive" charges against him in the FCC files.

Mr. David told Mr. Luotto it "might be doing you a favor" if the application were not approved as "we are at war . . . it becomes more difficult to get equipment." When Mr. Luotto protested that WOV had new equipment, Mr. David said the government might have to take over radio stations and Mr. Luotto walked out.

WEDNESDAY, AUGUST 11, 1943

Testimony of Andre Luotto was resumed.

On his return to New York following the incident in Mr. David's office, Mr. Luotto conferred with Mr. La Fount and Mr. Bulova and Mr. La Fount said he would try to get the matter brought to Chairman Fly's attention.

Later in July Mr. Luotto testified that Mr. La Fount informed him that members of the FCC had investigated the charges against Mr. Luotto, had found them groundless, and that the transfer of WOV would be approved at the July 14, 1942, meeting of the Commission. Mr. Luotto said Mr. La Fount had told him this about July 7. Mr. La Fount informed Mr. Luotto that Chairman Fly and other members of the Commission had been spoken to by him on the matter and that Mr. La Fount had gone so far as to notify WOV personnel that on July 14 Mr. Luotto would become station manager. Mr. Luotto mentioned "celebrating" and receiving the congratulations of the station staff.

PM Upsets the Apple Cart

On the fateful Tuesday so important to Mr. Luotto, Harry Kramer, who was slated to become WOV program director, called Mr. Luotto early and told him about an article by Jerry Franken in the newspaper *PM,* which was not exactly favorable to Mr. Luotto's patriotism.

This article, according to a later telephone call to Mr. Luotto by Mr. La Fount, blocked approval by the FCC of the WOV transfer at the meeting that morning as Mr. La Fount said he was notified by an FCC Commissioner.

Mr. Luotto testified he met with Mr. Franken and after Mr. Luotto analyzed the article "word by word" he informed Mr. Franken the article was completely false in word and spirit. When the discussion finished, Mr. Luotto said Mr. Franken left the office saying that if the analysis was correct *PM* would start a crusade to "vindicate" Mr. Luotto. Mr. Luotto now has suit for libel pending against *PM* in the Supreme Court.

The article in *PM* quoted the Italian publication *Il Mondo,* the publisher of which is Mr. Lupis, as source of some of the attacks on Mr. Luotto.

In August, 1942, Mr. Luotto said he talked to Mr. Lupis in the office of Mr. Lang of WHOM during which meeting Mr. Luotto asked Mr. Lupis if he considered Mr. Luotto a Fascist agent or connected with Fascist activities and Mr. Lupis answered "no." Mr. Lupis further said he protested against *PM* using material from his publication and that the material in *Il Mondo* which Mr. Luotto considered unfavorable to him was, in fact, interpreted wrongly by Mr. Luotto and was not meant to be unfavorable to Mr. Luotto.

Mr. Garey read into the record a report by Mr. Lupis to the FCC dated July 8, 1942, about Mr. Luotto in which the substance is that Mr. Luotto is a Fasicst sympathizer.

WOV Staff Contained Aliens

Questioning next turned to WOV staff personnel and Mr. Luotto testified that most of the station's Italian section people were aliens and he particularly referred to Ferrari Hutton, program director, as a former Fascist spy.

Mr. Luotto's relations with the Foreign Language Broadcast Control Committee were next outlined. Mr. Luotto had been asked by Mr. Simon of the Committee to "help him" inspect questionnaires answered by foreign language broadcast station personnel with a view to determining falsehoods, if any. Mr. Luotto's information was not used apparently because the Committee thought that inasmuch as the persons involved had been approved by FCC and OWI that the matter had better be dropped.

A letter from Mr. Luotto to Mr. Simon dated October 6, 1942, was then read by Mr. Garey in which Mr. Luotto asked the Foreign Language Broadcast Control Committee to probe the accusations made against him by *Il Mondo,* and, if substantiated, to take him off the air.

Mr. Lang told Mr. Luotto that Mr. Lupis had verbally replied to the Committee's investigation by saying he would not talk. On November 5, 1942, Mr. Luotto addressed another letter to Mr. Simon requesting an answer to his previous letter. Mr. Luotto replied orally to Mr. Simon that "this fellow Lupis is under the wings of Lee Falk and Nathan David . . . don't try to corner me. I cannot do anything."

Mr. Luotto said that he then went to Mr. Richards of OC asking Censorship to clear him, whereupon Mr. Richards said he could only pass an opinion if requested to by a station manager.

Censorship Clears A. Luotto

Mr. Luotto said he asked Mr. Lang to write Censorship following Mr. Richards' suggestion and Mr. Lang did and OC cleared Mr. Luotto to broadcast.

Because it was intimated to Mr. Luotto that the hearing on the WOV transfer would be held up for the duration of war, Mr. Luotto advised the Mester Brothers to withdraw the transaction with Mr. Bulova.

Soon after that in November, 1942, Mr. Luotto said his brother, Stefano, came to New York and told Andre that he had been put off the air at WGES in Chicago, relating to Andre the circumstances as told the Select Sub-Committee by Witnesses John and Gene Dyer of WGES previously.

The Luottos went to Congressman Marcantonio of New York and complained about their position and the Congressman called Nathan David, then dictated a letter to Andre Luotto containing the substance of the conversation which was that Stefano had been dismissed by "conjecture" and not because of specific instructions from FCC. The Congressman suggested that Andre go to Chicago and talk to the WGES management, which he did, speaking to Gene Dyer.

Mr. Dyer frankly told the Luotto brothers his "whole being revolts against . . . this injustice," but he didn't want to jeopardize his license by doing what he wanted to do in the matter (reinstate S. Luotto). Mr. Dyer suggested that Andre Luotto go to Washington and see what Congressman Marcantonio had discovered in a personal interview with Mr. David.

The Congressman told Andre that Mr. David had said that even to suggest that anyone in FCC uses "such high pressure methods, threatening to suspend or revoke or delay the granting of a license in order to have an announcer removed from the air was offensive. . . ."

A. Luotto Travels Considerably

When the Congressman suggested that Mr. David write Mr. Dyer a letter saying Mr. David had no objection to S. Luotto broadcasting, Mr. David refused saying he hadn't voiced any objections to S. Luotto.

A. Luotto returned to Chicago, requesting a meeting with Gene Dyer and Arnold Hartley. Mr. Dyer agreed, but asked Andre to keep Stefano away as Mr. Dyer didn't wont "your brother" jumping at Mr. Hartley's neck, which would be a justifiable action on Stefano's part, Mr. Dyer said.

Mr. Hartley, A. Luotto testified, put on almost a "melodramatic performance" in which he professed admiration for S. Luotto and said "I love your brother." Andre then asked Mr. Hartley (program director of WGES) to put Stefano back on the air and Mr. Hartley said "not before we have a conference with Becker" (FCC Chicago attorney). Andre Luotto then returned to New York.

Mr. Garey then introduced into the record a press release from the FCC dated August 6, 1943, concerning Stefano Luotto, who is described as an "Italian enemy alien," which Mr. Garey refuted by citing the fact that the Attorney General has ruled there are no Italian enemy aliens.

The release detailed the investigation of station WGES and read that Arnold Hartley had come to Washington and had told Mr. David that S. Luotto was a pro-Fascist, but that taking S. Luotto off the air would lose revenue amounting to $400 weekly, whereupon Mr. David said the choice was plain to him. The release mentioned that Mr. Hartley's statement confirmed "suspicions" as to S. Luotto's loyalty to the U. S. arising because he was vice president of the Dante Alighieri Society of Chicago, a so-called subversive organization, according to these federal investigators.

S. Luotto Accepted Via Transcriptions

Continuing with the release, Mr. Garey established that the president (in 1936) of the Dante Alighieri Society of Chicago was a pro-Fascist and also reported the action of Mr. Lang in dismissing S. Luotto when the FCC advised Mr. Lang of S. Luotto's Society affiliation.

Mr. Garey broke off reading to ask Andre Luotto if his brother was appearing on electrical transcriptions on broadcast stations and A. Luotto said he was "to this day," over WGES on records made at request of Mr. Hartley.

Mr. Garey then asked A. Luotto if any members of the Chicago society were broadcasting with FCC approval and Mr. Luotto said there were several, citing names.

Mr. Garey returned the questioning to the S. Luotto situation after A. Luotto's last visit to Mr. Dyer. A. Luotto testified he had asked Congressman Marcantonio to determine whether Mr. Dyer had asked Censorship about S. Luotto and when A. Luotto returned to the Congressman's office in Washington later Mr. Ryan of Censorship was there and he told A. Luotto that Mr. Dyer had been to see him. As a result, Mr. Ryan said OC was conducting a thorough investigation, which was concluded in January and station WGES was notified that no reason existed why S. Luotto could not broadcast.

A. Luotto then called Mr. Dyer to ask when Stefano would resume broadcasting and Mr. Dyer said he had had no answer from the FCC and that he did not "have my license" either.

A. Luotto then testified that he met Mr. Dyer in Washington in January, 1943, and Mr. Dyer said he had been to the FCC and that "it was useless" (trying to reinstate S. Luotto).

Luottos Give Up on Chicago

A. Luotto said that he then had a talk with his brother and they agreed it was futile to try to go on the air in Chicago and so they agreed to try New York and A. Luotto notified WOV that he was going to use S. Luotto as an announcer on a program for one of A. Luotto's sponsors, requesting the station's approval for the move.

WOV through Ralph N. Weil, manager, wrote Mr. Luotto that "the matter be held in abeyance," as "it may be necessary to submit any changes to the various departments of the government concerned with radio and radio broadcasting. . . ."

Mr. Garey asked if there was any rule requiring such submission and A. Luotto said there was none, except, perhaps, a precautionary check with OC. A. Luotto then said he went to Mr. Weil who said he "was embarrassed," and so A. Luotto said he would go to Washington and get clearance from Censorship again, but that getting such from the War Problems Division of FCC was "useless."

A. Luotto went back to Congressman Marcantonio and the Congressman got a letter of clearance from Censorship, which A. Luotto took back to Mr. Weil. Mr. Weil then said he needed clearance from the OWI and, specifically, Lee Falk. A Luotto went to see Mr. Falk after conferring again with Congressman Marcantonio.

A. Luotto asked Mr. Falk why he was trying to deprive A. Luotto of his "freedom from want" by advising station owners and managers not to do business with him. Mr. Falk said that was old stuff and was not happening any more. Then A. Luotto countered by asking why Mr. Weil needed OWI approval to hire S. Luotto. Mr. Falk said Mr. Weil was "just dreaming."

Upshot of the meeting was that Mr. Falk and A. Luotto parted good friends and Mr. Falk said the "dogs are off."

S. Luotto Will Not Be on WOV

A. Luotto then went back to Mr. Weil and was told to see Mr. La Fount who gave A. Luotto a letter dated April 14, 1943, addressed to him by Mr. La Fount which, in brief, asked A. Luotto to withdraw his request concerning employment of S. Luotto over WOV because of the suit for damages (against *PM*) pending in which WOV may become indirectly involved.

A. Luotto said he put the letter aside and asked Mr. La Fount for the straight answer and got the indirect implication that FCC was the obstacle. Mr. La Fount further asked Mr. Luotto to get a written order from both Mrs. Shea (of FCC) and Mr. Falk (OWI) and "only then will I put your brother on the air."

Mr. La Fount implied that whatever Mr. Falk had told A. Luotto, that he (La Fount) had seen Mr. Falk just recently and Mr. Falk gave S. Luotto a red light.

After the NAB War Conference (May, 1943) A. Luotto saw Mr. Weil again about his brother and asked if, because of the Chicago definition of Censorship's powers, at the NAB conference, S. Luotto couldn't now be reinstated. Mr. Weil bluntly told Mr. Luotto that foreign language stations must avoid seeing the government take them over and, therefore, we must "get along with them . . . whatever they suggest" (FCC). S. Luotto will not be reinstated, Mr. Weil concluded and A. Luotto said nothing further was brought up about the matter to date.

THURSDAY, AUGUST 12, 1943.

(Hearings adjourned because of illness of Counsel Garey.)

FRIDAY, AUGUST 13, 1943.

Robert K. Richards of the Office of Censorship was recalled to the stand.

Mr. Garey questioned Mr. Richards on his professional background in the newspaper, advertising and radio businesses, developing that Mr. Richards had about five years' radio experience and four years' newspaper experience.

In answer to the direct question by Mr. Garey "is it true . . . that the radio industry as a whole lives in fear and terror of the FCC?" Mr. Richards, after qualifying several answers, admitted that broadcasters he had come in contact with directly and personally "are in fear of the FCC," most particularly of the War Problems Division.

Mr. Garey pressed home a series of questions based on the "fear" angle and drew from Mr. Richards the admission that the broadcasters (licensees) he knew were reluctant to insist on their legal rights before the Commission because of this fear.

Further questioning went into the work of Censorship and then devolved on a discussion of analyses submitted to OC by Dr. Leigh's FBIS division of the FCC, said analyses having been made by David Truman, of FCC. Mr. Garey read into the record a copy of the analyses of the "German-American Housewife Hour" on station WBNX and stated this analysis was typical of the "trash" the taxpayers' money is being wasted on. Mr. Garey previously had had Mr. Richards testify that violations of the Censorship Code by American broadcasting stations were very few and of a minor nature. On "quantitative analysis" the analysis read by Mr. Garey deduced that the program under investigation on WBNX

gave a disproportionate amount of attention to Germany and things German in a fashion regarded as unfavorable (to the United Nations).

Richards Avoids FBIS Help

The record contained many tables and memoranda concerning other WBNX foreign language programs, most making the point that WBNX carried an excessive amount of material construed to be unfavorable to the United Nations.

Mr. Garey then introduced a letter from Mr. Richards to Dr. Leigh (of FBIS), dated September 17, 1942, in which Mr. Richards informed Dr. Leigh that at "the present time . . . we do not believe it necessary to work out any special arrangements with FBIS. . . ."

Mr. Garey then asked Mr. Richards if the attitude of OC at the time the letter was written was that Dr. Leigh would be "running one phase" of Censorship if his help was accepted and Mr. Richards agreed this was so.

A letter dated October 14, 1942, addressed by Mr. Richards to Dr. Leigh contained further indications of OC's reluctance to hold meetings with Mr. Truman of FCC, because OC definitely did not want to share Censorship with anyone. In answer to persistent questioning by Mr. Garey, Mr. Richards admitted that there was "no question" about the intention of the FCC's War Problems Division being desirous of taking over foreign language broadcast censorship.

Mr. Richards then confirmed the OC decision in the case of Alphonse Lambiase of station WCOP, who was "removed" from the air at the suggestion of an "individual from a government agency." OC cleared Mr. Lambiase and he returned to the air.

Records of meetings between representatives of OC and FCC were next read with it being fixed that FCC was sure about OC not having any authority to put personnel *on* stations, and the record further showed that Mr. David and Chairman Fly did not agree with OC's right to take personnel *off* the air, a right confirmed by the Attorney General.

Fly Offers Fullest Help to OC

After "reconsidering" a previous objection to FCC Counsel Denny's request that he read all the letter from Chairman Fly to Mr. Price (of OC), dated January 19, 1943, of which he had read only three paragraphs in previous hearings, Mr. Garey read the balance of the letter. Mr. Garey did this to make the point that Chairman Fly, in reviewing FCC procedure in foreign language broadcasting should a person be put off the air on one of these stations and the general picture with respect to license renewals, also interjected the well-known FCC "club"—revocation of license, which "is present" in all instances of negotiations between station management and the FCC. The letter concluded on a note of extending complete cooperation to OC.

Mr. Richards explained to the Select Sub-Committee the operation of the Censorship Code in "dedicatory" program cases (dedicatory programs involve requests by listeners for certain musical numbers or other material to be broadcast at certain times), a discussion which arose out of a complaint directed against station KEYS and in which the FCC assumed jurisdiction until it determined the complaint involved a Censorship matter and then turned the file over to Censorship.

A memorandum dated January 29, 1943, from Mr. Ryan to his chief, Mr. Price, as mentioned by Mr. Garey, indicated that Mr. Ryan, although reporting a "reasonable degree of success" in OC negotiations with OWI, was concerned about FCC's attempts to get into the Censorship picture, using the foreign language situation as a wedge.

FCC further notified OC through Mr. David that when OC requested removal of any foreign language broadcaster from a station, FCC would immediately set a hearing for renewal of license of that station, making OC a virtual "stool pigeon."

Neuner Enters FBIS Picture

On February 20, 1943, Mr. Bronson (of OC) addressed a memorandum to Mr. Richards and Mr. Ryan concerning a call from Robert Neuner, of FBIS, who said he was going to take over Mr. Truman's foreign language broadcast monitoring duties. He requested Mr. Bronson's advising him on the OC methods of monitoring. A subsequent memorandum involving the same OC executives was written February 22, 1943, and concerned Mrs. Shea, developing that Mrs. Shea was following up Mr. Neuner's call and was advising Mr. Bronson that she was going to "coordinate" FBIS foreign language work.

Next memorandum introduced was from Mr. Richards to Mr. Ryan, dated March 27, 1943, and concerned Mrs. Shea again. Mrs. Shea expressed concern that OC had "relaxed" its censorship requirements among foreign language stations by withdrawing requests for English translations. Mrs. Shea wanted to know "who is going to force these managers to see to it that the propaganda on their stations follows the right pattern?"

"Somebody else, not us," was Mr. Richards' reply.

Mrs. Shea then wanted to know what Mr. Richards would think if FCC undertook Censorship in the "shadow-zone" existing beyond the Censorship Code definitions and Mr. Richards advised her to think such a matter over a long time before any action was taken inasmuch as OC was sole agency charged with Censorship.

Mrs. Shea's next suggestion-question was that FCC "suggest" to the station managers that they SHOULD maintain English translations, a postulate Mr. Richards quickly said would countermand OC's action.

Mr. Garey then referred to memorandum sent Mr. Richards and Mr. Ryan by Mr. Bronson, dated March 27, 1943, concerning a survey Mr. Bronson made on a trip through the southwest contacting foreign language broadcasters. It was brought out that one William Pollack, FCC attorney, was "running ahead" of Mr. Bronson four or five days checking foreign language operations on stations Mr. Bronson was to call on.

Another "Government Snooper"

Mr. Bronson said Mr. Pollack had discussed Censorship with station managers, but did not go into detail except at KEYS where William Hughes, manager, had informed Mr. Pollack KEYS had eliminated personal dedications from Spanish programs, whereupon Mr. Pollack advised Mr. Hughes that such announcements need not be eliminated providing they were handled under

provisions of the Censorship Code. KEYS then reinstated the dedications.

Mr. Bronson expressed displeasure at this action by Mr. Pollack writing that station managers were a little frosty when Mr. Bronson got around to them, possibly associating Mr. Bronson as another "government snooper." Mr. Bronson also indicated that Mr. Pollack acted in a matter exclusively OC's and deemed it "unfortunate and ill-timed that FCC should send someone out at this time to check the same foreign language stations that we are calling upon."

The memorandum further stated "all we need to completely confuse the picture is to have Mr. Lee Falk of the OWI come sniffing along behind me."

A memorandum concerning "Foreign Language Personnel Investigations" dated April 21, 1943, and sent from Mr. Richards to Mr. Ryan revealed that Mr. Richards was "all befogged" about investigating foreign language personnel, and mentioned that OC had acted toward removing two individuals from the air and had asked FCC to investigate four others (subsequently cleared by OC). FCC volunteered reports on five others, in addition. FCC's reports, Mr. Richards wrote, were "damning."

Mr. Richards requested counsel inasmuch as OC couldn't conduct investigations without running into the fact that FCC had had an appropriation given it to do the very same thing. However, Mr. Richards indicated the OC dissatisfaction as to the reliability of FCC reports on foreign language personnel.

Bronson Versus Shea

Mr. Garey next took up a report from Mr. Bronson to Mr. Richards and Mr. Ryan dated April 23, 1943, concerning a visit with Mrs. Shea.

Mrs. Shea, it appears, had requested that Mr. Bronson tell her about his southwestern trip. Mr. Bronson told Mrs. Shea that in his opinion foreign language broadcasting was best handled by removing all of it from the air for the duration, to which Mrs. Shea and Leonard Marks, who sat in on the discussion, dissented, suggesting that Mr. Bronson get another job if his heart was not in his work. Mr. Bronson said the opinion was his own, but that in dealing with military security the most expeditious way to protect this was to remove foreign language broadcasts.

The discussion got into situations Mr. Bronson found on his trip and Mrs. Shea mentioned some that Mr. Pollack had reported to her. Mr. Bronson said he had corrected the "bad things" he found and let the "good things" alone. The two now well-known instances of a Texas station broadcasting the slogan "Remember the Alamo" along with "Remember Pearl Harbor" and the Texas station broadcast on which a prize-fighter, following his victory in the ring, stepped to the microphone and said "there are three Mexicans in the audience and I would like to kill them." Mrs. Shea wanted Censorship to take action on these and Mr. Bronson recommended that she file a formal request with Censorship.

Mrs. Shea wanted to know what Censorship would do if someone on the air said "kill Roosevelt" or "kill Wallace" and Mr. Bronson's report showed he thought Mrs. Shea was "a little on the sadistic side."

Mrs. Shea next wanted to know about Mr. Bronson's ancestry, which is English, then she remarked that in view of his background, "I see that you have the natural British antipathy for foreigners," a conclusion Mr. Bronson denied. She insisted. He denied. She insisted. He denied again. She said that there must be some reason he wanted foreign language broadcasts stopped.

Three Stations Complain

Mr. Garey brought into the proceedings the fact that three stations, KDAL, WRJN and KWKW, in May, 1943, had complained to Censorship that FCC had been trespassing on the jurisdiction and functions of OC in these three stations.

Mr. Richards said Mr. Price took the letters to Chairman Fly and there has been an improvement since then in the situation, Mr. Richards commented.

Mr. Bronson's next memorandum in connection with his contacts with Mrs. Shea was introduced and it was titled "Now my week's complete (My Life and Hard Times With Mrs. Shea—Chap. III)." This one was dated May 15, 1943.

The part Mr. Richards played in the case of Stefano Luotto (see previous days' hearings) was gone into again at this juncture.

Following luncheon recess, Mr. Garey read into the record excerpts taken from FCC files which concerned the Luotto brothers, particularly S. Luotto, showing FCC investigations of S. Luotto attempting to prove he was pro-Fascist.

Andre Luotto was called to the stand at this point, picking up his testimony at the instance where he had gone to Mr. Lang of station WHOM to make arrangements for S. Luotto's reinstatement. Mr. Lang said he would cooperate and write OC about Stefano. S. Luotto began broadcasting on WHOM May 16, 1943.

The following Thursday A. Luotto was called to Mr. Lang's office. Mr. Lang said he had gone to Washington on Tuesday and asked Mr. Simon of OC to ask Mrs. Shea and Mr. David, of FCC, why Mr. Lang's license was still held up.

Mr. Simon returned from the meeting and told Mr. Lang that his chance of getting his license was lost when he put Stefano Luotto on the air. Mr. Lang then went to FCC and learned about S. Luotto's affiliation with the Dante Alighieri Society of Chicago. Next stop for Mr. Lang was OC where he asked about this "dangerous" Fascist. Mr. Richards said OC had cleared S. Luotto.

Lang Is Bewildered

A. Luotto testified that he told Mr. Lang that members of the Victory Council, an OWI-approved patriotic war organization in the Chicago Italian community, and the Mazzini Society, arch enemies of Fascism, were also members of the Chicago Dante Alighieri Society when S. Luotto was. Mr. Lang admitted he was "bewildered."

Mr. Lang, "as a friend," then asked A. Luotto to forget the contract between them on S. Luotto's broadcasts until Mr. Lang could straighten out his temporary license situation and argue the difference between the New York and Chicago Dante Alighieri Societies with FCC.

At that time S. Luotto was broadcasting four times a day via transcription over WOV, A. Luotto told Mr. Lang.

Mr. Lang then called Mr. Fenner, FCC New York

counsel, and asked him about S. Luotto being on WOV and Mr. Fenner said he didn't know about it, but if that was the "shocking case" action would be taken. A. Luotto testified that his brother's transcriptions are still on WOV.

A. Luotto reported his meeting with Mario Buzzi, who came to his office with an offer to help stop the "persecution" of S. Luotto. Mr. Buzzi said he was to go to Chicago with a couple of FCC investigators to "get something on Luotto" and while he was in A. Luotto's office he called Gerolamo Valenti, publisher of *La Parola*, against whom S. Luotto had a criminal libel suit pending, while A. Luotto listened on another line. The essence of the conversation was that Mr. Valenti instructed Mr. Buzzi to try to get something unfavorable against S. Luotto, because "he is suing me." Mr. Buzzi got hold of A. Luotto some days later and said the investigators and he did not go to Chicago as FCC called them off. The day's hearing concluded with A. Luotto reporting how the New York FCC investigated his business, the Commercial Radio Service, by interviewing him and asking detailed questions, during which interview A. Luotto brought the whole matter of persecution against him up. Adjournment until Tuesday, August 17, 1943.

National Association of Broadcasters
1760 N STREET, N. W. ★ ★ ★ ★ ★ ★ ★ WASHINGTON 6, D. C.
September 3, 1943 SPECIAL LEGISLATIVE BULLETIN No. 15

New York City Hearings of the Select Committee Sub-Committee to Investigate the Federal Communications Commission

Representative E. E. Cox sitting for the House of Representatives, Seventy-Eighth Congress.

(The following reports are written in news style in digest form because the volume of material transcribed has grown to proportions beyond the means of NAB to reprint verbatim. The digest is objective and contains the full sense of each day's hearings. Should any station manager wish the full transcript of the hearings, information as to cost may be obtained from Althea Arceneaux, Shorthand Reporter, 1060 National Press Building, Washington, D. C.)

TUESDAY, AUGUST 17, 1943

(Representative E. E. Cox sitting as the Select Committee Sub-Committee.)

Several letters concerning foreign language broadcast stations, analyses and the file on the application for transfer of ownership of station WOV were entered on the record by Counsel Eugene Garey of the Committee.

A letter from J. P. Warburg, of the Coordinator of Information, to Alan Cranston, OFF (which preceded OWI) dated March 13, 1942, was entered on the record and concerned Mr. Warburg's suggestion that WOV was about to be sold by the Bulova people to an "undesirable" owner and that the probable way to stop the sale was to block it when the new owners apply for an FCC license.

James Alfred Guest, attorney, FCC, took the stand.

Mr. Garey questioned Mr. Guest about his traffic with Ralph Weil, general manager of WOV, whom Mr. Garey labeled as one of Mr. Guest's "informers." Mr. Garey asked about certain personnel on WOV and other stations, including the Luotto brothers, with the view to establishing that Mr. Guest had the "help" of station WOV personnel in obtaining information for FCC. Mr. Guest said that such information was sent to FCC in Washington and not to him. One such 15-page "report" was a criticism of station WOV sent to FCC by a WOV employe.

The investigation of George Brunner, of station WBNX, by Mr. Guest's offices was next taken up. Mr. Brunner, as related in previous hearings' testimony, had been put off the air in June, 1942, at the suggestion of Lee Falk of OWI and in January, 1943, Mr. Guest began his investigation, which determined that Mr. Brunner was not connected with any subversive organization. Mr. Guest insisted, under persistent questioning by both Mr. Garey and Representative Cox, that he was told to investigate Mr. Brunner by FCC at Washington and he did as he was told.

Guest Is On the Spot

When the questioning of Mr. Guest got around to asking him about material in the FCC files, Leonard Marks and Nathan David both objected that the files were confidential and the witness was so warned by them, with Representative Cox overruling their objections and ordering the witness to testify.

Mr. Guest refused.

Subsequent questioning on Mr. Brunner revealed that Mr. Guest's investigation was thorough, but that nothing was established to show Mr. Brunner was connected with subversive agencies in any way. Repeated insistence of Representative Cox and Mr. Garey for Mr. Guest to an-

swer the question "what legal jurisdiction did the Commission (FCC) have over Brunner?" finally resulted in Mr. Guest answering that the Commission was interested in Mr. Brunner because he was employed in a non-broadcast capacity by WBNX and that there were rumors about Mr. Brunner's affiliations with subversive organizations.

Mr. Garey read a memorandum dated March 20, 1942, from Lee Falk to Alan Cranston, both of OWI, in which Mr. Falk wrote "the following is an initial list of the people we believe should be removed from the radio stations: WBNX, George Brunner, Lido Belli, Carl Heinz (Jander), and Herbert Oettgen; WHOM, Maria Troja, Andre Luotto; WOV, Rino Negri, Ignio Mannechai."

The memorandum further suggests that "suspicious personnel be banned from all broadcasting stations."

Mr. Garey established that Short Wave Research, Inc., through Marya Blow, also acted as "informer" for Mr. Guest and Miss Blow was one of the persons who reported unfavorably to Mr. Guest about Mr. Brunner.

'Combination of Stooge and Pimp'

Manfred Abraham, of WBNX, whom the FCC New York office thought could be "helpful" in getting information on Mr. Brunner, was characterized by Mr. Garey as another "informer" and Representative Cox defined "informer" as a combination of "stooge and pimp."

Mr. Garey continued to ask Mr. Guest about several other "informers" he had used from various New York area foreign broadcast stations, including one man who was found to be an alien, a syphilitic and a dope addict, who was another person who apparently had "information" about Mr. Brunner.

Mr. Guest said they dropped the dope addict "like a hotcake" when they learned his past record.

Upshot of a long series of questions on the dope addict and information concerning Mr. Brunner was that Mr. Brunner was finally cleared by FCC and FCC Counsel Denny so notified station WBNX.

The renewal of station WBNX's license, due to expire June 1, 1943, was next discussed and Mr. Garey drew from Mr. Guest that the question of renewal hinged on Mr. Guest's report of his investigation of WBNX programs and personnel, an investigation Mr. Garey declared was illegal and usurped the powers of the Office of Censorship.

After Mr. Guest's letter of June 21, 1943, "dropping" the dope addict and devaluating the dope addict's information on Mr. Brunner to zero, WBNX was granted a permanent license.

Dorothy Waring, director of investigation, Anti-Nazi League, New York, was called to the stand.

Questioning developed around Mario Buzzi, identified as an investigator for the Anti-Nazi League, with Mr. Garey attempting to find out if Mr. Buzzi had been given funds to leave New York on or about July 8, 1943, when he was last seen in New York by Miss Waring.

Miss Waring Doesn't Know

Mr. Garey soon dispensed with Miss Waring, commenting that it was obvious she didn't have the information about Mr. Buzzi that the Select Committee counsel wanted. He asked Miss Waring to have Professor James Sheldon, Anti-Nazi League director, appear at the next day's hearings to testify.

Andre Luotto took the stand.

Mr. Garey asked Mr. Luotto about a meeting he had had with Arnold Hartley of WOV in Mr. Weil's office at WOV with Mr. Weil present. During this meeting Mr. Hartley assured Mr. Luotto that he (Hartley) had nothing but the highest regard for S. Luotto, Andre's brother, and wanted A. Luotto to know that. At this meeting, which took place about May 5, 1943, A. Luotto said Mr. Weil didn't say a "single word."

A. Luotto then made a plea to the Select Committee that he would like to know "what I am accused of in the files of the FCC and have an opportunity to answer each and every one of those dastardly lies." Representative Cox said the Select Committee could not give A. Luotto that satisfaction.

Stefano Luotto was called to the stand.

Mr. Garey extracted S. Luotto's biography and the admission that he was not pro-Fascist or pro-Nazi. S. Luotto came to New York from Italy in 1931 and became the first commercial broadcaster in Italian in that city; associated with his brother in the Commercial Radio Service. He went to Chicago in 1937.

S. Luotto testified that on November 2, 1942, John Dyer of station WGES called him into the station office and told him he didn't "have the right kind of friends in Washington" and that the FCC wanted him put off the air, giving no reason.

S. Luotto Is 'Naive'

S. Luotto told Mr. Dyer that he "had a serene conscience" and that FCC would be "anxious to right a wrong" in his case. Mr. Dyer, so S. Luotto testified, told S. Luotto he was "very naive."

Mr. Dyer told S. Luotto that Nathan David of FCC told WGES to get S. Luotto off the air or the station would not get its license. Mr. Dyer then asked S. Luotto to "kindly tip toe out of the station," according to the testimony, and S. Luotto "tip toed" out that very afternoon and was off the air.

The balance of the S. Luotto testimony corroborated that related in previous hearings by Andre Luotto, with the exception of a complete explanation of what the Dante Alighieri Society of Chicago was, and according to S. Luotto, it was a very harmless society devoting its meetings to lectures on art, literature or music with singing concerts sometimes interspersed.

S. Luotto did inject the startling comment into the hearing that Gene Dyer, co-owner of WGES, during a conference with the Luotto brothers in Chicago on S. Luotto's situation referred to dealing with a combination like Hartley-David is like "having a pissing contest with a skunk." Representative Cox attempted to have the witness "soften" the language, but S. Luotto stubbornly insisted that was what Gene Dyer said and so the chairman let it go.

When questioned about his citizenship, S. Luotto said he didn't want to take out his citizenship papers until he was absolutely sure his full allegiance to the United States could be sworn to as the oath of citizenship requires. S. Luotto took out his citizenship papers in June, 1941, having satisfied his conscience that he could renounce all ties with Italy, so he testified.

WEDNESDAY, AUGUST 18, 1943

Giuseppe Lupis, Brooklyn, N. Y., was called to the stand.

Mr. Garey questioned Mr. Lupis on his background and work in Italy, France and the United States prior to Mr. Lupis' assuming the job as censor and monitor at station WHOM in "'40 or '41." He came to the U. S. twice, once in 1926 as a visitor, leaving to return to France, then re-entering the U. S. in 1929 as a grocery store operator, leaving in 1935.

He returned in 1936 and in 1941 was employed by OWI as an overseas broadcast announcer. He also published the Italian magazine, *Il Mondo*, in addition to working at WHOM, and with OWI. Mr. Lupis' WHOM employment first began in 1938. Mr. Garey questioned him about his relations with Alan Cranston and Lee Falk and Mr. Lupis said the two OWI men requested information from him about Italian broadcasts and personnel.

Mr. Lupis also testified he was a consultant to Mr. Lang of WHOM on matters of hiring and discharging certain personnel, stating that he (Lupis) would give Mr. Lang the "facts" and Mr. Lang would hire and fire.

A long discussion concerning Mr. Lupis' duties at WHOM ensued in which it was established he acted as script writer, commentator, censor, monitor and announcer on Italian programs.

Mr. Garey had considerable difficulty in getting the witness to answer questions concerning what Mr. Lupis' contacts were and the subjects discussed among government agencies, including Army and Navy intelligence. It finally developed that Mr. Lupis discussed quite a number of things from possible sabotage committed by Italians in American Navy yards to foreign language broadcast personnel. It also was made apparent that Mr. Lupis had a great deal of "facts" about many alleged pro-Fascists, and that when he ascertained these facts he "exposed" the people involved.

Lupis Denies Getting Paid by FCC

On being questioned about being paid by FCC for doing some foreign language translation, Mr. Lupis explained he had signed the contract for the work as publisher of *Il Mondo*, but that one of his staff members had received the pay and nothing ever was paid to Mr. Lupis by FCC. Mr. Lupis further said that in 15 years of exposing Fascists he had never been paid by anyone to do that.

Testimony next revolved around Mr. Lupis' editor, Carlo A. Prato, with Mr. Garey attempting to establish that Mr. A. Prato was a Communist and had been "kicked out" of Switzerland because of that. Mr. Lupis termed these allegations "lies."

Another series of questions about whom Mr. Lupis knows in New York foreign language broadcasting and FCC and OWI circles followed, with Mr. Lupis admitting knowing few persons named by Mr. Garey. Most persons named have been mentioned throughout the New York Select Committee hearings to date.

Mr. Lupis steadily denied getting anyone "jobs" with OWI, FCC or foreign language stations.

The matter of the article in *PM* against Andre Luotto came up and Mr. Lupis remembered reading it and also discussing it with *PM's* editor and Jerry Franken, who wrote the story. Mr. Lupis denied giving Mr. Franken any information contained in the story, and insisted everything he published in *Il Mondo* was the truth. An article he published in *Il Mondo,* which concerned A. Luotto, Mr. Lupis said was reprinted in part from a San Francisco Italian paper, which caused Mr. Garey to ask about the truth of the San Francisco material and Mr. Lupis said he "assumed" the material to be true.

James H. Sheldon Takes Stand

James H. Sheldon, administrative chairman, Anti-Nazi League, was called to the stand following luncheon recess.

Mr. Garey questioned Mr. Sheldon on his background and determined that he had joined the Anti-Nazi League in 1938, prior to which he had been on the faculty of Boston University.

A history of the League, which was organized in 1933 to boycott German products, was next taken up, with Mr. Sheldon admitting that propaganda became the chief function of the League about 1936.

The League maintained a staff, which included investigators and Mr. Sheldon testified his office has built up a considerable file on various people in all parts of the U. S. A.

Mr. Sheldon further testified that transfer of some of this information was made to government agencies, including the FCC, most information dealing with activities of the German-American Bund and people connected with it.

Investigations made by the League stemmed from its own sources and not requests from outside agencies, Mr. Sheldon said.

Lengthy questioning concerning Mr. Buzzi, who was employed as an investigator by the League, then occurred, with Mr. Sheldon testifying along similar lines taken by Miss Waring at the previous day's hearing (August 17), in answer to much the some questioning given Miss Waring.

Mr. Sheldon was excused after he had promised to tell Mr. Buzzi to appear before the Select Committee the next time Mr. Sheldon heard from Mr. Buzzi, who apparently had gone south to convalesce from an illness.

Mr. Lupis took the stand again.

Mr. Garey recalled to him that he had said in the morning session that he had never made any reports on radio personnel to the FCC, but when Mr. Garey mentioned the name of Salvatore Nifosi, Mr. Lupis remembered he had made a report about that man.

Lupis 'Not Recollect'

When Mr. Garey then read a memorandum from the FCC files concerning Andre Luotto and quoting Mr. Lupis as the source, Mr. Lupis "not recollect" telling FCC anything about Mr. Luotto, although certifying that statements in the memorandum were true. The day's hearings closed with Representative Cox ordering Mr. Lupis to return the next day and to bring all correspondence with FCC and OWI officials he had, even though Mr. Lupis said he had destroyed most of his letters and kept no files.

THURSDAY, AUGUST 19, 1943

Mr. Lupis resumed his testimony.

Questioning opened on Mr. Lupis' employment at OWI and he testified he had worked for OWI for several

months, but had been paid by Short Wave Research, Inc. He also denied ordering a young Italian lawyer friend of his to monitor Italian programs over station WBNX, but admitted suggesting that his friend "give him a report" if he "had time to listen."

Mr. Garey asked Mr. Lupis what business it was of his what a competitive station broadcast and Mr. Lupis said he had fought Fascist propaganda for 27 years.

Letters from Lee Falk and Alan Cranston to Mr. Lupis, commenting on "cooperation" and "plans" extended OWI and FCC by Mr. Lupis were read into the record by Mr. Garey. The letter of Mr. Lang to Andre Luotto about the meeting they had with Mr. Lupis with reference to the *PM* article was read to Mr. Lupis, who confirmed its text substantially (letter is mentioned in previous hearings in A. Luotto testimony), but said most statements in the letter "were not exact."

Mr. Lupis volunteered the flat statement that the Dante Alighieri Society was the "most powerful Fascist agency in the United States," in testimony concerning his comments about the Luotto brothers.

Lupis 'Suggests' to Lang

Mr. Garey, after exhaustive questioning, finally drew from Mr. Lupis the fact that he suggested to Mr. Lang that S. Luotto be barred from broadcasting until the Luotto libel suit against Mr. Valenti of LA PAROLA was concluded, even though the Office of Censorship officially had cleared S. Luotto.

Mr. Lupis also said he advocated getting people off the air who had pro-Fascist sympathies by any possible legal method, even though direct or indirect.

Following luncheon recess, Arnold B. Hartley, program director, WOV, took the stand.

Biographical data revealed that Mr. Hartley began work at WOV on May 2, 1943, having previously worked at station WGES, with a total of 13 years' radio experience altogether.

Testimony then embraced Mr. Hartley's meeting August 2, 1943, with Mr. Guest (FCC). The two discussed Mr. Garey's pre-hearing questioning of Mr. Guest about Mr. Hartley with the principal point being whether Mr. Hartley was trying to "masquerade as a non-Jew." Mr. Guest then told Mr. Hartley that Nathan David was coming in town and would Mr. Hartley like to meet Mr. David? "No," Mr. Hartley said.

Not deterred, Mr. David called Mr. Hartley at home that same evening, Mr. Hartley testified. Mr. David referred to the letter Mr. Hartley had written to Dr. John Dyer (see Dyer testimony in previous hearings) on October 28, 1942, with a view to refreshing Mr. Hartley's recollection of the meeting with him (David) in Washington on the day of the letter, points of which were substantially as Mr. Hartley had written them to Dr. Dyer. Mr. Garey attempted to establish the point that Mr. David's call to Mr. Hartley was for the purpose of influencing Mr. Hartley's possible testimony before the Select Committee, a supposition Mr. Hartley agreed had "occurred" to him.

In October, 1942, at a meeting in Washington of the Foreign Language Radio Control Committee, Mr. Hartley said he had talked with A. Luotto and suggested to him that A. Luotto get up an Italian propaganda program.

Hartley Sees Spingarn

Mr. Hartley said that after the meeting in October, 1942, he attempted to find out why WGES was still on a temporary license and he was referred to Mr. David or Mr. Spingarn by WGES attorneys. Mr. Hartley saw Mr. Spingarn and asked him about the license, receiving the information that the license was being held up because of some complaints about Stefano Luotto and Remo Conti. It was brought out that Mr. Spingarn represented these two men as being alleged to be pro-Fascist.

Mr. Garey then tried to establish that at the committee meeting Mr. Spingarn had by implication warned station operators that FCC could use its licensing power to discipline stations indirectly. Mr. Hartley denied this implication, by testifying he could not recall anything like that.

Mr. Hartley went to see Mr. David following the talk with Mr. Spingarn. The discussion with Mr. David is contained in the letter Mr. Hartley wrote to Dr. "Jack" dated October 28, 1942. (See previous hearings—Dyer testimony.) Mr. Hartley confirmed the substance of this letter to the effect that if WGES were to stay on the air S. Luotto would have to get off—or else.

In trying to draw out Mr. Hartley as to what the opinion of the radio industry about the FCC was, Mr. Garey led questioning along lines that station operators felt FCC was motivated by "conditions of favor or disfavor" and Mr. Hartley parried these attempts by saying he was not familiar enough with industry feelings.

The only thing Mr. Hartley had against S. Luotto, testimony shows, was that S. Luotto wouldn't use OWI "canned" materials on newscasts—nothing else. Mr. Hartley said Lee Falk addressed the foreign language broadcasters of Chicago in October, 1942, and told them to use OWI material, both transcriptions and news material, and Mr. Garey got from Mr. Hartley the admission that S. Luotto's newscast was sponsored and, so long as station policy was followed, the station did not try to tell sponsors what to put in their programs.

Garey Says He Is 'Timid'

In lengthy questioning of Mr. Hartley to determine his feelings about OWI transcribed Polish programs, Mr. Garey said he would not say anything derogatory to OWI as he was a "very timid person." Mr. Hartley said OWI was a better judge as to whether Polish anti-Nazi programs were a waste of government money than he was, after Mr. Garey led questioning in that line.

Mr. Garey returned to Mr. Hartley's report to the Dyer brothers on the occasion of his return from the Washington visit with Messrs. Spingarn and David. It was recorded that Messrs. S. Luotto, Conti and Alfedi were summarily put off the air at WGES the day after Mr. Hartley's return, an action taken to "avoid unpleasantness" with FCC.

At this juncture Mr. Hartley said the fear of losing his license should be in every broadcaster's mind and such fear is "wholesome" for the broadcasting activities of a station. He admitted that soon after the three men had been discharged WGES received its permanent license and further said this was a result of the firings as he saw it.

Mr. Garey transferred questioning to the meeting Andre Luotto had with Gene Dyer and Mr. Hartley in Chicago

in December, 1942, in which the previously-mentioned Hartley "melodramatic" performance took place. (See A. Luotto testimony.) Mr. Hartley said he could not recall details of the meeting, but confirmed A. Luotto's report as being substantially accurate.

Consideration of the program idea Mr. Hartley had shortly after going to WOV of counter-action against Italian propaganda broadcasts from Italy by answering such broadcasts shortly after they were aired was next taken up. Mr. Hartley broached this idea to Lee Falk and OWI helped Mr. Hartley with it, did the monitoring and furnished the scripts for the Bulova stations.

Service Not Exclusive

Mr. Garey pressed home questioning trying to establish that this program series was given exclusively to Bulova stations and to WGES in Chicago at the recommendation of Mr. Falk, but Mr. Hartley said that when OWI began furnishing the show it, of course, could not be exclusive and was sent to whomever requested it.

Referring to Mr. Hartley's private and confidential statement to Alan M. Becker, FCC attorney, about S. Luotto, Mr. Garey was told by Mr. Hartley that this statement was not authorized by him to be released to anyone but Mr. Becker or to be revised, yet Mrs. Shea "polished" it up and then notified Mr. Hartley. This revision was sent to the Office of Censorship and Mrs. Shea attached a note that it was made at Mr. Hartley's request, a statement Mr. Hartley testified was false as the revision had already been made when he first heard about it.

Mr. Hartley said he didn't remember telling Andre Luotto in New York that he (Hartley) the fine things A. Luotto's testimony said Mr. Hartley had said. (See A. Luotto's testimony.) Mr. Hartley also denied that Lee Falk told the foreign language broadcasters at the NAB War Conference in Chicago that they would lose their license if they didn't clean up their stations.

Mr. David rose at this point to ask Representative Cox if the half dozen people whom the testimony had blackened the reputations of would be allowed to testify while the charges were fresh and the answer was given that these people would be given an opportunity to make answer in "due time."

FRIDAY, AUGUST 20, 1943

William Carlton Alcorn, vice-president and general manager of station WBNX, took the stand.

Facts concerning Mr. Alcorn's background and the station were entered on the record. In discussing awards given WBNX for outstanding operation in the "public interest, convenience and necessity," Mr. Garey asked Mr. Alcorn what yardstick was used in measuring "p.i., c. and n." and Mr. Alcorn answered "I'll bite," which was taken to mean he didn't know.

Mr. Alcorn said further, in answer to Mr. Garey's questioning, that Congress should define the terms "p.i., c. and n" so that station managers would know exactly what is meant, or eliminate it entirely from the Radio Act and substitute statutory "norms" or safeguards to guide the FCC in determining public interest.

Private enterprise cannot live under the present method of FCC operation, Mr. Alcorn stated flatly, in answer to a direct question by Mr. Garey.

It was brought out that in August, 1942, when WBNX was placed on a temporary license, it immediately suffered a severe cut in revenue as sponsors cancelled, because the license was only good for 30-day periods, and some of the WBNX personnel was under "a little cloud" as to their stability on the station.

Mr. Alcorn explained in detail the operation of his station, censorship of programs and made the point that since Pearl Harbor additional safeguards have been taken to protect the listener and the station from Censorship violations.

One complaint was made by the newspaper *PM* that on a program in German someone said "Hitler is God" and, furthermore, that *PM* was going to write to the FCC about it. Investigation proved the complaint was groundless, that someone at *PM* had only half-listened and got the wrong impression.

WBNX Checks with Recordings

By means of recordings, Mr. Alcorn said his station has a constant and reliable check on all foreign language broadcasts as sometimes persons complained even about the way music was played.

In June, 1942, Mr. Silver of FCC visited WBNX and obtained recordings of news programs broadcast by George Brunner, Mr. Alcorn testified. Mr. Brunner to date has been with WBNX 12 years, is an American citizen and well thought of by the station management, the testimony showed.

Mr. Alcorn said Mr. Brunner's removal from the air was the "most undemocratic thing I ever heard of; that he had no opportunity to justify or answer any complaints."

At the only meeting he ever had with Lee Falk—in June, 1942—Mr. Alcorn said Mr. Falk suggested that Mr. Brunner be taken off the air, giving no satisfactory reasons, but Mr. Brunner was thereupon taken off because Mr. Alcorn wanted to cooperate with the "wartime control board."

However, Mr. Alcorn did write to NAB president Neville Miller on June 19, 1942, relating all the facts concerning Mr. Brunner's dismissal, including the information that if Mr. Alcorn had trouble replacing Mr. Brunner to see Mr. Falk, who offered to recommend someone, and, in any event, who wanted to pass on anyone whom Mr. Alcorn did hire. Mr. Alcorn suggested in this letter that inasmuch as Mr. Falk had said that if Mr. Alcorn didn't comply with the request to dismiss Mr. Brunner, the Army might do something about it, that Mr. Falk's branch of the Office of Facts and Figures (preceding OWI) be formally endowed with authority of censorship, for which his department apparently was created.

FCC Press Release Refuted

(The following press release issued by Chairman Fly of FCC is herewith inserted because the testimony of Mr. Alcorn and insertions from FCC files made by Mr. Garey at this point concerns this release:)

> "The FCC had nothing whatsoever to do with the dismissal of George Brunner as an announcer for Station WBNX.
>
> "FCC's interviews with Henry H. Wolfgang had nothing whatsoever to do with the dismissal of Mr. Brunner.
>
> "Mr. Brunner was dismissed in June 1942—

one whole year before any representative of FCC ever met Henry Wolfgang.

"It was in May 1943—one year after the Brunner dismissal—that Wolfgang came to the FCC legal office in New York and told the sensational story concerning alleged Nazi radio activities. FCC agents in conjunction with the FBI investigated his charges immediately. They discovered the New York police record which listed Wolfgang as a potential spy with definite indications of working for the Gestapo, and his history as a narcotic addict, and dropped the man at once.

"The record will substantiate each of these facts."

In answering the above press release, Mr. Garey placed in the record letters and memoranda from FCC files which showed FCC personnel to be familiar with and to be compiling material on Mr. Brunner and other foreign language station personnel. A Mr. Clift from the FCC also investigated the files of WBNX in June, 1942. Mr. Alcorn said he took the matter up with Censorship and Mr. Brunner was cleared by OC.

Mr. Brunner was also cleared by Mr. Guest and Mr. Fenner of FCC when Mr. Alcorn brought the matter to their attention in the spring of 1943, testimony indicated.

In a letter from his Washington attorneys dated February 6, 1943, giving Mr. Alcorn reasons why he was having trouble with his license, several points were emphasized, the principal one being that Mrs. Hilda Shea of FCC was strongly of the opinion that foreign language broadcasts during war, even including musical programs, should be actively pro-Allied and so propagandized. It appears from this letter that Mr. Alcorn was derelict in his management of his station in allowing some passivity to creep into foreign language broadcasts and, therefore, his license was involved. The programs by Lido Belli were specifically cited as not being "active" enough on the pro-Allied propaganda side.

Charges in Letter Inaccurate

The letter further cited that two other points on which Mr. Alcorn might be cited by FCC (according to Mrs. Shea) were that scripts were not always submitted in advance for programs (by broadcasters to WBNX) and that broadcasts were not monitored "on the air."

Mr. Alcorn termed these charges inaccurate.

The attorneys summed up their letter by urging Mr. Alcorn to require full and complete scripts in advance for all programs, and to have all programs monitored "on the air" by qualified linguists. With regard to Mr. Belli they made no recommendation except to mention that "your license is in jeopardy because of him." However, they did "suggest" two courses—either dispense with Mr. Belli entirely or try to compromise with Mrs. Shea's views by making the station personnel on foreign programs pro-democratic and to retain Mr. Belli to service commercial accounts, but not to broadcast or to select program material.

OC cleared Mr. Belli when it investigated him, the letter reported.

Mr. Alcorn said that when he received this letter he called Reed T. Rollo (the attorney who wrote it) and said: "this is about the most unusual letter I have ever received from you, and I still can't quite understand it. If you feel that way about it, you get right up out of your chair and go over to the Commission and set our license down for a hearing; we are perfectly willing to go through with that."

The license was granted.

It was revealed by Mr. Garey through reading letters into the record that Mr. Falk had recommended that a man named Ernest Angel, a German language broadcaster, see Mr. Alcorn for possible employment. A letter from Mr. Alcorn to Mr. Falk in June, 1943, pointing out that Mr. Guest had cleared Mr. Brunner for broadcasting and asking some disposition from Mr. Falk was read and Mr. Alcorn said he had received no answer to it.

Another Letter Unanswered

Mr. Alcorn's letter to Mr. Guest of March 17, 1943, requesting a bill of particulars on any "shortcomings" of WBNX in view of the investigations of WBNX conducted by Messrs. Silver and Clift also remained unanswered, Mr. Alcorn said.

Testimony next turned to Lido Belli, whom Mr. Alcorn characterized with the best recommendations. Mr. Belli was interned shortly after Pearl Harbor as an alien and was released shortly thereafter when Mr. Alcorn signed with immigration authorities as sponsor for Mr. Belli.

In August Mr. Alcorn was called back to Ellis Island and asked to sign a new parole agreement which stipulated that Mr. Belli was to cease all broadcasting or control or preparation of broadcast material. This stipulation was the "economic ruination" of Mr. Belli, Mr. Alcorn said. Mr. Garey said this stipulation was imposed after Mr. Falk had written the Department of Justice demanding Mr. Belli be interned for the duration.

Mr. Alcorn said he did everything he could to get the parole changed, getting a clearance from OC again after an intensive investigation by Mr. Richards of OC.

Correspondence between Mr. Alcorn and Mr. Belli's attorney and the Department of Justice relative to getting Mr. Belli's right to service his customers (he operated an ad agency) even if he could not broadcast was entered on the record. In October, 1942, the FBI said the matter was now in the hands of OC.

Letters also were introduced by Mr. Garey "in view of the constant thread that runs from the FCC to the OWI and from these offices through . . . Short Wave Research. . . ."

Letters from Alfonso Vanacore (Hugo Neri on the air), who had been discharged from Mr. Belli's employment because of the foreign language broadcast situation, to OC and OWI in which Mr. Vanacore asked clearance to get back on the air were read.

Mr. Garey then returned to the FCC investigations of Mr. Alcorn's station files.

'Everybody' Investigated

FCC began investigating his station completely in the spring of 1943, Mr. Alcorn testified, and "everybody" at the station and who ever broadcast on it in a foreign language was investigated, including Mr. Alcorn and his executive staff. Investigations included backgrounds and foreign political and native leanings of the people and all operations of the station.

Copies of IL MONDO, which attacked WBNX as an outlet of "Fascist hokum," were put in the record by Mr. Garey, after which Mr. Alcorn was excused from the stand.

Luncheon recess over, Mr. Garey introduced a letter dated June 3, 1942, from Chairman Fly to Arthur Simon, Foreign Language Broadcasters Wartime Control chairman, which stated if the control code were to be effective 100% cooperation must be had from foreign language broadcasters.

On June 5, 1942, Mr. Simon wrote to Mr. Alcorn requesting a contribution toward helping running the Control Committee. On June 8, Mr. Alcorn wrote Mr. Simon, returning a copy of the Control Code, in which Mr. Alcorn asked pointed questions as to who gave the Control Committee a "mandate" over stations—FCC or OWI?

A letter dated June 9, 1942, from Mr. Hartley to Mr. Simon contained information that Mr. Hartley's impression of the Control Code did not jibe with copy of it he received—in fact, did not jibe to such an extent that Mr. Hartley tendered his resignation from Wartime Control saying that the Code was an arbitrary ruling infringing upon rights of managements and powers of government.

A letter from Gene Dyer, of WGES, to Chairman Fly dated June 10, 1942, indicated that Mr. Dyer thought Wartime Control was "running away with itself" and that WGES would sign only if Mr. Fly so recommended.

Neville Miller's letter to Mr. Alcorn dated June 13, 1942, mentioned a meeting of members of the NAB staff with OC and with Mr. Simon, Joe Lang and Harry Henshel of Wartime Control, in which it was decided the Control Committee should not dictate to stations, but should set up a code of cooperation.

More Letters

In October, 1942, Mr. Alcorn wrote Mr. Simon that WBNX would not participate in a meeting of Wartime Control at Washington because WT "has failed in its objective."

Edward Ervin's (WBNX employe) statement before the FCC (Fenner) in New York on February 24, 1943, was introduced by Mr. Garey. Mr. Ervin made the point that WBNX may have made some mistakes of omission because it is "human," but the station was operated with utmost conscientiousness and concern for its duties under its license, giving details on how the station controlled its programs and the personnel which appeared on them by thorough checking of this personnel over long periods of time.

Giulio Ascarelli, of station WHOM, was called to the stand.

The usual biographical questioning occurred, during which Mr. Ascarelli said he came to the U. S. A. in February, 1939, and applied for citizenship two weeks later. After trying to get work at Metro-Goldwyn-Mayer, for whom he had worked in Italy, he tried WHOM after hearing there was an opening there for an Italian language broadcaster. He looked in the telephone book for the station address, he said.

Mr. Ascarelli talked to Mr. Wilcox, who referred him to Mr. Amauli, director of Italian programs. Mr. Ascarelli got the job after several conferences with Mr. Amauli.

Mr. Ascarelli said his membership in the Fascist Party in Italy was for "practical reasons of working" and not political. He said he was suspected by the Fascist Party of anti-Fascist actions because he worked for an American concern. A quota visa was given him to come to America because he was Jewish, he testified.

Subsequently Mr. Ascarelli was employed by CBS and OWI, the latter work being paid for through Short Wave Research.

Aliens Can't Be Paid by U. S. A.

Because he was an alien, Mr. Ascarelli testified he had to be paid through Short Wave Research and not by a U. S. government agency.

Mr. Garey asked Mr. Ascarelli if he knew certain people (mentioning them by name) who have appeared in the hearings records and Mr. Ascarelli said he met Miss Keene of Short Wave Research, Mr. Tabet and Mr. Colombo of WOV and others after he came to America. He met Remo Nissin in Italy, he said.

Mr. Garey questioned Mr. Ascarelli about his duties as censor at WHOM, which are mainly that he compare the English text with the Italian translations in newscast scripts to see they coincide exactly.

It was revealed during questioning of Mr. Ascarelli that he was grilled by Mr. Fenner of FCC concerning possible Fascist activity at WHOM, or any persons there with Fascist leanings, and also as to his own background and family.

After further brief questioning on how Mr. Ascarelli got his visa (on a "break," he admitted) the hearings adjourned until Tuesday, August 24.

(The following letter was sent to the New York *Times* by Chairman Fly. It is dated August 19, 1943, and was printed by the New York *Times* on Sunday, August 21:)

To The Editor of the New York Times:

During the past three weeks the Cox Committee to investigate the Federal Communications Commission has held what it terms "hearings" in New York City. The *New York Times* has run substantial accounts of the local activity of this Committee. There are, however, other less publicized facts concerning the history and procedures of the Cox Committee, the knowledge of which is essential to any public appraisal of the Committee and its work.

I do not wish to go into the matter of the $2,500 check Congressman Cox received from Radio Station WALB in Albany, Georgia, for "legal services" he purported to perform in connection with that station's application for a license from the Commission. This matter is now in the hands of the Attorney General and the facts are widely known to the public. The relation of that item to the origin of the investigation and the scurrilous remarks regarding the Commission which are made by the Congressman on the floor of the House even before the investigation began are likewise relegated to the background. At this juncture, however, one may well inquire as to the character of "judicial inquiry" which has developed from such a genesis.

The Congressional power of investigation is too essential an instrument for maintaining the health of our

body politic to permit it to be prostituted for personal vengeance. Since the earliest years of our Congressional system, investigations have been the most thorough means by which the Congress informs itself on crucial topics, in order to legislate wisely and remedy abuses. But to the extent that the Congressional power is diverted to the personal and political purposes of the investigators, the Congressional investigative power is impaired. The constructive force of such an inquiry can rise little higher than the judicial quality of the proceeding; and the quality of the Cox proceedings is at such a level that it must be understood and remedied if the future Congressional power of investigation is to enjoy the respect and public confidence to which it is entitled.

From its inception the Cox Committee and its Counsel have abandoned any attempt at objectivity or constructive accomplishment. The principle of a full and fair presentation of all the facts has been rejected. Suppressing the true facts, the Committee has sought the headlines by twisting and distorting meagre evidence carefully calculated to do injury to the Commission and its personnel. Careful design is all too apparent.

The Commission has never been permitted to answer the irresponsible charges made, to make any statement through counsel or to offer any document in evidence. The procedural controls of the Committee are exercised to the end that startling news will be created and its publication assured, while evidence reflecting upon the validity of the story is completely smothered. Thus after six months of "investigation" and seven weeks of "hearings," the Committee has still not afforded the Commission an opportunity to answer any of the charges or to get a word in edgewise.

The other day a reporter who I am sure is sophisticated enough to know his way around, asked me why it was that the wee, small voice of the Commission was never heard at these hearings. He remarked that he knew of the Commission's answer to at least one of the pettifogging charges made at the public hearing, and that he could not understand why the Commission did not speak up. It was shameful, he said, for the Commission to allow such a distorted record to stand. I agree with him, but there is nothing apparently that can be done. We have demanded without avail an opportunity to be heard. Our pleas for a hearing have continually been ignored.

Observers at the Committee hearings have seen the Commission's representatives silenced, their proffers of proof rejected, and even the fact that the proffer was made stricken from the record. They have noted the oft-repeated Edgar Bergen-Charley McCarthy act in which Cox and his Counsel exchange speeches carefully prepared to emphasize the point which they desire the press to accentuate. In the hearing room the Committee's own hired press representative seeks to spur on the reporters. Adjournments and recesses are utilized to grasp the headlines and, indeed, to smother countervailing statements.

This procedure has, indeed, been reduced to formal rules. Thus on July 6, the Cox Committee in meeting assembled was offered the suggestions of an expert headline-getter for the control of the Committee procedures. The next day the Committee's Counsel, no doubt apprehensive that some member of the Committee might not appreciate the imporance of these rules, resubmitted them in ready reference form. These rules are so revealing that I quote them verbatim,

> "1.—Decide what you want the newspapers to hit hardest and then shape each hearing so that the main point becomes the vortex of the testimony. Once that vortex is reached, *adjourn*.
> "2.—In handling press releases, first put a release date on them, reading something like this: 'For release at 10.00 A.M. EWT July 6', etc. If you do this, you can give releases out as much as 24 hours in advance, thus enabling reporters to study them and write better stories.
> "3.—Limit the number of people authorized to speak for the Committee, to give out press releases or to provide the press with information to the *fewest number possible*. It plugs leaks and helps preserve the concentration of purpose.
> "4.—Do not permit distractions to occur, such as extraneous fusses with would-be witnesses, which might provide news that would bury the testimony which you want featured.
> "5.—Do not space hearings more than 24 or 48 hours apart when on a controversial subject. This gives the opposition too much opportunity to make all kinds of counter-charges and replies by issuing statements to the newspapers.
> "6.—Don't ever be afraid to recess a hearing even for five minutes, so that you keep the proceedings completely in control so far as creating news is concerned.
> "7.—And *this is most important:* don't let the hearings or the evidence ever descend to the plane of personal fight between the Committee Chairman and the head of the agency being investigated. The high plane of a duly-authorized Committee of the House of Representatives *examining* the operations of an Agency of the Executive Branch for constructive purposes should be maintained at all costs."

Although the rules themselves are the best evidence of the unfair character of this investigation, the vicious results their operation achieves invites a few supplemental remarks. For example, under Rule 1 the prejudgment of the Committee is made obvious. I would suppose an investigation of this kind would strive for the facts, not decide in advance of hearing what it wants "newspapers to hit hardest." Then, as if this decision were not enough, the Committee seeks to "shape" the entire hearing to this prejudged point. At this juncture the gavel falls. The decision to skirt around any facts that might prevent reaching a predetermined "vortex" is laid bare in Rule 1.

By Rule 3, the Committee "plugs leaks and helps preserve the concentration of purpose." Plugs what leaks? Preserves concentration of what purpose? Could it be that the Cox Committee has so shrewdly staged its proceedings to "grab the headlines" that it is now fearful lest its simultaneous secret proceedings and gagging of witnesses is likely to leak out? Or, is it merely fearful some of the facts which will refute the wild charges are likely to be anathema to the concentration of purpose?

Rule 5 is, of course, the most tainted of all. Not only are the "hearings" so-called, rigged to garner headlines and prevent any answer of Committee charges by the Commission but also the truth can be avoided if only the "opposition" can be outmaneuvered in press relations.

For the government agency investigated to be termed the "opposition" is something new. The press has a public trust to present the facts upon which the day's news is based; they as well as the Commission must have an interest in discouraging tactics of the Rule 5 type.

Rule 6 indicates to what degree "policy sits above conscience" in this Committee. Admonitions for short recesses to regain a lost position and to "keep the proceedings completely in control so far as creating news is concerned" seems hardly necessary in the face of the tight rules laid down. The rule shows that the Cox Committee is not taking any chances on losing complete mastery of the publicity and hence control of the "job" it started out to do on the Commission. Even though early warnings of what was to come were clearly visible still I cannot believe that Congress contemplated a procedure of this kind in its name.

Control of the public procedures and the publicity mechanism, while a hearing is denied, has been accompanied by complementary behind-the-scenes activity fitting into the same pattern. Early in the investigation the Commission discovered that various "witnesses" from the industry, from the Government, and from the Commission's own staff were being grilled by Committee Counsel in secret sessions. At these proceedings no member of the Congressional Committee has been present. The press and public have been kept similarly in the dark. Even the "witness," if not antagonistic to the Commission, has been refused permission to see or correct the transcript of his own testimony.

These "star chamber" proceedings by the employees of the Committee have been held in private hotel suites, in the private law offices of Committee Counsel and his personal associates, and in other places of seclusion. On occasion, the attendance of "witnesses" at such places before these Committee employees has been compelled by subpoenas issued without any authority of law. This unlawful procedure has been amplified by the Committee staff member purporting to place the witness under oath. Under these circumstances the "witnesses" have been grilled for hours on end and full transcripts of the "testimony" taken. The Commission has never been permitted to purchase or even to see a copy of those transcripts.

Reprehensible as the taking of this secret testimony is, the manner in which it is finally used is worse. When the witness is very antagonistic to the Commission and is not able to be present at the public hearings, only the most damaging parts are read into the record; any countervailing statements even of the same witness are studiously suppressed. When the witness of the "secret session" is a Commission employee, only those statements which appear to be damaging because read out of context are uttered for the public record.

After the witnesses who might be fair and state the facts as they really are have been culled out by these secret sessions, the anti-Commission witnesses who are sufficiently disgruntled are finally called to public hearing, and their secret testimony is used to force them to go at least as far in "public hearings" as they were cajoled or threatened to go in the closed session. That even these witnesses, hostile as they are to the Commission, are reluctant to go this far on the public stand is evident from the record.

The press, the public, and the Commission have a right to an open, impartial, and objective investigation which will not merely admit but also will affirmatively seek the full and true facts. If the Commission has on occasion erred, let the facts be fully known and the errors promptly corrected. Meanwhile, let's have an end to hearings which reach a "vortex" and then adjourn, before the full facts may appear, secret hotel-room seances, gags, intimidation, and "conclusions" released to the press 24 hours or more before the hearings are held. My interest here is of small concern; the public and the Congress have much at stake.

/s/ James Lawrence Fly
Chairman, Federal Communications Commission

National Association of Broadcasters
1760 N STREET, N. W. ★ ★ ★ ★ ★ ★ ★ WASHINGTON 6, D. C.
September 10, 1943 SPECIAL LEGISLATIVE BULLETIN No. 16

Text of Address of Senator Ed Smith of South Carolina at 4th NAB District Meeting on FCC-Supreme Court Decision

(Following the speech text is the text of the resolution passed by the 4th NAB District broadcasters urging passage of radio legislation such as the White-Wheeler Bill by Congress. The broadcasters were assembled in Asheville, N. C., Sept. 3-4.)

"What hath God wrought" was the first message sent over the telegraph wires. It seemed then, that no greater miracle could be accomplished or imagined than the sending and receiving of communications over vast distances by means of small instruments and thin lines of wire.

But the radio with no visible connection between the sending and receiving apparatus, circles the earth in a flash. It carries not only messages but the voices and personalities of speakers on waves of ether—science working with God for the benefit of all mankind.

This miracle of radio is not simply a means of communication. It is a mighty medium of information, free expression and discussion.

Any effort to restrict or circumscribe it strikes a blow at one of our profoundest rights—the right of Freedom of Speech. It is a blow aimed at the Bill of Rights itself, America's most sacred document.

Such a blow, at our deepest liberties, has been dealt by a majority of the Supreme Court—Felix Frankfurter writing the majority decision.

There was before the court a question on the licensing of radio stations and on wavelengths. There was no question whatsoever before the Supreme Court concerning radio programs. But Frankfurter, in writing the majority decision, deliberately went far afield and embraced that question. In his decision he turned over to the FCC the control of radio programs, virtually giving them the power to determine who should speak over the radio and what they should say. A totalitarian government hardly could go farther than that in restricting free expression.

This he has done at the very hour when Americans have been sent all over the world to fight and to die for freedom of speech.

Frankfurter Prospers in America

It is passing strange that Felix Frankfurter, of Austria, should write a decision threatening American Freedom. He knows, by happy experience, what a glorious privilege it is to be protected by our splendid form of Government. For long years he has lived here and prospered well. He was educated in our colleges. He has been entrusted with office after office of dignity and influence. And finally he has been elevated, by the President of the United States, to the highest appointive position of trust and honor and power that this nation has to give. He knows what a tragic fate can befall a country whose liberties are dead. Prostrate Austria, his native land, in her misery and her shame, is his example and his proof.

It is with gratitude that I pay tribute to Mr. Justice Murphy who wrote the dissenting opinion and whom I now quote:

"By means of these regulations and the enforcement program, the Commission would not only extend its authority over business activities, but would greatly enlarge its control over an institution that has now become a rival of the press and pulpit as a purveyor of news and entertainment and a medium of public discussion. To assume a function and responsibility of such wide reach and importance in the life of a nation, as a mere incident to its duty to pass on individual applications for permission to operate a radio station and use a specific

wavelength, is an assumption of authority to which I am not willing to lend my assent.

". . . We exceed our competence when we gratuitously bestow upon an agency, power which the Congress has not granted. Since that is what the court in substance does today, I dissent.

". . . Because of its vast potentialities as a medium of communication, discussion and propaganda, the character and extent of control that should be exercised over it by the Government is a matter of deep and vital concern. Events in Europe show that radio may readily be a weapon of authority and misrepresentation, instead of a means of entertainment and enlightenment. It may even be an instrument of oppression."

Calls Decision Roll

It is of vital importance to Americans everywhere that they know which men of the Supreme Court bench agree with Frankfurter and which men agree with Murphy.

Therefore I shall call the roll of the Supreme Court.

Mr. Justice Black and Mr. Justice Rutledge took no part in this decision. Justices Reed, Jackson, Stone and Douglas agree with Mr. Frankfurter. Mr. Justice Roberts agrees with Mr. Justice Murphy in upholding freedom of speech. What a valiant but what an alarmingly small roll of honor!

It is the duty of Congress to re-enact a radio bill, as promptly as possible, to nullify this dangerous court decision.

This bill must be clear, strong and forthright. It must state plainly the scope and the limit of the powers to be delegated to the FCC. It must leave no loophole for broad interpretation of authority. This bill must guard and protect America's dearest freedom.

Our fighting men have left this sacred heritage in our keeping. We will betray them if we do not guard it with all our might!

What price freedom for the world if American freedom be sacrificed!

Remember Americans all—"Eternal vigilance is the price of liberty!"

4TH DISTRICT RESOLUTION

5) RESOLVED: That the membership of the Fourth District of the NAB, comprised of the owners and managers of radio stations in North Carolina, South Carolina, Virginia, West Virginia and the District of Columbia, view with alarm the possible effect of the May 10th decision of the Supreme Court of the United States, holding that the FCC was endowed with heretofore unsuspected, expansive powers.

Be it further resolved that the membership of this Fourth District, in conjunction with other members throughout the United States, urge the Congress to adopt legislation which will definitely and clearly prescribe the powers which they wish delegated to the FCC and that the first step in obtaining this legislation be taken immediately by the United States Senate through the passage of the White-Wheeler bill or such other legislation as will provide for the security and safety of a free radio.

National Association of Broadcasters
1760 N STREET, N. W. ★ ★ ★ ★ ★ ★ ★ WASHINGTON 6, D. C.
September 17, 1943 SPECIAL LEGISLATIVE BULLETIN No. 17

Hearings of the Select Committee Sub-Committee to Investigate the Federal Communications Commission Continue

(The following reports are written in news style in digest form because the volume of material transcribed has grown to proportions beyond the means of NAB to reprint verbatim. The digest is objective and contains the full sense of each day's hearings. Should any station manager wish the full transcript of the hearings, information as to cost may be obtained from Althea Arceneaux, Shorthand Reporter, 1060 National Press Building, Washington, D. C.)

TUESDAY, AUGUST 24, 1943

Testimony of Berta Wurm, translator and secretary at station WBNX, taken by the Select Committee counsel June 16, 1943, was read into the record by Committee Counsel Eugene Garey.

Miss Wurm's testimony showed she had been interviewed by the New York office of FCC (Mr. Fenner, Mr. Guest and others) four times in 1943 and had been questioned about her own background and the backgrounds and political beliefs, etc., of several persons at station WBNX.

Lido Belli (Rizzieri Belli), radio producer, was called to the stand.

Biographical questioning established that Mr. Belli came to America in 1926 and first got into the radio business as an announcer, then became a free-lance producer in 1933. On December 9, 1941, he was taken to Ellis Island as an enemy alien and kept there 13 days, being released on parole to W. C. Alcorn, manager of WBNX, as related previously in these transcripts, following clearance of suspicion from Mr. Belli by the U. S. Attorney General.

Several memoranda then were introduced by Mr. Garey from the FCC files showing that FCC and OWI personnel (Mr. Falk, Mr. Jett, Mr. Fly and Mr. David and others) were actively interested in 1942 in Mr. Belli and these files indicated that Mr. Belli was a pro-Fascist in the opinion of FCC people.

As reported in the testimony of Mr. Alcorn previously, Mr. Belli confirmed that he was called to Ellis Island in August, 1942, and told to cease all broadcasting activities. Mr. Belli said he lost more than $90,000 by being kept out of business for the succeeding eleven months. He vigorously acted to determine why he was put off the air and did get clearance from the Office of Censorship and help from Congressman Marcantonio of New York. The name of Duccio Tabet, WOV censor, entered the testimony in the various memoranda, with Mr. Garey observing pointedly the "Committee will learn more (about Tabet) this week."

OWI Instructs Belli

Longest report showing alleged pro-Fascist tendencies of Mr. Belli was written by Mrs. Hilda Shea of FCC to Nathan David, also to FCC, on December 24, 1942, and goes into considerable biographical and business detail. Mr. Belli denied all the charges so alleged.

Mr. Belli testified that at Congressman Mercantonio's suggestion he went to OWI and saw Mr. Cranston, Mr. Falk and Mr. Facci, who advised him to fire people he had on his payroll and to hire people they recommended and to put more pro-democratic material on his programs. They said Mr. Belli's parole would be altered so he could again conduct his business. Mr. Belli hired a man whom the OWI people recommended and fired Hugo Neri, whom the OWI people wanted fired. Mr. Belli in April, 1943, sent a communication to the FCC in which he reported on the changes he had made in his staff per request and suggestion of OWI—in May his parolé conditions were modified and all activities against him ceased. Mr. David

interjected the comment at this point that the same letter text was sent OWI, OC and the Department of Justice.

After determining that Mr. Belli and his staff were thoroughly investigated by FCC personnel in January, 1943, Mr. Garey excused the witness and the session adjourned.

WEDNESDAY, AUGUST 25, 1943

Counsel Garey opened the session by reading into the record more material from the FCC files on Lido Belli, which disclosed, among other revelations, that the FCC had interviewed 50 persons and consulted 21 publications and agencies in the Belli investigation.

Renzo Nissin, WBNX newscaster and censor, was called to the stand. Questioning by Mr. Garey and Representative Cox determined that Mr. Nissin had come to America in 1938 and was not a citizen, but had been employed by OWI in 1942. Mr. Garey said the Congressional Record of June 17, 1943, it was revealed that OWI hired 417 aliens with salaries ranging from $3,800 to $8,000.

Nissin Takes Over

After some difficulty making a living, Mr. Nissin testified he went to work at WHOM with an Italian broadcast and as a script writer, both jobs coming under a dramatic company working at the station and not on the station staff.

Mr. Nissin in 1942 was employed by OWI to write pro-democratic programs in Italian, material for which was largely furnished by OWI sources.

The testimony established that after Mr. Nissin received the letter from Mr. Belli requesting an interview (The OWI had recommended that Mr. Belli hire Mr. Nissin) Mr. Nissin went to Mr. Belli's office and was shocked at the story Mr. Belli told him about the trouble Mr. Belli had had. In answer to Mr. Garey's question as to whether Mr. Nissin was "amazed to think that a situation (Belli's) like that could obtain in free America" Mr. Nissin said he was. Mr. Nissin said he censored and wrote most of Mr. Belli's programs and in general was in charge of Mr. Belli's broadcast operations. Questioning then revolved around Mr. Nissin's activities, persons he hired (after clearing them with FCC and OWI) and his connections with OWI—i.e. he had a lot of friends among the employes of the Overseas branch. Mr. Nissin discharged only one man and him on the grounds he was incompetent, testimony recorded.

Lengthy questioning concerning Mr. Nissin's interests in the Belli matter brought out that Mr. Nissin regarded Mr. Belli very highly and recommended to OWI that Mr. Belli be allowed to return to his business.

Following luncheon recess, Mr. Garey read into the record the statements of Bernard Fiedler, Casimir and Florence Jarzebowski, Michael Kecki, Natalie Lesmewski, Martha Ley, Tadeusz Sztybel and Eleanor Zablotowiscz, all of station WHOM. Statements were taken by Select Committee Council McCall on June 17, 1943.

FCC Investigations Thorough

Principal point established in all these statements was that the FCC examination of the WHOM people, conducted by Mr. Fenner and company, was extraordinarily thorough, going into complete biography, religion, political beliefs, information concerning friends and relatives and acquaintances and other data on each person questioned.

William I. Moore, of WBNX, was the next witness called. He was identified as Mr. Alcorn's (WBNX manager) assistant.

Mr. Moore outlined in detail the FCC investigations of WBNX conducted in May, June and July, 1942, characterizing them as "a most comprehensive investigation of the station's activities of every imaginable character." Testimony also referred to the FCC questionnaires WBNX filled out in the spring of 1943 (forms 850-51-52).

Other points confirmed Mr. Alcorn's testimony at the previous hearings on the George Brunner matter. After an exchange of questions and answers concerning Mr. Moore's contacts with Frances Keene, about which Mr. Moore's recollection was very poor, he was excused.

Ralph N. Weil, manager, WOV, was next on the stand.

Mr. Weil, following a brief exposition of his business career, was asked by Mr. Garey to present some exhibits and a report on WOV's public service work from January, 1942, to the present, which showed WOV had spent about $286.000 in time and cash on this service in that period. A number of awards WOV had received also were exhibited, including a letter from Neville Miller, NAB president, and the award given WOV by NAB at the Cleveland convention.

After this display of WOV's services, questioning suddenly centered on Mr. Weil's lack of memory concerning details of a conversation Mr. Weil had had with Harold La Fount of the Bulova interests the day following Mr. La Fount's testimony before the Select Committee counsel. Mr. Garey charged that Mr. La Fount spoke to Mr. Weil about this testimony and Mr. Weil said he couldn't remember, but he didn't think that was so. The entire matter revolved around who recommended Arnold Hartley (WOV program director) to Mr. Weil when he hired Mr. Hartley.

Mr. Garey indicated Mr. Weil was not telling the truth and the hearing adjourned until the next day after Mr. Weil had requested permission to confer with his lawyer. Mr. Weil was directed to return the next morning by Representative Cox.

THURSDAY, AUGUST 26, 1943

Testimony of Arnold Jaffee, Hershl Levin, Boleslaw Rosalak and Ona Valaitis of station WHOM was read into the record by Mr. Garey, as taken by Mr. McCall, Select Committee counsel, June 17, 1943. This material was a continuation of the FCC examination of WHOM staff personnel, referred to in the foregoing day's transcript.

Mr. Garey then read letters from Chairman Fly, FCC, to the FBI and military personnel requesting and giving information concerning foreign language broadcast personnel, particularly George Brunner, of WBNX. Mr. Garey made the point that Mr. Fly's concern about Mr. Brunner more than seven months after Mr. Brunner was off the air was to "find justification for what they (FCC) had done" in putting Mr. Brunner off the air.

Duccio Tabet, censor and translator of WOV, was called to the stand.

Tabet and the Lord's Prayer

The customary biographical questioning revealed that Mr. Tabet had come to America in September, 1940, and had organized a group, consisting largely of Italian refugees, called "Free Italian Youth," which was to help the United Nations fight Fascism and to establish a democratic government in Italy.

Questioning then turned to Mrs. Tabet and a speech she made before the Cooper Union rally in July, 1943, in New York. Mr. Garey attempted to learn whether Doctor or Mrs. Tabet had Communistic leanings, which Doctor Tabet denied. He said he and his wife were interested in going back to Italy as soon as possible to help in establishing a democratic government there.

Lengthy questioning followed concerning Doctor Tabet's connection with WOV. He began work for WOV in December, 1941, and his wife got some work through Short Wave Research, Inc., and their acquaintance with many of the people mentioned many times in these hearings began, including Mrs. Keene, Mr. Colombo, Mr. Hutton (WOV program director) and others.

Not getting much satisfaction in trying to establish that Doctor and Mrs. Tabet acted as informers for FCC, Mr. Garey then turned to a detailed examination of Doctor Tabet's duties as a censor of programs, going into the content of a memorandum Mr. Hutton and Doctor Tabet prepared in April, 1942, containing censorship instructions to the Italian program staff.

It was at this point that the "Lord's Prayer" exchange occurred, so widely picked up by the press in reporting the hearings. It appears that Doctor Tabet had censored a Christmas script of 1942 and had deleted a passage which could be taken to advocate forgiveness for Fascists—a passage very similar to the Lord's Prayer passage which reads "Forgive us our trespasses as we forgive those who trespass against us. . . ."

Garey vs. Tabet on 'Peace'

Mr. Garey set up the parallel between the passage Doctor Tabet deleted and the Lord's Prayer phrase, but Doctor Tabet said "we can't make a comparison of a prayer and a commercial announcement."

Mr. Garey then pressed home hard the charge that Doctor Tabet had no right to censor a basic principle of the Christian religion in free America, with Doctor Tabet defending himself on the point that he had the right to censor something he thought could be misinterpreted.

It was pointed out that Doctor Tabet also had censored the phrase "and peace on earth to men of good will," because it did not include mention of the American victory. This item was worried over at some length with Doctor Tabet trying to fix his defense on the commercial aspect of the program, which made it "not a religious program" and Mr. Garey driving ahead on the deleted sections and Doctor Tabet's competence to censor religious principles.

After luncheon recess, Mr. Garey inserted into the record information on Mario Ferrari-Hutton, program director of WOV, which concerned biographical data and business history. He came to America in 1940.

Arthur Simon, general manager, WPEN, was called to the stand.

Testimony taken from Mr. Simon by Select Committee personnel on August 12, 1943, was read into the record. Biographical and business data were recorded, then the transcript switched to Mr. Simon's contacts with Andre Luotto, who had figured largely in previous days' hearings.

Mr. Simon's remarks about Mr. Luotto indicated he was a good businessman and a gentleman and so far as Mr. Simon knew, a loyal and patriotic American.

Mr. Garey then examined Mr. Simon concerning Mr. Luotto's efforts to clear himself and his brother S. Luotto and their contacts with Mr. Simon at that time (see Legislative Bulletin No. 14) and Mr. Simon largely confirmed the substance of Mr. Luotto's testimony, with some corrections.

Simon Says 'Outrageous'

Considerable testimony relative to Mr. Simon's work with the Foreign Language Wartime Control Committee was introduced, including reiteration and confirmation of previous transcripts in the hearings about Mr. Simon's and the Committee's involvements with OWI and FCC on censorship matters. References were made to Mr. Lang's (WHOM) troubles with FCC in getting a permanent license and also other foreign language stations, all material which has been covered in previous hearing sessions.

Completing this reading, Mr. Garey next introduced testimony taken from Mr. Simon by the Select Committee staff on August 23, 1943.

This testimony began with references to the NAB Cleveland convention foreign language broadcasters' breakfast at which Mr. Falk of OWI spoke. Mr. Simon was asked if he recalled Mr. Falk "harping" on cleaning up the foreign language stations on threat of losing licenses if it wasn't done. Mr. Simon confirmed this and said he "hit the ceiling" and got up and said Mr. Falk's allegations and remarks were "outrageous." The testimony then went on to cover certain contacts Mr. Simon had with Chairman Fly about foreign language committee cooperation and the business of a couple of committee meetings in Washington, business of which was routine, and also covered some complaints A. Luotto made to Mr. Simon on several foreign language people falsifying information on their foreign language committee questionnaires.

Reverting to live testimony, Mr. Garey asked Mr. Simon about his feelings concerning the Mazzini Society (anti-Fascist group) and Mr. Simon said he wouldn't have any part of it on his station.

Tabet Resumes Testimony

Duccio Tabet was recalled to the stand.

Mr. Garey read into the record a broadcast script titled "The Face of Jesus and the Face of Judas" which Doctor Tabet censored the name "Judas" out several times, which Doctor Tabet explained by saying the Italian word for Judas "Giuda" means "Jew" and he didn't want the script to mean "Jew" when it meant "Judas."

Mr. Garey next jumped to a program on which music composed by Vincent De Crescenzo was featured, asking Doctor Tabet if he had forbidden music by this man to be played over WOV. Doctor Tabet denied this.

A report Doctor Tabet made "on his own initiative" to FCC recommending that WOV have some additional pro-democratic programs was then introduced in which criticism of some of WOV's program was recorded. Mr.

Garey developed the observation that Doctor Tabet voluntarily made suggestions and recommendations about WOV programs to FCC people.

Summing up the testimony given by the three censors, Doctor Tabet, Giuseppe Lupis and Renzo Nissin, Mr. Garey said that while the FCC investigated the personnel on foreign language stations and found fault with many innocent persons, FCC allowed men to remain on stations engaged in the "practices and activities" of the three men mentioned—and Mr. Garey concluded his point on a possible need for action and legislation to remedy these matters.

Ralph Weil, manager of WOV, was recalled to the stand.

Unusual Managership

Opening up on the subject of why Mr. Weil hired Arnold Hartley, Mr. Garey established that Mr. Falk's recommendation on this was "important." Personnel of Mr. Weil's station who are aliens was next discussed with Mr. Weil revealing that he didn't know much about the background or political tie-ups in Italy of his alien people, or how they came to be hired or why.

Mr. Weil volunteered the information that he took up censorship matters with OWI for a year after Pearl Harbor because he didn't know which government body was officially designated to pass on those matters. To make sure, he asked everybody (OWI, OC and FCC) about his problems.

Relations Mr. Weil had with A. Luotto were gone into with Mr. Weil corroborating substantially the testimony given by A. Luotto (see Legislative Bulletin No. 14). Mr. Weil said the only reason he didn't put S. Luotto on WOV was because S. Luotto had been removed by another foreign language station (WGES) and it was a gentleman's agreement among foreign language stations not to hire a man removed from another station—and, further, Mr. Weil had not investigated at all and refused to honor Censorship's clearance of S. Luotto. Still further, on the stand today Mr. Weil still didn't know whether he would permit S. Luotto to broadcast beginning September 1, 1943, but agreed to notify the Select Committee of his decision at Mr. Garey's request.

Mr. Garey read a report written by Mr. Weil to Mr. Guest of FCC made March 10, 1943, in which Mr. Garey said Mr. Weil laid down completely before FCC to curry favor.

Others Investigated

At this juncture Mr. Garey read into the record statements taken by the Select Committee staff from George Brunner, Mario Capelloni and Ruth Parsey, of WBNX; Peter Novassio, Giuliano Gerbi, Paola Sereno and Tullia Calabi Zevi, of WOV; Susan Pascal, secretary to Lido Belli, and Joseph de Laurentis, radio artist. (Mr. Novassio is not with WOV at present.)

Inasmuch as George Brunner has been mentioned so much in these transcripts, it is offered that Mr. Brunner's testimony showed Mr. Falk had told him in June, 1943, that Mr. Falk was doing everything he could to get Mr. Brunner back on the air (he was a salesman then) and that Mr. Brunner had been taken off the air for two reasons: 1. voice inflection, and 2. a newscast delivered by Mr. Brunner on December 15, 1941, didn't correspond with the English text. A citizen, who came to America in 1923, Mr. Brunner also testified he went through the same grilling by Messrs. Fenner and Guest as to his life, background, relations and friends, political beliefs, etc., that other personnel listed in this week's hearings had.

Mario Capelloni was given the usual thorough FCC questioning as above. In the case of Joseph de Laurentis, he related a great deal of trouble getting his name mentioned on WOV because Doctor Tabet "scraped" it off scripts. He also was "blacklisted" by some government agency, he didn't know which, for a while and was off the air, but everything was finally straightened out some time after an FBI investigation of him. He has been a citizen since March, 1915.

Giuliano Gerbi testified he gets $50 a week from WOV as announcer, $30 a week from NBC as translator and announcer and $3,800 annually from OWI for the same kind of work. He came to America to stay in 1940 and filed citizenship papers, and he also got the FCC going-over—twice in a few months.

Tabet 'Too Strict'

Peter Novassio said he became a citizen in 1926. His testimony included the information that Doctor Tabet and Mr. Hutton had refused to allow music of Mr. De Crescenzo to be played on WOV, charging him to be pro-Fascist. Mr. Novasso said Doctor Tabet was too strict and was trying to make rules in America like the Fascists did in Italy.

Ruth Parsey was grilled by FCC, principally about Mr. Brunner. So was Susan Pascal, who got the works on not only her own background, etc., but on her boss (Mr. Belli), trying to find out about his beliefs, conversations, etc. Miss Pascal said Mr. Fenner outright called her a liar twice.

Paola Sereno was asked about "plenty of people" and also plenty about himself, by the FCC questioners, so he testified. In a second examination by the Select Committee, Mr. Sereno was asked about the OWI program "Your Uncle Sam Speaks," for which he was a translator —he described the show and told of his taking part in the cast once.

Tullia Zevi was questioned at length on her background and that of her husband, Bruno, now overseas, by the Select Committee staff. It developed she and her husband and Professor Sal publish a little anti-Fascist magazine titled "Querderni Italiani." She is also monitor and censor at WOV working under Doctor Tabet. Asked about the "Judas" incident, she gave the same answer that Doctor Tabet did—that "Judas" sounds much like the Italian "Judi" for "Jew." She came to America in 1939 and has filed first papers. Considerable questioning about her duties and business relations with Mr. Hartley and other WOV personnel was recorded, how she was hired, what Mr. Weil does, etc.

FRIDAY, AUGUST 27, 1943

Rep. Edward J. Hart presided in the absence of Representative Cox.

Hugh Reilly, Select Committee counsel, opened the final New York session by calling Harold La Fount, vice president. Wodaam Corp. (operator of WOV) to the stand.

Mr. La Fount, it was established, came to America from England when a child. became a resident of Utah

and a Mormon bishop and was a member of the old Federal Radio Commission. He is now president of the Independent Broadcasters' Association, consisting of about 100 "very small" stations.

Mr. La Fount, it was recorded, owns an interest in WORL, WCOP, WNBC and WELI and supervises WOV and WPEN. Questioning devolved around Mr. La Fount's business duties in the stations and his operations in them.

The Andre Luotto case was taken up (see Legislative Bulletin 14) and Mr. La Fount admitted that Mr. Luotto's character was "very satisfactory." Mr. Reilly asked Mr. La Fount about his acquaintanceship with Washington people, particularly the FCC personnel, most executives and Commissioners of which he knows. Mr. La Fount stated he is contact man between the IBA and the FCC, but is not a "lobbyist."

Mr. La Fount confirmed in essence the testimony A. Luotto gave the Select Committee concerning the contacts he and his brother, Stefano, had had with Mr. La Fount.

Mr. Reilly then questioned Mr. La Fount as to whether he had ever hired anyone besides Mr. Hartley at OWI's recommendation on any of his stations and he said no.

OWI Charged

Mr. La Fount admitted discharging personnel because of suggestions from OWI, even though in one case he was convinced the person involved should not have been fired, and that in three cases Mr. Simon (of WPEN) keenly resented firing them.

Mr. La Fount admitted knowing Chairman Fly, Governor Case and Commissioner Craven of FCC better than any of the other Commissioners.

The matter of the transfer of WOV from the Bulova interests to the Mester Brothers came up as related in A. Luotto's testimony. Mr. La Fount testified that he knew nothing about FCC's objection to A. Luotto until after the application for transfer had been filed and set for hearing.

Mr. Garey interrupted Mr. Reilly's questioning after a brief recess to introduce four letters bearing on the Alfonso Vanacore (Ugo Neri) case in which Messrs. Falk. Cranston and Facci of OWI had directed Mr. Belli to put Mr. Vanacore off Mr. Belli's programs. Mr. Vanacore had been trying to get the ban lifted and the letters dealt with clearances given him to return to the air from OWI, FCC and OC. OWI and FCC disclaimed jurisdiction in his case and OC said it never had entered the matter. Mr. Garey made the point that Mr. Vanacore still is not on the air and won't get back because of OWI and FCC.

Mr. Reilly resumed questioning Mr. La Fount. who said he had misunderstood previous questioning and that Mr. Hartley's name was not on a list of recommendations for program director for WOV submitted by OWI.

Further reference to the WOV sale was made and Mr. La Fount confirmed A. Luotto's testimony about the PM story (protesting against transfer of WOV to A. Luotto and the Mester Brothers), and the subsequent events which led to the dropping of the application request without prejudice by the FCC.

A staff memorandum sent to Mr. La Fount by Chairman Fly of FCC on May 27, 1942, was introduced.

FCC Dislikes A. Luotto

This memo very definitely listed A. Luotto as a major factor in viewing the transfer in an unfavorable light by FCC plus the factor that the Mester Brothers Company itself was not even up to the FCC's "minimum standards" for station operator qualifications.

Questioned as to the validity of this memorandum and as to his feelings about it, Mr. La Fount finally admitted that he thought Mr. Luotto was a good citizen and that he should be given a chance to "be heard" on the charges against him.

Mr. Luotto's testimony was again touched on and Mr. La Fount confirmed the gist of the meeting at which he and Mr. Luotto, FCC Counsel Telford Taylor, WOV Attorney Horace Lohnes and Mr. Taylor's assistant attended at which Mr. Luotto presented his story as related in Legislative Bulletin 14, following other details similarly as presented by Mr. Luotto.

Mr. La Fount said he had never seen any formal written objections on the WOV transfer filed by FCC, but had only got them by word of mouth. He confirmed the fact that the principal reason the application was withdrawn was because WOV attorneys had indicated a hearing would be a long, slow and costly procedure with a year at least elapsing before any action could be taken by the Commission and because of the complications mentioned by Mr. Luotto in his testimony.

Mr. Garey concluded the New York hearings by summing up that FCC set up a "Gestapo" which has violated the rights of individuals and that the material presented in the hearings was but a small part of the national picture, but that the Select Committee could study the great mass of unpresented material at its leisure.

Special Legislative Bulletin No. 16 contained the "Text of Address of Senator Ed Smith of South Carolina at 4th NAB District Meeting." In the interest of accuracy we point out, as stated in the NAB REPORTS, that "Senator Ed (Cotton Ed) Smith, of South Carolina, was scheduled as dinner speaker, but illness prevented his appearance. Mr. Shafto read Senator Smith's speech. . . ."

(The following letter was sent to Representative Cox by Gene T. Dyer and a copy was sent to NAB. So that the record may be complete we are glad to print in in this Legislative Bulletin.)

"The writer was downright flabbergasted to read in the September 3rd Special Legislative Bulletin of the National Association of Broadcasters the following:

" 'S. Luotto did inject the startling comment into the hearing that Gene Dyer, co-owner of WGES, during a conference with the Luotto brothers in Chicago on S. Luotto's situation referred to dealing with a combination like Hartley-David is like "having a (deleted by Dyer) contest with a skunk." Representative Cox attempted to have the witness "soften" the language, but S. Luotto stubbornly insisted that was what Gene Dyer said and so the chairman let it go.'

"This statement for your information and that of the Committee is *absolutely untrue*—and since it is so

damnably hurtful to both Mr. David and Mr. Hartley, I feel it my duty to deny it most forcefully.

"I shall mercifully conclude that Mr. Luotto's misquotation of my words was a result of his 'unfortunate inability to understand the English language.'

"Shortly after the time of Mr. Stephano Luotto's dismissal from WGES, he visited me at my office together with his brother Andre and asked me to intercede with the FCC to restore him to the air. They wanted to arrange a meeting with a New York Congressman, Mr. David, Mr. Hartley and a number of other persons whose knowledge of him (S. Luotto) might prove Luotto's case for his return to the air. I refused to agree to this plan at the time and when pressed for an explanation I answered in this evasive fashion as I recall:

" 'I have not made up my mind in this matter at this time gentlemen,—and I've learned from my experience back on the farm that until I'm equipped with a shot-gun I'll never get into a perfume throwing (a less elegant term was used) contest with skunks.'

"There was certainly nothing of rancor or condemnation in my heart or mind for either Mr. David or Mr. Hartley. Mind you, Mr. Hartley was then in my employ and remained with us months afterward and left us of his own volition. And further I have never discussed the Luotto matter in any way whatsoever with Mr. David. It was certainly the furthest thing from my mind to have in any way impugned the character or standing of these gentlemen, nor could my statement as set forth be construed as reflecting on anyone. I was simply saying that until I was armed with facts I would enter into no argument. I hope your record will indicate this direct variance with the testimony of S. Luotto.

"There are other discrepancies in Mr. Luotto's testimony but since they tend to hurt only ourselves, I am making no issue of them.

"It is my belief, Mr. Congressman, that the interests of American broadcasting could well be served by proper revision of the Communications law as now written but it is also my belief that under the present radio law the close surveillance of radio stations even to the point of their personnel is a bounden duty of the Federal Communications Commission. I respectfully urge that this end (the modification of the law) be accomplished without indescrivate destruction of the lifeworks of men in the industry. With this purpose I know you agree.

"I am taking the liberty of sending a copy of this letter to Mr. David and Mr. Hartley and to the National Association of Broadcasters."

National Association of Broadcasters
1760 N STREET, N. W. ★ ★ ★ ★ ★ ★ ★ WASHINGTON 6, D. C.
October 1, 1943 SPECIAL LEGISLATIVE BULLETIN No. 18

Text of Representative E. E. Cox's Resignation Speech and of Representative Martin J. Kennedy's Statement and Resolution Concerning Freedom of Speech and Radio . . .

Representative E. E. Cox of Georgia:

Mr. Speaker: For more than a year, now, I have been the object of bitter and scurrilous attacks.

Day after day the poison shafts of slander have been driven through my heart. Every effort to tear down and to destroy a reputation I have spent a lifetime in building has been put forth. All of this is something that I have been compelled to endure in silence. My hands have been tied—tied by the Chairmanship of a Select Committee of this House to investigate the Federal Communications Commission.

This Chairmanship has compelled me to maintain a judicial attitude which cannot longer be done in the face of the insults and the slander being hurled at me from day to day.

Mr. Speaker, that which is being dealt out to me is a sorry wage for service I have tried to render in the interests of my fellow men.

It is a difficult thing—a terribly difficult thing—for a man to sit silent under the lashes of slander and falsehood such as have been laid upon me. But so long as silence appeared to be in the best interest of the operations of the Select Committee of which I am the Chairman, it was the part of wisdom and good administration for me to do so.

The first consideration must be the integrity and effectiveness of the Committee of which I am chairman. The utterly baseless attacks upon me have beclouded the real issue of whether the Federal Communications Commission has been guilty or not guilty of the acts of maladministration, with which it has been charged and which this Committee was directed by the House to investigate. The House and the country are deeply concerned to ascertain the facts about the Federal Communications Commission without prejudice and free of personal controversy.

As long as I am connected with the investigation it is obvious that the effort will be made to divert public attention from the real issue, alleged maladministration of the affairs of the Federal Communications Commission to a personal controversy.

In my judicial career when a case arose in which my own personality was involved or my impartiality was questioned it was my practice to eliminate myself from the trial of the case. While such a custom does not prevail in investigations by legislative bodies, I have never the less reached the conclusion that in the light of the circumstances and the nature of the controversy in this instance, I may well follow that course.

The truth of this personal controversy and my complete vindication will come at another time and in another way. It cannot be attempted on this floor in the limited time I have at my command and this is not the time for such an effort.

I do want to say to you, Mr. Speaker, that I face my colleagues in this House—those who have known me and who have been my warm and cherished friends over the years—with an absolutely clear conscience. The work of the Committee has begun and it must be completed. The evils at which the inquiry is directed must be eradicated. Unless this is done one of our most cherished freedoms will become but an empty phrase.

Mr. Speaker, this is a hard thing for a man to do. It is an unhappy thing for a man to have to do and if my own interests alone were at issue I could not do it. But, Mr. Speaker, the first duty of every member of this House is to consider the welfare and the effectiveness of the House itself. Its interests are incomparatively greater than the interests—even the right of justice—attaching to an individual member. The next duty of a member of this body is the welfare of the various instrumentalities it creates to carry out its will—whether those instrumentalities be independent agencies or standing or select committees. Any member who loves this body as we all love it, who takes pride and deep satisfaction in being a part of its honored membership must put before himself, before his own interests, before even justice to himself the best interests of the House. Consequently, the action I take today is based solely upon my conscientious and deep desire to live up to the most sacred obligations of this body and to my oath as a member of it.

Mr. Speaker, moved by these considerations and fortified by the concurrence of friends in this House in whose friendship and judgment I have the utmost confidence, I tender my resignation as Chairman of the Select Committee to investigate the Federal Communications Commission. Its work thus far has been well done. Its membership is excellent. Its staff is composed of men and women who are able, conscientious and skilled in the work they have undertaken. This Committee must continue its work under a new Chairman freed of any possible embarrassment of my personal problems or controversies.

I thank you for the honor of having named me Chairman of the Commitee and for your expressed confidence in my administration of its affairs. I urge the House to support, to continue and to stand solidly back of the work of the Committee under its new chairman, whoever he may be.

So far as I am personally concerned my love and admiration for this House, my devotion to its ideals, make it a matter of pride with me, that I, one of its members, efface myself so that the work of one of its committees may go forward. Let no man mistake me. I shall continue to make the fight where I find it. I leave the Well of this House today with my head unbowed and with my devotion to my duties undimmed.

From the Office of Rep. Martin J. Kennedy (D) 18th District, New York

Radio has become such an important factor in the shaping up of public opinion that there has been a tendency by Government officials, broadcasting high officials and various organizations to impose a direct or indirect censorship on radio discussions. Such censorship is not in the interests of the development of a free American public opinion.

The American people are able to formulate their own judgments. They must have their information brought to them without interference from those who do not entertain the true value of the public mind, established by our successful history founded on the judgments of all Americans after free public debate on the numerous issues solved during the course of this country's life.

The more serious tendency toward censorship lies in the efforts to make our Courts lean towards censorship restrictions on radio communications because broadcasting for physical reasons is necessarily subjected to a licensing or a franchise system.

There really should not be any question but that the provisions of the First and Fourteenth Amendments to the Constitution apply to radio. But, because of the tendency to differentiate speech through licensed communication from ordinary speech, as far as freedom is concerned, it has become imperative that Congress and the people speak more pointedly on this question through a referendum in the form of my proposed amendment.

I have purposely refrained from attaching directly new language to the First and Fourteenth Amendments because these two amendments are so sacred to the American people and now so succinctly express the basic American creed that any tampering with their form might be viewed as a profanation.

Freedom of religion, freedom of speech and a free press not only are the great objectives of our system, but are as well the guarantees of its continuance.

Americans are not a namby-pamby people. They can take strong stuff over the air just as they can give strong medicine to our enemies on the field of battle. The forthright leaders of the past—those men who guided America to its present high position—were never mollycoddles in the use of language and there is no reason for the belief that leaders on the air today should pull their punches in castigating inimical movements.

If a speech on the air offends a listener, the dial can always be turned away from the broadcaster who is offending as far as a particular listener is concerned. We want our broadcasting to be forthright and we want our facts accurately reported. We will pass our own judgments.

At present, through a filter system, composed of the Federal Communications System and those who control the licensed broadcasting systems, our broadcasting has been diluted to the degree where it has become so neutral as to be ineffective. We want strong speech from strong men on the air, not synthetic understatements from pulpiteering puppets. An example of the worth of strong free speech is in the broadcasts of Walter Winchell. He helped to awaken America to the danger of the Fifth Column and his sharp attacks on it over the air did much to destroy it. He aroused public opinion to such an extent that the work of the enemy in our midst has been ineffective. Censorship that would have stopped Winchell in these attacks would have been disastrous to the country.

There are other able commentators on the air who have fearlessly pointed out to the people things that were destructive and these men should not be hampered because higher-ups do not share their views or approve of their methods of expression.

America can only live while speech is free and the most important of all speech is speech by radio.

Following is a copy of my resolution, H. J. R.

H. J. Res. ——

In the House of Representatives
September 30, 1943

JOINT RESOLUTION

Congress shall make no law abridging the freedom of speech by radio or wire communication.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Constitution of the United States is hereby amended by adding the following article:

AMENDMENT 22—SECTION 1.—Congress shall make no law abridging the freedom of speech by radio or wire communication.

SECTION 2.—The provisions of any law, license or contract in violation of Section 1 hereof are hereby declared inoperative.

National Association of Broadcasters
1760 N STREET, N. W. ★ ★ ★ ★ ★ ★ ★ WASHINGTON 6, D. C.
October 22, 1943 SPECIAL LEGISLATIVE BULLETIN No. 19

Federal Communications Investigation

Statement By Clarence F. Lea
Chairman of the Committee
October 18, 1943

The House Committee for the investigation of the Federal Communications Commission held an executive session today for the purpose of passing upon the admissibility of certain statements taken at New York and also determine certain matters of policy to govern the deliberations of the Committee.

All of the members of the Committee, including Mr. Lea, Mr. Hart, Mr. Magnuson, Mr. Wigglesworth and Mr. Miller of Missouri, were present.

After a two-hour session, the Committee unanimously agreed on matters covered by this statement as follows:

Admissibility of Testimony

As appears from the record of the open session of this Committee, held in Washington on the 14th of October, the written transcripts of statements of four witnesses, taken on an investigation into Short Wave Research at New York during August and September, were requested to be embodied as testimony in the permanent record of the Committee hearings. As it further appears from the record of such hearing on the 14th of October, a question was raised as to the propriety of receiving this evidence on the ground that it was not taken before a member of the Committee. Thereupon, it was asserted that the Committee would use its discretion as to what part of such testimony would be received in evidence where hearings were private. It was then decided the Committee would consider the matter in executive session, and before such evidence was sent to the printer.

Pursuant to this understanding, this Committee met today to consider methods of procedure of the Committee and also the question as to whether or not the offered statements should be received in the records of the Committee. After looking into the matter, it appears that part of these statements were made in the absence of any Committee member and at a private hearing.

After considering the admissibility of this testimony, the Committee has reached the conclusion that under H. Res. 21, as adopted by the House of Representatives, and under which this Committee is operating, hearings can be conducted only by a member of the Committee, and the presence of such member during the whole of such hearing must be regarded as within the intendment of the resolution.

It appears that the statement of two of these witnesses was taken without the presence of any member of the Committee at any time, and that in the case of one of the other witnesses a Committee member was in attendance only part of the time.

The Committee has decided as a matter of policy to admit testimony taken in the presence of a member of the Committee in charge of the hearing, and to re-examine the witnesses whose testimonies were not given at a hearing at which an authorized member of the Committee was present.

The witnesses whose testimonies were not given at a hearing in charge of such a member will be brought before the Committee for further interrogation, after which any question of the admissibility of the testimony of such witnesses will be determined.

After consideration, the Committee finds that the three letters offered in evidence and marked "Exhibits 21, 22 and 23" for identification are relevant to the issue involved and properly admissible. The letters are, therefore, received in evidence.

Procedure

All hearings of the Committee shall be presided over by one of its members.

All hearings shall be open to the public, unless, because of military secrets or other public interest, the Committee shall determine to meet in executive session with a quorum present.

The Federal Communications Commission shall be notified in advance of all hearings.

Oaths shall be administered to witnesses by the presiding Chairman of the Committee at any hearing.

All witnesses shall testify under oath.

It is the purpose of the Committee to allow the Commission full opportunity to present, in due time, any facts relevant to the subject matter of the hearing.

Method of Preparing Analysis of Testimony

The Committee has arranged for an analysis of the testimony taken at the hearings to be made. Under this plan of analysis, citations will be made under three general headings as to each substantial accusation made against the Commission or its personnel.

The first head will include what are regarded as substantial accusations made against the Commission or its members.

Under the second head, the citation will be made to the various sections of the hearings which are claimed to support the accusations.

Under the third head, citations will be made to evidence in the record embracing denials, explanatory and exculpatory matters in reference to such accusations respectively. Under this head the Federal Communications Commission may likewise make such citations.

National Association of Broadcasters
1760 N STREET, N. W. ★ ★ ★ ★ ★ ★ ★ WASHINGTON 6, D. C.
October 29, 1943 SPECIAL LEGISLATIVE BULLETIN No. 20

White-Wheeler Bill (S. 814) Hearings Set For November 3; NAB Legislative Committee To Meet November 2; Bankhead Bill Reported Favorably Without Radio; Pengra and Arney Heard

Chairman Wheeler has announced that hearings will commence on the bill to amend the Communications Act of 1934, November 3rd, before the Senate Committee on Interstate Commerce.

Neville Miller has called a meeting of the NAB Legislative Committee for November 2nd to consider testimony to be given at the Wheeler-White hearings and to consider other legislative matters.

Bankhead Bill to pay for Government newspaper advertising reported favorably without any major amendment and without including radio, by the Committee on Banking and Currency of the United States Senate, by vote of eleven to five.

The NAB presented testimony at the hearings. C. E. Arney, Jr., secy-treas. of NAB, and Marshall Pengra, chairman of the Small Market Stations Committee of NAB, testified. After giving an outline of the organization of the National Association of Broadcasters, Mr. Arney said: "The immediate question before this Committee—namely that of paid government advertising, has been a subject continuously before this Board of Directors during the past two years.

"It first arose with respect to the activity of the Civil Service Commission in the recruitment of defense workers, shortly after the declaration of the emergency in the spring of 1941. It came to a head later in July of that year when the Navy launched a paid advertising campaign in behalf of recruiting. None of these funds was allocated to nor solicited by radio. After thorough discussion the Executive Committee adopted a resolution expressing its opposition to the use of Government funds for advertising. The following is the text of that Resolution, and I quote:

> "Resolved: In view of current trade publicity being given to a proposed advertising campaign in behalf of the Navy Department to be placed through one of the large advertising agencies, the Executive Committee feels that the purchase of time by defense agencies might tend to restrict rather than enhance the most effective utilization of broadcasting during the present emergency.
>
> "Therefore, we wish at this time to reaffirm the industry's desire to continue its present practice of making its facilities available at no cost to Government agencies engaged in promoting the national defense program."

"Subsequently the matter has come up in connection with various other government campaigns. Specifically, it was given extended consideration when S. 1073 was introduced. At that time the board reaffirmed the policy of the industry as being unalterably opposed to paid government advertising in any media.

"Some segments of the industry, fearing that a government policy of paid advertising might be adopted with respect to one medium the effect of which would be to introduce a manifestly unfair competitive factor in the advertising field to other media not included, have insisted that if it is to be the policy of government to buy advertising in any medium, then radio and other media most certainly should be included.

"Acting upon these expressions the board of directors at its meeting on June 3, 1943, adopted the following resolution and I quote:

> "Whereas, the broadcasting industry through the National Association of

Broadcasters has opposed the acceptance of government funds for advertising or the acceptance of government loans or subsidy in any form, and:

"Whereas, there is before Congress today proposed legislation which provides for the expenditure of government funds for advertising in newspapers,

"Now, Therefore, Be It Resolved, that the Board of Directors of the National Association of Broadcasters reaffirms its former actions but does not take the position that if Congress contemplates such legislation every effort should be made to see that there be no discrimination as between the press and radio or any other media of communication, and

"Be It Further Resolved that the Board of Directors direct its Small Stations Committee to determine what class or classes of stations should receive such advertising and take such other action as may be necessary to carry out the provisions of this resolution."

"In taking this position the Board of Directors felt compelled to defend the competitive position of radio advertising media. It will be noted that the resolution reiterated opposition to any paid government advertising. I may say parenthetically that this position was taken in full knowledge of the fact that many stations were faced with serious problems of falling revenues.

"The facts are that in 1942, 176 stations lost an average of $6,082 per year, and the average net earnings of 125 stations were $1,125 per station. Of these 301 stations 225 are in towns of less than 50,000 population. Those are the stations in the small markets as defined by the National Association of Broadcasters.

"Following the passage of this resolution by the Board on June 3, the Small Market Stations Committee, one of the National Association of Broadcasters standing committees, met. This committee represents the 382 stations operating in communities of 50,000 population or less. It was created at the 1943 war conference of the industry in Chicago. It is headed by Marshall Pengra, General Manager of KRNR of Roseburg, Oregon. Mr. Pengra is here today and I am going to ask him to give this committee a statement of the attitude as developed in the discussions which have taken place within the Small Market Stations Committee."

During the questioning which ranged all the way from rural coverage of radio stations to the handling of the world series broadcasts and controversial subjects, Mr. Arney pointed out in connection with the bill that approximately $180,000,000 worth of radio time has been devoted to the promotion of the war effort during 1942. Of this amount he estimated that approximately $130,000,000 was in sustaining time and the other $50,000,000 was included in commercial programs. He stated further—"here is the position that we take here—that we oppose any sort of paid government advertising. We feel that the present system has worked in a manner that is as effective as it can possibly work with perhaps the failure of the human equation.

"As matters stand today the Treasury Department has at its beck and call the advertising brains of this country through the War Advertising Council. The War Advertising Council places at the disposal of the Treasury Department the best men in writing copy both for radio and for printed media that there are to be had. They serve without compensation.

"Now if all those brains have not been able to conceive some sort of announcement or advertising program that will effect the results that you gentlemen here seemingly are aiming at—namely, the sale of more War Bonds, it is difficult for me in my own mind to see how you can accomplish it through the appropriation of money to the Treasury Department and the Treasury Department will then hire some agency to place this advertising, and it will have at its disposal the services of but one of the many agencies that are now serving it. So it is a matter that has been difficult for me to understand. In other words you have all the brains, you have all of the time on all of the stations, and you have presumably the space in many of the newspapers and printed media at the disposal of the Treasury Department. So far as radio is concerned, I think I can say without fear of contradiction that there has never been a time when the Treasury Department has asked for an announcement or broadcast that it has not been given."

The testimony of Marshall H. Pengra, General Manager of Radio Station KRNR, Roseburg, Oregon, and Chairman of the Small Market Stations Committee of the National Association of Broadcasters, is quoted below in full:

Statement of Marshall H. Pengra, General Manager of Radio Station KRNR, Roseburg, Oregon; and Chairman of the Small Market Stations Committee of the National Association of Broadcasters.

Mr. Pengra. My name is Marshall H. Pengra. I am general manager of Radio Station KRNR, Roseburg, Oregon, a town of 7,000 population. I have occupied this position since 1937.

I am chairman of the Small Market Stations Committee of the National Association of Broadcasters. In April of this year N. A. B. named a Small Market Stations Committee to meet at the National War Conference of Broadcasters in Chicago to consider their problems and make recommendations. The first meeting of the Small Market Stations Committee in Chicago resulted in a finding that stations in its classification were subject to a multitude of problems peculiar to smaller operation, and recommended a permanent com-

mittee to meet at once for further and more searching consideration of the problems.

The first regular meeting of the Small Market Stations Committee was held in Washington on June 12 of this year. It reported that the problem of securing increased revenue was the number one consideration of small market radio stations, and recommended that a complete study of all stations in this classification be started at once to determine the feasibility of attempting to set up a group-selling plan to interest national advertisers.

During this meeting, and pursuant to the resolution of the N. A. B. board which Mr. Arney read, our committee held an extended discussion of the Bankhead bill (S. 1073) in its original form, and these were our findings:

1. Small Market Stations hold with the industry's repeatedly expressed position. We oppose in principle the idea of government-paid advertising.

2. The Bankhead bill if passed discriminates sharply and viciously against the radio industry as a competitive advertising media in the same field with newspapers and other media, setting up an advantage gained not through merit on a free competitive basis, but by process of law.

As a result of these considerations and findings the committee declared that if the bill should pass, funds should be provided for all mass communications media in proportion to the use of such media by private industry, and in that connection suggested the appointment of an advisory committee to work with the Secretary of the Treasury, or any other government official or agency engaged in the allocation of such funds.

Gentlemen, this bill (S. 1457) as it now stands puts the Federal Government in the advertising field as a buyer, but not a buyer in the free and competitive sense of the word. The Government's advertising appropriation in terms of this bill specifies the purchase of newspaper space exclusively. By the accepted government buying rule in any field, the Government buys the best. That is the standard practice for the Federal Government of the United States—it buys the best to be had in war materials, food for its men, and in hundreds of other lines. If, through passage of S. 1457, the Federal Government buys advertising exclusively in the newspapers of the United States, that exclusive selection is serious discrimination against other media in the advertising field. It constitutes the highest endorsement of merit for service rendered. It says in effect, the Government always buys the best, and in advertising it buys newspapers exclusively.

And that represents our position.

Senator Bankhead. That is what the Government has been doing, but it has not been buying newspaper space.

Mr. Pengra. Yes.

Senator Bankhead. And it has not been buying radio time, do I understand you to say?

Mr. Pengra. No radio space has been bought by the Government.

Senator Bankhead. Then this is nothing new. That is all I wanted to ask.

Senator Danaher. Mr. Pengra, you designate the group for whom you speak as the Small Markets Radio Stations.

Mr. Pengra. Yes. We define those as stations operating in towns of 50,000 population or less.

Senator Danaher. In towns, do you say?

Mr. Pengra. Yes.

Senator Danaher. Do you try in any way to limit your designation by the amount of listening audience?

Mr. Pengra. No.

Senator Danaher. Is the designation which you have adopted one which is recognized as a descriptive term by the Federal Communications Commission in any regulation?

Mr. Pengra. No. This committee was formed originally in April of this year. To our knowledge other than its awareness of the existence of the committee, the Government has given no recognition of any kind.

Senator Bankhead. Is it an advertising agency?

Mr. Pengra. Is your question directed to this point, Is this group an advertising agency?

Senator Bankhead. Yes.

Mr. Pengra. This is a committee of stations within the National Association of Broadcasters.

Senator Bankhead. All right. No other questions.

The Chairman. In regard to the small markets stations, I will say this: I remember a particular case where a certain address was made by a distinguished person in opposition to a certain measure, and then the Senator favoring the measure asked for time. One Senator's remarks were broadcast throughout the network, but when the other Senator spoke I think he was limited to a very few stations. The other stations just would not take the talk. What is that attributable to? Could it have been due to the fact that the heads of the other small stations thought they did not want the public confused by hearing the opposition?

Mr. Pengra. I find it difficult to answer that question.

The Chairman. But that situation has occurred.

Mr. Pengra. Yes. But I shall attempt to answer your question as to what the various station managers might be thinking in that connection, by saying I would have no conception. It happens to have been the practice of our station in the past, so far as we have been informed in the past, to bring out both sides of any controversial issue. But in many instances we are not advised in advance that a talk is to be on a controversial subject. There may have been several of such subjects in the past, and as one of them you might say a discussion of lend-lease. Frequently not until we have heard the address do we have any way of deciding whether it is the introduction of a controversial subject or just a general explanation.

The Chairman. However, if an address is going to be contrary to the views of the person who is the owner or manager of the station, that person would have the opportunity to just cut it off.

Mr. Pengra. Answering your inquiry as to the ability of the owner or operator of a radio station to decline to accept, that is within the concept of the duties permitted by the F. C. C., yes. Let us take the case of a radio station manager who is confronted by a situation such as you suggest, and you suggest that he might prefer not to present the opposite side of a given issue because he personally opposes it.

The Chairman. Yes.

Mr. Pengra. There are no regulations that I know of to prevent that man from doing such a thing, unless it would be his own moral character and the respect he holds for the license by which he operates, which is granted by a governmental agency, the F. C. C. But I think that is the human element applicable to any field of communication media.

The Chairman. Do you not think you could provide a remedy for it in some way?

Mr. Pengra. That our committee could do that?

The Chairman. Yes.

Mr. Pengra. There are rules recommended by the National Association of Broadcasters for such procedure, which to my knowledge are as good as could have been arranged for so far, and one which my station—and I can only speak for my station—follows.

Senator Danaher. Is there not some effort within the industry to bring about an acceptance of those rules you are talking about?

Mr. Pengra. Yes, there is. But as Mr. Arney pointed out, there is no method by which the National Association of Broadcasters as an association can impose any penalty for failure to observe them.

Senator Danaher. Except not to cut them into the network in the first place unless they agree to take the refutation.

Mr. Pengra. The National Association of Broadcasters could impose such rules, but whether or not they would be accepted I do not know. You are speaking of network operation, and if the network as such agrees to that proposal, then undoubtedly the rule will follow through down to the individual station.

The Chairman. Do you not think the industry ought to try to enforce it, or do you want a law enacted on the subject?

Mr. Pengra. I am not sure whether I would want a law enacted on that or not. In the immediate consideration of it the only thing I can tell you for sure is gauged by my own operation. In the operation of my own station——

Senator Bankhead. Where is your station?

Mr. Pengra. It is in Roseburg, Oregon, a town of 7,000 people. Roseburg is in the southwestern section of Oregon, about 200 miles south of Portland. The operation of our station there is on the basis that when the Federal Communications Commission has given us a license to operate in the public interest, we are constantly vigilant to see to it that we shall be in the public interest in the just sense of the word.

Now, as I have said, I can speak only for my own operation in that respect. We consider it a very high privilege under the existing rules and regulations that govern the granting of radio station licenses, to operate a radio station in our community. We bend every effort toward giving the best and most considerate service we can in the public interest, without restriction.

Senator Danaher. At the same time you are subject to the very human limitation it would seem to me that if someone buys network time to advocate a given proposition, and then on the hour scheduled for the refutation there is a candidate for mayor in Roseburg, Oregon, who has purchased your facilities for that same period, and paid you with perfectly hard, round, good American dollars for that privilege, you are going to take his dollars, are you not?

Mr. Pengra. Senator Danaher, might I qualify that with this statement, that if it is a question of two groups, let us say one being a national network and the other a local presentation, both wanting to buy the same time, as far as we are concerned that group which has reserved the time first under the natural rules of business would be entitled to first use of the time. Then we can offer to the network group supplemental time for a later appearance, and that is our practice. But when you consider that the operation of a radio station must be in the public interest, both nationally as it may affect a network program, and also locally, the use of the station's facilities by the mayor of Roseburg as against a Senator, in the case you suggested, would not resolve itself into what we would like to do but which was first. That would be the problem in our town and it does occur.

The Chairman. Under the plan you have outlined, if your station were notified as to what particular side the individual was talking on, would that be of assistance in handling the situation?

Mr. Pengra. It would help to a great extent. Might I illustrate that by saying this: If we know that a controversial subject is to be discussed by a speaker, and if I were informed what side he would take, and then be assured that the other side will be heard, in the operation of our station in the public interest we will publicize the fact that such and such subject is to be covered. That is operating a radio station in the public interest.

The Chairman. Well, you seem to be very fair about it, but I am afraid some other radio broadcasting stations might be like a judge I have heard referred to, that after hearing one side he refused to hear the other side because it might confuse his mind. (Laughter.)

We thank you very much for your statement.

Mr. Pengra. And I thank you for the opportunity to be heard.

National Association of Broadcasters
1760 N STREET, N. W. ★ ★ ★ ★ ★ ★ ★ WASHINGTON 6, D. C.
November 5, 1943 SPECIAL LEGISLATIVE BULLETIN No. 21

Hearing on White-Wheeler Bill

(Consistent with the established policy of keeping the industry informed on the progress of matters vital to its welfare NAB will publish a series of Special Legislative Bulletins covering the White-Wheeler Bill Hearings. Wherever possible a digest of the testimony will be given. Since however Mr. Fly's testimony was not presented in the form of a prepared statement and most of the discussion was the outcome of questioning by members of the Committee this issue of the bulletin is largely a verbatim report of the testimony. It is followed by a brief resume of the high points of the testimony of November 4 which will be more comprehensively covered in later bulletins.)

The Senate Committee on Interstate Commerce, under the chairmanship of Senator Wheeler, opened its hearings on S. 814 (Wheeler-White Bill) Wednesday, November 3, with Chairman Fly of the FCC the first witness.

After outlining the important functions of the Commission, Mr. Fly drew a comparison between the Senate bill and the Sanders bill on which hearings were held during the 77th Congress and presented a cross reference to provisions of the Senate bill together with references to portions of his testimony which went back to that hearing. The testimony which followed is reproduced below:

I shall discuss the procedural provisions of this bill. As I found in the course of the extensive hearings in the House, the greatest interest was in the network regulations, and I shall merely outline the status of the network regulations as they exist today, and in terms of the procedures which lie in the background. And I shall make some comment upon the Supreme Court decision sustaining those regulations. Also, I will comment briefly on the new sections, that is, the sections not contained in the Sanders bill, which are sections 7, 9, 10 and 11, and which are primarily concerned with the problem of free discussion.

* The Chairman. I should like to ask you this question right there: Are the networks still operating?

Mr. Fly. Yes. The networks are still operating, and I think it may shock this committee, in view of the representations which were made to this committee, and I know were given serious consideration at that time, that the networks would be destroyed by the regulations; I say, it may shock this committee to say that the networks are making more money today than they have ever made. I think the past quarter was the most profitable quarter in the history of radio network operation.

Senator Reed. Is that due to the regulations, Mr. Fly?

Mr. Fly. I will say, Senator Reed, I think that is a very fair question. I do not think it is due to the regulations. I think the one thing that is clear is that the regulations have not impaired network operation in any particular.

Senator Reed. I agree with you upon that. Of course, their increased profit is, however, not a reflection of the effectiveness or lack thereof of regulation, but is due to business conditions.

Mr. Fly. It is consistent with the assumption that the network regulations offer a feasible and healthy mode of network operation. But I do not take the position that the network regulations produced the increased profits.

The Chairman. I realize, of course, the contention was that if these regulations went into effect the networks could not operate.

Mr. Fly. Now, that is right, sir. They in effect said the networks would be destroyed, that the regulations would be destructive of the feasibility of network operation. And in general there was a great cry of ruin and destruction that went up. Of course, that was extensively heard by this committee, and the networks were very energetic and competent in presenting that plea in the various forums, including the courts.

Now, the two major networks, and they are the

* "The Chairman" wherever appearing hereafter refers to Chairman Wheeler.

ones that are making the most money today, have standing room only. They have that far consolidated their time on the air that the presidents of each of the big networks have seen fit to go off to Africa, and to parts unknown, for the time being. And I see no reason why they cannot. An office boy can run the network, and continue to drag in the money that floats over the counter. So I think that is a good illustration of the great concern which these people feel as to the welfare of their own business, and it comes down simply to one thing, I think, and that is that these two big networks want to get back into the same monopolistic practices they were in before, and want to control radio broadcasting stations in this country far and wide, and in the extensive detail which they did prior to these regulations.

The Chairman. Right there let me ask you a question about one thing that has never been clear in my mind, and that is with reference to advertisers. Perhaps I should have asked this question of the representatives of the networks, and probably you won't be able to tell me, but do the large advertisers of the country make up their own radio programs, or do the networks make up such programs and then sell the programs to advertisers?

Mr. Fly. I think in the main, Mr. Chairman, advertising agencies make up programs. I think in times past, and that includes my own testimony here, we have given perhaps too little emphasis to that point. The advertising agencies, big powerful national concerns, have a tremendous control over network broadcasting in terms of programs. They have their program departments, and they originate shows, and they—

The Chairman. That is what I wanted to know. They originate shows, do they?

Mr. Fly. Yes.

The Chairman. Do they hire their own commentators or do the networks hire the commentators?

Mr. Fly. Both on the origination of shows and on the hiring of commentators the practice will vary somewhat from case to case, but I think in the main the sponsor hires the commentator. Then, often where the network does hold some control over the commentator, still in that event the sponsor exercises discretion in selecting him.

To give you a single example, Mr. Swing had made a contract with N. B. C. to make his services available to that network. Then through a series of negotiations the Standard Oil Company concluded to ask Mr. Swing to act as commentator on their program, and an arrangement was made with N. B. C. to release Mr. Swing and he appeared upon the Blue Network. Now, the sponsorship there is of the Standard Oil Company.

There are outstanding some instances where different people, and I think maybe not the networks but people connected with networks, have some sort of contractual relation with some commentators; and to a certain extent they own slices of them, very much as some agents may own a portion of a boxer.

The Chairman. Well, for instance, we will say a manufacturer, or the Standard Oil Company, or Ford, or General Motors, or a soap manufacturer such as Procter & Gamble, may put on their own show.

Mr. Fly. In the main that is true.

The Chairman. And they put on the kind of show they feel is most suitable for attracting the largest number of listeners to their program.

Mr. Fly. Well, in the case of the soap operas with the motive to get the greatest number of listeners, but some other sponsors may be more interested in getting across to listeners ideas which they want to get across.

The Chairman. For instance, in the case of a manufacturer who employs a commentator, he may want to get across the ideas that he wishes put across.

Mr. Fly. That is very true, and that is the reason I put in the qualification on the suggestion that they are simply trying to get the greatest audience. In that event they may place more emphasis upon the philosophy than they do upon the size of the audience.

The Chairman. So that a manufacturer who hires a commentator may want to get across his philosophy regardless of the public interest.

Mr. Fly. Yes.

The Chairman. In the main, one who puts on a show puts it on for purely financial gain to himself rather than for what is in the public interest.

Mr. Fly. That is true in too great a number of cases.

The Chairman. That is the reason, I take it, why we get so much tinpan alley stuff over the radio rather than getting programs of a high character, programs which perhaps do not appeal to the intelligence of the people.

Mr. Fly. I think that is true on both angles of the thing, in terms of quality of job done in the entertainment field, soap operas and that sort of thing, and in terms of turning the microphone over to the sponsor who has an ax to grind, for to a great extent their network has abdicated its function of management, and to a great extent its duty of seeing that it has a program which is best in the public interest.

Senator Hawkes. Mr. Chairman, may I bring out a point I have in mind?

The Chairman. Certainly.

Senator Hawkes. I wish to ask Mr. Fly if it is not a fact that the number of utilized stations a network may be able to guarantee an advertiser or a cient, determines to a very substantial extent the character of the show that is put on.

Mr. Fly. I think that may be true.

Senator Hawkes. I know it always has been true in my business. In other words, if you can only get so many stations, then you only put so much money in the show, and you have a certain man, like Mr. Swing, or somebody else. I think the number of outlets and opportunity to guarantee delivery to the greatest number of people, in large measure determines the character of the broadcast.

Mr. Fly. Well, I think that may be true, sir; and certainly if you carry that to the degree of getting only a few stations, you cannot put the money into the quality of the broadcasting.

Senator Hawkes. That is the point I make.

Mr. Fly. That would be true. That, however, is not in general a very serious problem. Since the network rules have gone into effect the networks have extended their coverage and added a great number of stations. I offer that not in a critical sense, for I think that is a constructive move, and am certainly hoping to see a spread of the benefits of network operation.

Senator Reed. But that is true to the extent that they have abdicated a part of their duties.

Mr. Fly. I think that is so.

Senator Hawkes. The point I wanted to make is that these programs have to be set up a long time in advance. There certainly is some point in being able to guarantee your outlets, otherwise you cannot prepare your show. These things do not happen in a moment, you know; they have to be prepared, and sometimes it takes two or three months to get a broadcast up and to get the cast in shape.

Mr. Fly. Yes.

Senator Hawkes. The point I am trying to make is, there has got to be some way to know what outlets you will have before you can prepare your show, or your broadcast.

Mr. Fly. Of course, some shows are prepared without regard to what network they will go on, or when. They are prepared with a view of being able to sell those shows and to put them on at some future date. But once the determination to put a particular show on is made, then of course you have got to arrange with the stations to see that the show is carried, and that can be done under the present option time regulations. It is being done, and it is obviously a feasible operation. As a matter of fact, the blue network recently put on a full hour program, from coast to coast, on a period that is not covered by any form of operation. It cleared the entire time from coast to coast. That is from six to seven o'clock in the evening.

Senator Reed. Mr. Fly, would you go a little further with an explanation of the program you just described, a one-hour program from six to seven in the evening. Who sponsored that program, if anybody?

Mr. Fly. That is the Philco Radio program on the Blue network, sir.

Senator Reed. Was there anything unusual about that?

Mr. Fly. No. There is really nothing unusual about it, except that there is a case where the network moved out and provided a nation-wide coverage from coast to coast one hour on which it had no option time at all. That is from six to seven p. m. on Sundays.

Senator Reed. To that extent that is unusual, is it not, that one of these networks had a full hour open, a full hour for which there was no option?

Mr. Fly. That has not been unusual in times past, Senator Reed. The Blue and the Mutual have had time available; indeed, the two large networks in times past have had this spot available. Right now they do not have it.

The Chairman. You may continue, Mr. Fly.

Mr. Fly. I want to mention very briefly the great consideration which was given to these network regulations. The original hearings under Commission Order 37 lasted for 73 days of actual hearings and extended over a period of six months. 96 witnesses were heard, and all but two or three of those were from the industry itself. There were 8,713 pages of transcript, and 707 exhibits. There were oral arguments, briefs, and supplemental briefs; and upon the basis of that complete record the regulations were established in May 1941.

Thereafter—and those were the hearings which the members of the committee will recall that we appeared on investigation of these regulations, on Senate resolution 113, 77th Congress; and that hearing lasted for 13 days, and filled 628 pages of record.

Then, I have mentioned the extensive hearings that were held before the House Committee on Interstate and Forign Commerce, on the Sanders bill, and that developed into another discussion of these network regulations. That lasted for weeks, and I testified for a week there.

Then the networks carried the matter into the courts. There were four court decisions, two in the statutory district court below, and two in the Supreme Court of the United States. For the record, those opinions are reported in 44 Federal 688, 47 Federal 942, 316 U. S. 447, and 319 U. S. 190.

I suppose that seldom in history has any set of regulations had the detailed and painstaking attention in the various forums that might review a matter such as these very regulations; and I need hardly remind you that they have been finally sustained in the courts, in the district court and in the United States Supreme Court.

Now, as I have suggested, when the general cry of ruination and of impracticability went up, that largely came from two sources, or I might say, two and a half sources; the two big dominant networks who were making the most extensive use of the monopolistic practices and had the major control over the entire industry—

Senator Reed. You refer to these giant monopolies, broadcasting networks, but you haven't named them. Some of us are not as familiar with these things as you are.

Mr. Fly. National Broadcasting Company and Columbia Broadcasting System.

Senator Reed. Dividing the N. B. C. into two networks.

Mr. Fly. I am coming to that in a moment, sir, but those are the dominant forces in the effort to tie down all regulations and then they have been served by a stooge organization known as the National Association of Broadcasters.

Senator Tobey. What do you mean by a stooge organization?

Mr. Fly. Well, let me say this, whenever N. B. C. or Columbia are needled in any way, then the cry is very apt to come from Neville Miller, president of the National Association of Broadcasters, and that has become such a common practice that when they are needled in that way an action from Miller and the N. A. B. is almost a reflex action.

Senator Tobey. You made a charge there, an interesting charge.

Mr. Fly. I didn't mean to make a charge.

Senator Tobey. Well, you did make a charge.

Mr. Fly. I meant to make a statement of fact.

Senator Tobey. You charged that when Neville Miller and the N. A. B. took any action it was a reflex action from the Columbia Broadcasting System and the National Broadcasting Company. What is the connection of Columbia and National to Mr. Neville Miller and to the Broadcasters Association that causes the reflex?

Mr. Fly. It is the great power that those two dominant forces have exercised in the industry and because they built that up under the system by which they had controls over the entire industry prior to the time of the regulations. Bear in mind, sir, that the two small networks, that is, the Mutual and the Blue, are not members of the Association; and also bear in mind the inconsistent record—this is not a charge. This is a fact that can be observed in day-to-day operation, that any time anything comes out that affects these two big networks, somebody at the Association's office sets up a squawk, and in addition to that, while the two small networks are not in here protesting and are not bucking this legislation, the N. A. B. organization has been out holding various district meetings, beating the bushes to stir up pressure to come in and break down these two regulations that the two big ones object to. They have gotten their radio affiliated newspapers to write a great series of editorials and then they get those printed up in big sheets and they mail those around. I dare say you gentlemen got your share of them. They mail them around to everybody who might be concerned, and those in turn inspire more editorials to be written, thus creating a great deluge of public opinion.

Senator Reed. May I inquire if you have information on what comprises the membership of the National Association of Broadcasters?

Mr. Fly. In times past the National Association of Broadcasters had had around one-half of the radio stations of the country who were members and they were predominantly the network affiliated members. Then they had an arrangement whereby the networks would consist of the board of directors of the Association to make big contributions and were always right there to see what their own affiliated stations did, and how they voted. With all the controls they had over the affiliated stations there was not much difficulty in seeing that the Association came out with the right answers. To give you a single example, I said a few words out at St. Louis a few years ago that the big networks didn't like. That afternoon the board of directors of the N. A. B. met and passed a resolution calling for my removal. It was all right with me that they brought an issue of that kind out into the open. Thereafter I was appointed and this Senate appointed me unanimously, but that is the way it has been through the years, and still is, and the two smaller networks are not taking part in that operation.

Senator Hawkes. Have the two smaller networks, the Blue and the Mutual, the right to join this Association, or are they denied the privilege?

Mr. Fly. They can join it if they want to.

Senator Hawkes. Have they ever been members?

Mr. Fly. In times past, yes.

Senator Hawkes. And they resigned?

Mr. Fly. Yes.

Senator Tobey. Is it your idea that when Neville Miller speaks it is the voice of the National Association of Broadcasters and the skin of the Columbia Broadcasting System and the National Broadcasting Company?

Mr. Fly. That is my belief, sir.

Senator Tobey. You want the committee to believe that?

Mr. Fly. I want only to give attention to the facts which I have presented to you and to use those facts in connection with your appraisal of the testimony that comes from those purported associations. Now, whether that would be your conclusion is no real concern of mine, but I am trying to make clear as best I can in factual terms the real people who have made an endeavor to break down this set of regulations, and it is not the small network, it is not the individual independent stations. You take the Blue network, for example. I would suppose that of all of the beneficiaries of the network rules that the Blue network and the stations affiliated with the Blue network, which was the weaker and the smaller one owned by the N. B. C., for the first time the Blue network is a fully-independent, profitably-operating network competing in its own right. They formerly had 116 stations. Today they have 154. They have added a potential listening audience of five million additional listeners. They have gotten a number of new and very good and some very profitable programs. Their revenues are up 50 percent or more over last year. I venture to say that the regulation which lay at the basis of that separation of the two N. B. C. networks in setting them up as independent and competing organizations will go down in history as a really far-sighted bit of action. I think it is far-sighted on the part of the regulatory agency in enunciating the policy and I think the Radio Corporation of America and the N. B. C. were far-sighted in cooperating as they did cooperate in effecting that separation. I believe that all in the industry have agreed that it has been a healthy result for all concerned, including the N. B. C. that sold the network.

Senator Tobey. Who owns it now?

Mr. Fly. Mr. Edward Noble.

Senator Tobey. Is he the gentleman that bought the New York station at one time?

Mr. Fly. That is right.

The Chairman. I might add that I had advocated that the Blue and the Red networks be separated for a long period of time before the Commission actually took action.

Mr. Fly. That is right, sir, and I think it certainly was a wise idea. I think the Senator was entirely right on that and eventually we were right on it.

The Chairman. It took the Commission a long time to come to that conclusion.

Mr. Fly. That is right. It has taken them a long time to come around to a lot of things here that it should have given attention to in years past. I do want to say, though, that that network was not sold under pressure. We kept that rule in abeyance with no time limit fixed on it and held it off indefinitely while the N. B. C. got the thing organized into a separate corporation and generally built it up as an effective semi-independent organization, and then they took their own good time in looking around for the right purchaser. I want to again say that the Radio Corporation of America and the N. B. C. fully cooperated in that move, and I think it is one of those very healthy examples of cooperation in terms of effectuated policy as between the industry on the one hand and the Government on the other hand.

Now, the committee will recall that in times past there has been a great deal of discussion of the exclusivity features of the old network contracts. One of the network rules struck out the exclusive feature. That is, the provision that a station could buy network programs only from one source. Now, we don't have a long history of operation under that provision, but I think the most interesting example that can be given is the World Series program. That is and has been through the years a Mutual program, and before the network regulations went into effect, other stations, that is, stations on the N. B. C. and the C. B. S., were not permitted to carry the World Series.

* * * *

Mr. Fly. A total of 289 stations carried the broadcast. Of these 154 are regularly affiliated with Mutual, 43 are affiliated with both Mutual and another network, 43 stations were affiliated with one of the three other networks, and 49 were unaffiliated. Under the prior system certainly none of the 43 stations affiliated with the other networks exclusive would have been permitted to carry the World Series programs, no matter how much the public wanted those programs. Of the 49 unaffiliated stations a number of those might have been prevented from carrying it because of the provisions of territorial exclusivity which were effective at that time. It is just possible some of those that were on the two networks would not have been permitted to carry them.

* * * *

Mr. Fly. Now that is one of the ways in which a regulation of this kind can work to the public benefit. I might say, even though the public is not aware of the processes by which it may come about, it is a significant fact that communities heretofore denied World Series programs were for some reason enabled to get them at this time.

The Chairman. Has there been a general agreement since the regulation went into effect that various stations on the Mutual and Columbia could interchange their programs?

Mr. Fly. No, sir, that has not been as extensive as it might be. That is the general notion of the open market on the programs. As a matter of fact, the two big networks are staying as close to the exclusivity principle as they can. Columbia has recently circulated some provisions to go in the contracts they were presently drafting, which were written pretty much in terms of exclusivity and then expecting the stations to read out of those principles whatever the station might think was required by relatively minor provisions stating that the contract would be construed in accordance with these rules, but as that was actually carried out and with the correspondence backing it up, they were tending to move into the exclusivity relation again and to continue to preserve it. Now, there was another form of exclusive arrangement which was quite troublesome and that was the provision whereby certain stations and particularly some of the powerful stations would protect too broad an area by forbidding the network program being duplicated anywhere within the broad area, presumably an area in which the station had some interest, but we saw some rather outstanding examples of how that worked, where a station was permitted to control an operation that was on its own primary service area and its own proper market, that is, a market which they could properly lay claim to.

For example, a station in San Diego which is 100 miles from Los Angeles had extreme difficulty in getting network affiliation due to the dominant position of the Los Angeles station and its contract with the networks. Then we had a little station down in the Rio Grande Valley of Texas which had difficulty in getting on the networks, which stemmed in part from the desire of a station 300 miles away to have protection.

There was another one at San Benito, Texas, which followed roughly the same pattern. In all of those stations there was no useless duplication of program service. The upshot of it was that the people who regularly listened to the stations in their own communities just couldn't get the service. In the three instances there, all of those have been signed up and have been given network services.

The Chairman. I might call attention to the fact that in Montana when I took it up with Columbia about some of the stations in Montana and the Columbia network, they contended of course that the people of Montana could get KSL in Salt Lake City and also could get stations in Los Angeles on the Columbia network, and that consequently it was not necessary for them to

come into Montana. I insisted that the people of Montana were entitled to those programs.

Mr. Fly. That is a principle which we tried to effectuate.

The Chairman. Let me ask you, while we are on that subject, with reference to cleared channels. After all, when we passed this legislation it was with the idea that there should be an equitable distribution of stations, and that the people of the country generally would be able to have the benefit of good radio programs. How many stations have you got in New York City, alone?

Mr. Fly. I think there are around 16 or 18 stations there, sir.

The Chairman. Only 16 or 18?

Mr. Fly. I would guess 18. Including the Jersey side—

The Chairman. I meant in that particular area.

Mr. Fly. If we include the Jersey side, 22, as Mr. McCosker suggests; 22 stations serving that area.

The Chairman. How many in Los Angeles?

Mr. Fly. Almost as many. I would guess about 16.

The Chairman. How many of them are cleared channels in that area?

Mr. Fly. I am informed that there are 12 in Los Angeles. You have three cleared channels in New York and a fourth station which has pretty near the same practical service.

The Chairman. Who owns the cleared channels in New York City?

Mr. Fly. The Columbia WABC, the N. B. C. WEAF, and the Blue network WJZ; and the fourth station I mentioned, WOR, is affiliated with Mutual. WOR is not a fully affiliated cleared channel station, but it has the same practical service.

The Chairman. My attention was diverted for a moment. How many did you say?

Mr. Fly. I mentioned four.

The Chairman. Four were owned by the networks?

Mr. Fly. Three of them are owned by the networks, and the other one is affiliated with Mutual.

The Chairman. What networks are they owned by?

Mr. Fly. WABC is owned by Columbia, WEAF is owned by N. B. C., WJZ is owned by Blue, and WOR is owned by the Bamberger interests, that is, the Macy Department Store interests. They are affiliated with the Mutual. WOR is the key station.

The Chairman. What is the power of those stations?

Mr. Fly. 50,000 watts.

The Chairman. Do they need 50,000 watts to cover the New York territory?

Mr. Fly. No, sir.

The Chairman. It has been called to my attention, for instance, that there is a station in New York—I have forgotten the name of it—which has a 10,000-watt station, which uses to a large extent these recordings in its programs. That station in the last year has taken in a gross of something over $1,000,000.

What I had reference to, a station in Bridgeport, Connecticut, we will say, is not able to retain its listeners in its own community because of the fact that there are 50,000-watt stations in New York which cover that area so completely. Is it necessary for a cleared channel to have as much power as 50,000 watts?

Mr. Fly. It is not necessary, sir, if you are going to simply cover the area of New York City and its immediate environment. If you are going to have long distance service and extensive rural service, then you do need high power, but of course those stations are not located to give the most extensive rural service because too great a number of those stations are located in an area where half of the service is lost and where in general they go into a very populous area, although they do have—even though they skim the cream of the metropolitan area, they do have substantial rural coverage. I think perhaps up in Senator White's country they will get those stations occasionally and will get the Boston stations more frequently, for example.

The Chairman. Well, here is what the intention of the legislation was. It said:

"It is hereby declared that the people of all the zones established by this title are entitled to equality of radio broadcasting service, both of transmission and of reception, and in order to provide said equality the Commission shall as nearly as possible make and maintain an equal allocation of broadcasting licenses, of bands of frequency, of periods of time for operation, and of station power, to each of said zones when and insofar as there are applications therefor; and shall make a fair and equitable allocation of licenses, frequencies, time for operation, and station power to each of the States and the District of Columbia, within each zone, according to population."

If you really want to reach the rural area out in the West and the Middle West, certainly you ought to have some higher powered stations out there if you are going to reach the rural areas.

Mr. Fly. That is true.

The Chairman. Because there are certain parts of my State where in the daytime they cannot get any station because of the limited amount of power that they have.

Mr. Fly. That is true. In terms of getting the rural coverage, you get the optimum result by having all of the clear channel stations somewhere away from the border lines and at a point where they would more effectively reach out into the distant areas. The trouble is that they have been allocated on a basis of the economics of operation and not in terms of the need. It does not take high power to reach a lot of people in a congested area. It takes high power to reach out over the miles, over the long stretches and distance.

The Chairman: That is exactly what I was going to say. But the reason why you have the high powered stations in New York, to a large extent, is because of the financial end of it or the eco-

nomic. They can get a larger amount of profit from the advertisers.

Mr. Fly. That is right, sir. That is the reason they are there.

The Chairman. And the reason you have the smaller stations in the other localities is that there is not a large population there, so that you do not reach the rural communities out in the West and the interior there.

Mr. Fly. I think it is still possible, though, to have a large operation in a moderate size city in the interior where it does reach out and cover the distance.

Senator Reed. Mr. Fy, I sent a copy of Senate bill 814 to all the radio stations in Kansas, asked their opinion and criticism and advice. Out of that correspondence I learned that the National Association of Broadcasters had given a general endorsement to the provisions of Senate bill 814. Would you suggest that that should increase our confidence in that legislation or invite a closer scrutiny?

Mr. Fly. Well, I think, sir, where the dominant interests are so closely allied and working together to the exclusion of the interests of the smaller networks and of the independent stations, that you would want to view that with some degree of skepticism.

Senator Reed. The Kansas stations rather generally have more affiliation with the Mutual and the Blue than they do with the other ones. The Kansas stations rather generally approved Senate bill 814; now, not without exception.

Mr. Fly. Well, the N. A. B. have done a big job of propaganda. They have held these district meetings all around, and they have had people there to work up enthusiasm and get people in there and explain what a vicious thing it was, and how it was going to bring in government control of the industries in their stations, and so on, and they have gotten them to get in touch with their Senators and Congressional Representatives. They have urged them to do so in writing as well as in these meetings, and no one has gone around to explain to these stations just how the thing would work to their benefit. Now, I must say that they have done a pretty effective propaganda job there.

Senator Tobey. Of course, they have only taken a leaf out of the New Deal's notebook. That is the way they have carried on their agricultural policy in this country for the last ten years.

Mr Fly. Well, I am not familiar enough with that to pass judgment, sir.

Senator Tobey. I am telling you.

Mr. Fly. But if you look at the record of the public utility holding companies you will see something that is quite comparable, except that I think here is a more effective job. They have really done a nicer job here than the public utility companies did, and they have done it pretty broadly and pretty effectively. And they haven't sent any phony telegrams, so far as I know.

Senator Shipstead. It would be nicer for whom?

Mr. Fly. Pardon me, sir.

Senator Shipstead. You said they had done it nicer than the public utilities. Nicer for whom? The public?

Mr. Fly. In their own interests.

Senator Shipstead. In their own interests?

Mr. Fly. Yes, sir.

Senator Shipstead. I see.

Mr. Fly. Their methods were—

The Chairman. They have not been as coarse as the public utilities were.

Mr. Fly. No, they haven't. I think the upshot of it is the tendency to mislead a lot of people, including the Congressional representatives; and to that extent I do think it is a pretty ominous thing that we have that sort of a machine working as it has been functioning, but so long as we can come here and lay the thing right out on the table before you gentlemen I do not have any worry about it. They have not gotten very far with it yet, and I doubt if they will so long as they follow that method of approach.

Senator Reed. Mr. Fly, may I suggest here that my own experience is hardly in line with that statement you have just made. I have had very little information from the Kansas radio stations except on my request. Back in March when this bill was introduced, or shortly thereafter, not knowing much about radio, wanting to know the views of those stations interested in my State, I sent them all a copy of the bill. Now, virtually all the correspondence I have had from Kansas was in response to that request. I have had only two or three voluntary offers of advice.

Mr. Fly. I think that is right, sir. I do not think the little stations that have been going about their own business have gotten much exercised over it; and I think, were it left to them, they would not move forward on it at all. As a matter of fact, some of the most effective support that has come from the smaller stations group has come from an extensive number of people out in that region, some of the small networks of the small stations out there. But I think that by and large the small stations that have been left alone on it have not been moved one way or the other to a great extent.

Senator Reed. My own experience confirms to a great extent just what you have said. We are out in the heart of the country, of course, with a number of small stations and a few large ones in that territory. Practically all the correspondence that I have had, all the advice I have received, all the letters that have been written to me, have been upon my request, not voluntary.

Mr. Fly. Yes, but I think—

Senator Reed. And those letters that have come upon my request have rather largely approved this legislation.

Mr. Fly. I think the upshot of that is that the material and the work that these gentlemen have done has gotten out to these people, and there is where they got their understanding of what the thing means; but I do not think that any of them got hot and bothered enough about it, of that particular group, to make any real noise about it.

Senator Gurney. Mr. Fly, my experience, if I may interject here, is somewhat along the line of Senator Reed's. I have not written any of my South Dakota stations. By the same token I have not heard from one, and I am intrigued by that because generally on radio legislation where we seek to change the whole law I would be bombarded with letters and requests; and I am just wondering if the stations feel so held down by the Commission that they do not write and are afraid possibly of reprisals. I wonder if that is not the answer.

Mr. Fly. I do not think that is true, sir. There is certainly not an example in history where anything has happened to a station for expressing its views on any matter that has come up. I think the upshot of it is that those stations out at a distance were not highly exercised about the matter one way or another, and I think to a great extent they have not wholly understood the workings of the regulations, and I would daresay you haven't got many letters complaining about them too.

Senator Gurney. Well, I have gotten some letters in the past few years about it. I know, of course, that this proposed bill S. 814, if it became law, would change the operations of the Commission and in the way they would be able to control radio. I should like to have a concise statement, if I could, from you as chairman, as to what function of the Commission could not be carried on if this bill became law. In what way would it be detrimental to the radio-listening public, in your estimation? Could you point out the high points in it?

Mr. Fly. It would be detrimental, sir, in restoring the industry back to a condition of monopolistic practices and attitudes and policies, and you would deprive the Commission of any effective means of doing anything about it. I think that perhaps is the most significant feature of this bill.

Senator Gurney. I think that that is a general answer, but it does not point out specifically, by paragraph, just where the Commission would be limited.

Mr. Fly. Well, you mean in the bill, sir?

Senator Gurney. Yes. I should like to have wherein the bill is wrong and why it should not be passed.

Mr. Fly. Well, if you look on page 12 of the committee print, line 10:

> " 'Nothing in this Act shall be understood or construed to give the Commission the power to regulate the business of the licensee of any radio broadcast station"—

And no rule or regulation having to do with the business practices shall be effective.

Now, that is the very language that is designed to restore the monopolistic control of the two big networks. That will kill the monopoly regulations and will in effect repeal the Supreme Court decision sustaining them. And that is what it is designed to do.

Senator Gurney. Well, of course, we have never had any commission that could regulate what a newspaper shall do.

The Chairman. Well, a newspaper is quite a different situation, is it not, Mr. Fly, from radio, in this: that with radio there are a certain number of wave lengths which can be used by radio operators?

Mr. Fly. That is right. There is a physical limitation on the wave lengths that can be used, and those wave lengths belong to the public, and there is a duty inherent there that the operation on those wave lengths must be in the public interest.

The Chairman. I mean, the original law that we passed, the original law that was passed of which Senator White was largely the author, as I called attention to a moment ago, specifically referred to that matter.

Senator Gurney. Then, by your answer I feel that the Commission feels that it is necessary that a government agency control what shall go out over radio, rather than like with the newspapers,—

Mr. Fly. No, not at all, sir.

Senator Gurney. —where public feeling controls what is put out in the newspaper.

Mr. Fly. Not at all. I haven't made any such suggestion.

The Chairman. Well, have you, or has the Radio Commission, anything in mind with reference to trying to tell the radio stations what should go out, or control their programs?

Mr. Fly. We have not exercised either a negative or affirmative control over any program or any proposed program. Never in history. We have never suggested that any program should be put on the air. We have never endorsed any program. We have never directly or indirectly suggested that it should be carried, and we have never disapproved one or required it to be taken off the air, or even suggested it should be taken off the air. So, in response to the question about program control, I would say that there is just nothing like that here, sir.

Now, that, by the way, is the danger here. Under that guise this monopoly is going to move in here and try to strike down these antimonopoly regulations. They are going to try program control and try to restore the monopolistic condition. They know good and well that we are not going to tell them what programs they can take and what they can't take, and that is really not what they are talking about here.

Senator Reed. Mr. Fly, getting away from the program matter for a moment, I would like to ask you a question or two. Now, my ignorance on this radio operation matter is appalling, and I am seeking light.

The Chairman. You are not alone in that.

Senator Reed. Well, I admit it, though, more freely than some of the others do.

The Chairman. Well, I don't know. I admit it.

Senator Hawkes. Mr. Fly, may I ask you—

Senator Reed. Just a moment.

Senator Hawkes. Oh. I beg your pardon.

Senator Reed. For example, in a letter here

from one of these stations to which I wrote asking for an opinion this statement is made:

"You probably do not know, and I doubt if any member of Congress knows, that we cannot replace a worn-out transmitter with a modern one without express Commission consent."

Mr. Fly. That is true now, sir, and that will be true under the proposed bill.

Senator Reed. It will?

Mr. Fly. Yes. We have to license all radio transmitting equipment; and, if a new transmitter is substituted, that would need to be licensed. But there is no difficulty there. It simply means that, lest you are to have complete confusion in the field, you have got to have some authority which regulates the type of equipment that is put on the air, and it has got to go through the mill; but, so far as any difficulty is concerned, there is no difficulty about it.

Senator Reed. Well, may I proceed with this letter?

Mr. Fly. Yes, sir.

Senator Reed. I would like to ask you two or three questions on this.

Mr. Fly. All right.

Senator Reed. He said:

"In the swaddling clothes day of broadcasting when haywire equipment was the rule, some such supervision may have been necessary. If so, it no longer is when no station operates with less than Commission-engineered, approved equipment. You might, if time permits, give this phase of the matter consideration."

Now, they go ahead and talk about the length of time it takes to get permission from the Commission, and the delays and the red tape, and this man said:

"Even now the Commission has had my application for some weeks for permission to install a new one-kilowatt transmitter to insure continued operation, replacing a 13-year-old machine that my engineers tell me may go down any minute. Both are Western Electric. The difference is all in favor of the new one, of course. In addition, parts are no longer made for the old."

Mr. Fly. Well, now, I think I can answer that, sir. Normally there would be no problem at all in getting Commission consent to substitute the new transmitter if it is of the same type and will do the same job, but, let us say, to do it better, and he would have no problem there.

Senator Reed. He apparently has a problem of delay.

Mr. Fly. The real problem comes, sir, due to the shortage of materials, and we have been required to establish limitations on the construction and use of materials, to follow out the policies laid down by the War Production Board; and where there is any difficulty in substituting a new transmitter, undoubtedly it resolves itself down to that question as to whether pursuant to the policy of the War Production Board we can authorize the utilization of the new material. Now, under our rules, if that is essential to the continuity of the business, we are permitted to authorize it; and, in effect, if it is not essential to the continuity of it, we can't do it, even though we want to.

Senator Reed. Well, I inferred, without being certain, that in this case they had the new transmitter which they wanted to substitute for the old one.

Mr. Fly. That may well be true, but the war policies there forbid the use of materials, and it doesn't merely forbid the purchase or acquisition, but it forbids the use of them excepting under certain carefully specified conditions. So it may well be true that he has got it there.

Senator Reed. But, and having it, is not permitted to substitute it for the old one?

Mr. Fly. Well, I do not think that is the fault of the Commission, sir. Those are the rules under which we have been required to operate, and the industry has been required to go along with us in operating during the war period. I had recently suggested a review of that question as to whether we could not be permitted to use materials which were on hand and had been on hand for some time and where the military had in effect indicated that they would not need them, woud not take them; and it is my own feeling that there we ought to be permitted to go ahead and to make use of them. But that will require some amendment of those rules.

The Chairman. There wasn't any trouble about it before the war, was there?

Mr. Fly. Oh, no, sir.

The Chairman. I mean I have heard no complaints before the war, but I have had some complaints since the war.

Mr. Fly. We have had a number of them, and it is not at all an easy job for us. It would be much easier for us to approve it and tell them to go ahead. We have no interest in delaying them.

Senator Reed. Mr. Fly, confirming your suggestions a while ago of the propaganda phase of this thing, I have a letter that is from Kansas that is directly in point, from one of the advertising clubs out there. I got a letter quite recently in which they transmitted to me excerpts from the Collier magazine editorial about you and Mr. Cox and the House of Representatives. Now, it is hardly necessary for me to say to you, after our contact, that that spoiled this fellow's case, because if I think there ever was an outrageous perversion of legislative practice and procedure it was that Cox investigating committee over in the House.

Mr. Fly. I appreciate that, sir.

Senator Clark of Idaho. It is against the rules of the Senate to speak disparingly of the House.

Senator Gurney. Mr. Chairman, I have another question.

Mr. Fly. Yes, Senator Gurney?

Senator Gurney. Mr. Fly, if I may proceed, I asked you a general question as to wherein the proposed law or proposed bill would be detrimental to the operation of the Commission, and you cited

one place in line 10, page 12. What are other places in the bill?

Mr. Fly. Well, sir, I don't want that to be reduced to the significance of one line in several pages.

Senator Gurney. Oh, no.

Mr. Fly. If you are going back to the monopolistic practices, or you are not, and there is where she hinges.

Senator Gurney. All right. Is that the only place in the bill where the present law is changed? Certainly not?

Mr. Fly. No, sir. There are other provisions that I think are subject to question. For example, there is a pretty elaborate scheme of provisions for the intervention of parties who do not have a legal interest, and they would be permitted to come in—let us say an ordinary competitor; not one where there is any electrical interference, but where an existing station in a city doesn't want to see another station come into the city. Then I assume that this language would enable that station to intervene. And even after a grant, I think within thirty days after it, they could move to become parties, and the Commission would have to set the thing down for hearing and to go through a series of delays on it, and then it might be carried by the same party to the Court of Appeals, and then the Court of Appeals would have the authority to stay the proceedings; and indeed the Court of Appeals might have authority to issue some sort of a license and make some sort of a grant, thus moving into the administrative field; and in general there is the mechanics set up for the dog-in-the-manger type of intervention and the stalling and delaying through succeeding months, where it might be a clear case normally for moving ahead and getting a public service to go.

I think the same criticism can be offered as directed to the provision which enables the Commission to issue declaratory judgments and declaratory opinions. There again, parties who may not have an appropriate interest can come right into an existing proceedings and call for some declaratory ruling and get the whole thing bottled up, and then that can be carried to the upper courts, and the whole procedure would be paralyzed while they are going through that one.

The upshot of that is that you are laying a pretty effective foundation here for the dog-in-the-manger type of operator, and in view of the fact that these frequencies are publicly owned I doubt if you want to set up a series of persons of that kind that can move in and paralyze the administrative procedure for an extended period of time in their own interests.

Now, even under the present procedures we have had a lot of those delays caused by improper intervention, sometimes we feel through dummy ownerships. For example, an existing station sees a competitor applying for a wave length, and then all of a sudden another group of citizens superficially unrelated to either of the groups come in and file a competing application, and then that will force us to set it down for hearing, and then that will go on to the Court of Appeals, and you can litigate for a long period of time, and no station gets going there; and you will find occasionally, if you dig far enough, that the existing station is behind that competing applicant, and it is really just a dummy operation.

Senator Reed. You know, Mr. Fly, I am a newspaper publisher, and I am prejudiced against this radio advertising anyhow.

Mr. Fly. Well, sir, I think the press has really got something to concern itself about here.

Senator Reed. I am sure we have.

Mr. Fly. You know, there are other phases of that, Senator. With a tendency of the newspapers to be affected by the news print shortage—and of course that is a very crucial thing nowadays—I shouldn't be surprised if there would be some tendency of the advertisers, you see, put in that squeeze for space, to move out to the radio.

Senator Reed. You are not suggesting that the radio industry might encourage that, are you, Mr. Fly?

Mr. Fly. Well, I am not offering any advice on it, and I just think that that is a situation that might conceivably work to the detriment of the press and to a windfall for radio.

Senator Reed. That is undoubtedly a very important consideration for newspapers right now.

Mr. Fly. Yes, sir, I know it is.

The Chairman. Mr. Fly, I think that Senator Gurney asked you a question which, to me, you haven't fully answered, and that is, he cited that paragraph:

" 'Nothing in this Act shall be understood or construed to give the Commission the power to regulate the business of the licensee of any radio broadcast station and no regulation, condition, or requirement shall be promulgated, fixed, or imposed by the Commission, the effect or result of which shall be to confer upon the Commission supervisory control of station programs or program material, control of the business management of the station or control of the policies of the station or of the station licensee.' "

Now, your answer was that that would let them go back to their old monopolistic practices, as you termed it.

Mr. Fly. Yes, but not because of the program language, but because of that language in reference to the business aspects.

The Chairman. Now I should just like to have you explain that in a little more detail, rather than to make the general statement that it will permit them to go back to their old monopolistic practices, because that doesn't mean very much to me.

Mr. Fly. The networks have always contended —that is, the two big networks have always contended, before this committee and the House committee and in the courts, that the antimonopoly regulations were, in effect, a control of the regulation of the business practices of these companies, and that has become a part of the vernacular, and it is a contention which they have strenuously

pressed; and in terms of their efforts to strike down all of the antimonopoly regulations there has always been that language, and the opposition has been couched in terms of saying that this gives to the Commission control of the business policies of the broadcasters, and they had urged that the Act did not give any such control, and it should be nullified; that all we had was the power to take care of electrical matters, to act as a sort of an electrical traffic policeman.

Well, the Supreme Court then held that we did have authority to regulate the business policies of these concerns to the extent that we did in the antimonopoly regulations. So when they come in here adopting the same language and trying to write their own same language into the statute, I cannot think there is any doubt as to what they intend; and I believe when they get up here to argue the network regulations for the umteenth time, that they will tell you that that is what they are up to in that language.

The Chairman. Well, now, what I am trying to get at, in what particular is it that they object? I mean, that you think that this language in effect, that is, would let them go back, in your judgment, to the fixing and domination of the radio time of the independent stations by contract?

Mr. Fly. That is right, sir, and the exclusivity features, and they would move back into exclusive option time and the general control of the stations from New York. I think they would say that the whole pattern of the antimonopoly regulations is then repealed and made unlawful, and they go all the way back, except that the Blue would not go back. That has been sold, and the deal is consummated. But I think it would widen the whole business out. At least, that is the contention which they would make.

Senator Gurney. Mr. Fly, I have not been in radio for 11 years, but prior to that time, at the start of the industry, up until 1932 I was closely identified with it; and when you say "monopoly," it just does not set with me, because my business dealings with the Columbia Broadcasting System were certainly all fair and above board, and there was no effort on the part of the network to tell me how to run my station. None whatsoever. I attended many conventions where I met other radio station owners. We were all getting along fine, and not in trouble. And so when you say that you have got to have this power that you have under present law, why, it just seems unnecessary. Your answer is not sufficient.

Mr. Fly. Well, sir, we have got a voluminous record on that. I do not want to repeat the record. There are many, many thousands of pages that have shown just what those practices were, and I spent days before this committee going over them at the time that this committee reviewed those very regulations.

Senator Gurney. And I listened to them too.

Mr. Fly. We spent seven days before the House Committee on the same thing, and I think there is an overwhelming record there. I am reluctant to ask this committee to review it again at this late juncture because it is an awfully extensive job.

Senator Gurney. Well, I know a lot of information has been given out. I just want to make one further comment. When you said that the bill provides different ways to get into court on applications that are before the Commission, do you not feel that the wording of this bill possibly is put there in this manner so that a radio station can get into court; that it makes it easier for him to get into court in case a decision of the Federal Communications Commission is not entirely to his liking and he doesn't feel it is fair?

Mr. Fly. I agree, Senator, that every station that has a legal interest in such a decision ought to be permitted to intervene before the Commission, ought to be permitted to appeal to the courts. I raise no question there. I think it should be able to appeal. I think, as the present appeal provisions have been construed, that that right is pretty secure. But if there is anything necessary to assure that every party who has a legal interest gets a legal hearing, why, I would not raise any question about it. I just do not think you want to open the door to a system of interventions by people that have no legal interest, that will paralyze the whole administrative process.

Senator Gurney. Then we have two points in this bill that you have mentioned now that are not to your liking. Are there others?

Mr. Fly. The one that I mentioned there as having to do with interventions and appeals is rather extensive; it comes in a number of separate provisions. I have some more specific comment on those provisions that have to do with free discussion, and I also have some comment on the problem of reorganizing the Commission. I want to make a few comments on that.

The Chairman. Let me ask you: Perhaps if we let you go ahead with your statement you will cover these points. If you are going to, you may proceed.

Mr. Fly. Yes, sir. Well, I think I can cover them fairly briefly.

Now, as to the provisions for reorganization, the main points in those sections are that the Commission shall be divided into two divisions: Public Communications, that is, broadcasting and so on; and Private Communications, which roughly touches upon the common-carrier field. And then in general the specific decisions and the dispositions of matters in those two fields are to be made by the respective divisions.

The chairman is placed in pretty muchly the capacity of an administrative official. While he has responsibility for the work of the two divisions, he has little or no authority in connection with them. That is, he must answer to the public. He must answer to the Congressional committees and must represent the Commission and the divisions of the Commission before the various bodies and interdepartmentally, and that sort of thing. But still the chairman may not sit upon either division or vote on either division except in the case of a vacancy or except in the course of the establishment of certain rules and regulations of

general application, and that sort of thing. So it leaves the chairman of the Commission in the position of answerability, placing the responsibility on him and requiring him to answer for the conduct of the Commission, without his having any authority to do much or anything about it.

The Chairman. Would you object to a provision providing that the chairman is permitted to sit in on these divisions if he so desires?

Mr. Fly. I do not have any strong feeling, sir, about the whole idea of dividing into two divisions. The present statute makes that permissive, and in times past the Commission has had two divisions, and it did not seem to work to the optimum results, and the Commission itself abandoned the effort to operate in two divisions.

Now, I have given something more than momentary thought to the idea of going back under the present permissive provisions and trying to suggest that we establish the divisions. It is not an easy question, but the difficulty was, I think, that there was a tendency to make certain people unfamiliar with significant policies and significant decisions in the field of communications, thus in a way disqualifying the commissioners on the other division from any adequate knowledge and effective judgment on the matters in the one.

The Chairman. I think McNinch was the first one who suggested that they should be in divisions down there, should be divided.

Mr. Fly. No; they were in divisions prior to that, sir.

The Chairman. Well, I mean what he wanted, he wanted it to be written into the law, as my recollection of it is.

Mr. Fly. I am not clear on that, but I think that it can be done with a fair degree of feasibility. I certainly have no final judgment on that.

The Chairman. At the time he suggested it I think the industry was rather opposed to it.

Mr. Fly. I would guest that they were. It sort of depends on who moves first, you know, and the other is opposed. At least it has been true in times past.

I think there is another provision there that you would want to give some thought to. No more than four of the commissioners may be of one party, and no more than two in any one division. You see, there are seven commissioners as a whole, and then no more than four in one party. The upshot of that is that either the chairman of the Commission or the majority of one of the divisions is going to be in the opposing party. As the Commission stands now, as far as the attitude reflected by us is concerned, I do not consider that a fatal objection. But I can conceive of circumstances where it might be quite questionable of having either the chairman of the Commission or the majority of one of the divisions of the opposition party. And that is necessary under this.

The Chairman. Of course, I think we ought to examine that myself. I think we ought to examine that very carefully because from the election returns yesterday I am afraid the Republicans may come into power.

Mr. Fly. Maybe we ought to provide that the minority party shall be in the majority on all of them.

Senator Reed. Well, may I suggest that neither you nor the chairman of this committee are giving consideration to a very important fact, that we have three parties: a Republican Party, a Democratic Party, and a New Deal Party.

The Chairman. The Republicans apparently have quite a division in their party too. I don't know what they call it. They have the Willkie Party and the Republican Party.

Second Day of Hearings

There follows a brief resume of the high points of the testimony on November 4, which will be more thoroughly covered in a later bulletin.

Senator Gurney requested that Chairman Fly clarify his views with regard to the absence from the country of the Presidents of the two major networks—Trammel and Paley and asked Mr. Fly whether he had any objection to Mr. Trammel's going out of the country—to Africa—to arrange broadcast programs, and Mr. Paley's going out of the country in behalf of OWI. Mr. Fly indicated that he did not intend that his remarks regarding networks running themselves should be construed as any reflection on Messrs. Trammel and Paley.

Senator Gurney queried Mr. Fly as to whether he had knowledge of the membership of the National Association of Broadcasters and Chairman Fly replied that he assumed at the present there was something in excess of one half the number of stations in the country that were also members of NAB.

Senator Hawkes said that he had initiated an inquiry which disclosed that of the 159 Blue network affiliates 113 are members of NAB, that of the Mutual's 209 affiliates, 130 are members of NAB, whereas the membership in NAB of affiliates of CBS numbered only 107 and of NBC only 108.

Senator Gurney inquiring further into Chairman Fly's objection to that portion of the bill which states: "Nothing in this Act shall be understood or construed to give the Commission the power to regulate the business of the licensee of any broadcasting station" received from Chairman Fly the opinion that this section of the bill would repeal the "anti monopoly" regulations—that it would have a tendency to relieve the networks of the anti-trust laws.

Senator White took exception to Mr. Fly's interpretation in regard to network regulations and indicated that he had been considering amendments to the bill which would in effect adopt as legislation some of the network regulations.

Chairman Wheeler pointed out that he did not believe that they could completely relieve the Commission of exercising some authority over certain business of radio stations and still legislate in the public interest. He said he had the view that the Supreme Court decision more or

less turned over to the Commission the regulation of every detail of business and that in proper form of legislation a line should be drawn somewhere between the first and second extremes as to what should and what should not be authorized for proper Commission regulatory authority.

Following considerable discussion as to the length of license term, Mr. Fly said he was willing today to recommend to the Commission a three-year license term.

National Association of Broadcasters
1760 N STREET, N. W. ★ ★ ★ ★ ★ ★ ★ WASHINGTON 6, D. C.
November 12, 1943 SPECIAL LEGISLATIVE BULLETIN No. 22

Resumé of Hearings on White-Wheeler Bill

FRIDAY, NOVEMBER 5, 1943

Present: Wheeler, White, Tunnell, Tobey, McFarland, Gurney, Clark, Moore.

Mr. Fly's testimony at the commencement of the Friday hearings was directed to the provision of the White-Wheeler Bill with particular reference to Section 7, 9, 10 and 11, "which relate generally to the subject of free speech." He indicated that he had no objections to the proposals in principle.

With respect to Section 9, (requiring announcement of name of sponsoring person or organization) he said that it is "a very good provision." He suggested, however, that the Committee give consideration to the fact that the announcements required are as important in the case of sustaining time as on commercial time.

With reference to Section 7 (equal opportunity for opposing candidates) of the Bill Mr. Fly said that this provision should be more explicitly spelled out to include also primary elections and matters such as referendums, bond fights, etc., subject to vote by the electorate. Further he suggested that the section be expanded to cover the "forces supporting the candidates" so as to give balance on each side.

Chairman Wheeler touched upon the inequity in the financial inability of small manufacturers to keep up with the financial ability of large manufacturers to buy time but "doubted that we can do anything about that at this time."

Mr. Fly expressed his doubt as to the advisability of authorizing censorship by stations of controversial script because he thought the blue pencil would be used with too heavy a hand in an effort to "relieve the station of libel suits" and further that he felt a station was legally in a better position if it could point to the law which prohibited its censoring political speeches and controversial issues. The legal aspects came in for discussion as to whether Federal Legislation could in effect do away with State Law covering libel. Chairman Wheeler suggested that Mr. Fly submit to the Committee a memorandum covering the legal aspects of this question.

Mr. Fly endorsed in principle (right of reply by opposition on public or political questions) Section 10 of the bill but came up with the suggestion that a "requirement that logs be kept" should be adopted. When confronted with the opinion that if more paper requirements were imposed on business and more papers were filed down in Washington that eventually the sale of all that paper might pay off the National Debt. Mr. Fly said such a requirement would require "only a little column" but should say "What disposition was made of each request for time." He said he didn't want this material filed automatically—even periodically, but "simply to be made available to the Commission when needed."

Mr. Fly terms Section 11 of the bill which treats "anti-censorship" by the Station or Commission generally desirable and would tend to the "more optimum use of the mechanism of Free Speech." In connection with Free Speech, Senator Wheeler asked whether any censorship by the Commission was involved in the Stipulations requested by the Commission from Mr. Edward Noble in the Blue Transfer case. Mr. Fly denied that the Commission "required" a stipulation and offered as an exhibit the Decision which contains a copy of Noble's letter. Mr. Fly said, the fact was that "I personally told Mr. Noble, and told their counsel, that so far as I was concerned we would approve a transfer even though he did not feel he could adopt and enunciate those principles."

Senator Tobey took Mr. Fly through the financial set up of Blue, exploring into who had or is to have financial interests. No new information resulted. Then Senator Tobey went into the question as to whether there was any pressure put on Donald Flamm at the time of Noble's purchase of WMCA. Mr. Fly's reply was that no pressure was put on and that he had asked Thad Brown, who had come to see Fly about charges of pressure, to report back to Flamm that such was not the case.

Senator Clark asked about the Newspaper Ownership Question and drew from Mr. Fly an expression that it was to be "disposed of at an early date." Senator White said that he had a strong feeling that there is nothing in the Act to support action by the Commission against an applicant simply because that applicant is a newspaper and directly questioned Mr. Fly as to what section of the Act he felt conveyed such authority. Mr. Fly

could not point to any particular authority, stating "I just do not know the answer to that question" but added that he thought "our lawyers can give you a pretty good argument on it." Then Senator White turned to Section 16 of the Bill and received from Mr. Fly a gestured "not at all workable, absolutely unworkable."

Following some additional by-play on the Chiefs of Staff recommendation during which Senator Tobey read their recommendations and in which Mr. Fly said the Secretaries of the Navy and War had simply signed without knowing the facts, there followed some additional newspaper ownership discussion, during the course of which Senator White predicted that the time was coming when thorough Congressional consideration would have to be given to the question whether any person engaged primarily in some other business should be allowed to own and operate a broadcast station. He stated, however, that he believed that under the present Act, the Commission had no authority to refuse a license to an applicant on the sole ground that it would be affiliated with a newspaper.

The hearings were recessed until 10:30 A. M. Tuesday, November 9.

Resumé of Senate Hearings, Tuesday, November 9, 1943.

Present: Senators Wheeler, Chairman; White, Clark, Hawkes, Tunnell, Brooks, Shipstead, Gurney, Truman, Smith.

William S. Paley was the only witness and after reviewing briefly his previous appearance before the Committee in connection with the White Resolution, and reviewing the action of the Courts on the network rules, he said: "If I seem to be going over old ground it is because May 10, 1943 marked for American Broadcasting the end of one world and the beginning of another." He remarked: "the Supreme Court said in effect that the powers of the Commission under the present law are without discernible limits" and "have granted the Commission unlimited authority over every aspect of this medium of mass communication." He said that the question which is before the Congress today is: "Do the American people want the Government to have the power to tell them what they can hear on the air?"

The Chairman asked how many stations' licenses had been revoked and when Mr. Paley replied that he believed only two had been, the Chairman asked whether he thought those stations should have been thrown off the air? Mr. Paley replied that he thought the action was bad in principle but was good in those individual cases. However he added, "I would much rather have two or three or a dozen stations misuse their facilities than have a single man or a single commission tell 900 stations what they should broadcast and what the American public should hear."

Senator Hawkes asked whether something short of revocation, for example, suspension, would not be a better solution. Mr. Paley said that he did not believe that substitution of suspension for revocation would remove the danger, that he does not believe that "the American people want a radio system which is under the control of a small bureau of men with seven year appointments—that the American people want the kind of radio they have known. And this can be assured only by the free and competitive play of the program judgments of hundreds of broadcasters throughout the country. Certainly government must perform the necessary role of technical supervision over frequency assignments. But any crack through which even the best intentioned board could extend its control into the program field is wide enough to let through the flood of government control over thought."

Mr. Paley recommended the strengthening of the language of Section 8 in view of the experience gained as a result of the May 10 Supreme Court Decision, since the language of Section 8 was drawn "before we were aware of the degree to which statutory language could be construed by the Court to broaden the Commission's powers." The language of the section should be strengthened "in order to make sure that the intentions of Congress cannot be thwarted." He said the language needed to be strengthened in view of a new threat which "has developed here, before you, in the last few days. You will recall that throughout the Supreme Court decision Justice Frankfurter dealt with business and program control as substantially a single entity. Senator White in Section 8 and in his introductory remarks last March, likewise treated these two aspects of control as parts of a single problem. I think it has not occurred to anyone until recently to suggest that business control and program control were anything but two sides of the same all important coin. But Chairman Fly in his testimony before this Commission last week actually attempted to split one of these controls from the other. The Chairman of the Commission stated he had no desire to control programs. He wished only to control the business practices of radio. In my opinion, gentlemen, the idea that these two things can be separated is a fallacy of the most dangerous sort. If any such idea is accepted it could easily frustrate the basic purpose of this bill. Anyone who has operated a radio station or a radio network knows that program control is indivisible from business control.—The two are one."

As an example, he cited the rule of non-exclusivity of programs to a single outlet. He said "this rule purported to control merely the business practices of networks and stations . . . often the result of the rule is to make them (the stations) carry network programs when they prefer to carry local programs, under the fear that other local stations with which they are competing might otherwise carry CBS programs and thus cut into our affiliate's own audience and prestige. . . . It thus constitutes a direct interference with program practices, although it pretends to deal only with business practices."

Senator Wheeler said he felt that the exclusive feature of the network arrangements is bad, to which Mr. Paley replied that if the situation is considered by Congress sufficiently bad, safeguards should be enacted into the basic law and not left to the changing whims and changing minds of a Commission.

Mr. Paley then cited another example: "Another striking example of using so-called business controls as a direct lever for controlling program policies occurred in the Blue Network hearings, which were scarcely touched on here the other day. This was purely a business transaction. One group was ready to buy the Blue Network; another group was ready to sell. The Commission had jurisdiction because the licenses of three of the hundred-and-fifty odd stations on the network were affected. But the Commission used this occasion to probe deeply and exhaustively into program policies and program intentions of the network management. At this two-day hearing an overwhelming proportion of the total time was devoted to a searching inquiry into program policies. Under this questioning the management indicated the policies which it followed in connection with certain types of programs. But until the new management wrote a letter which abrogated these policies, presumably in accord with the Commission's wishes, this business transfer was not approved."

Still another example, Mr. Paley said, is the fact that "on October 7th the Chairman of the Commission publicly stated in effect, that program time should be sold to special pleaders on public issues. Such a practice would have immediate effects on programs. But on November 4th, before your Committee, he disclaimed any desire to influence programs. I can only assume from this that the close relationship between business practices and programs is not yet clearly understood by the Chairman of the Commission." Mr. Paley said it was only a short step from telling stations the kinds of programs they should carry and to saying how much and what percentage of certain types of programs a station should carry.

Mr. Paley said that all these practices could be followed "unless the Commission is denied control of business practices. The whole device is transparent. Look through the window of almost any business practice in radio and you will find program merchandise behind it." He said "should the Commission control the business practices it can tell us what kind of contract we can enter into and with whom. Thus it can control radio's access to the news and hence the news which listeners hear."

He said that it all comes down to this—"the business of broadcasting is the business of programming. If you grant the Commission the power to regulate the business which furnishes the programs you grant it automatically the power to control the programs themselves." Senator White interposed—"the authority to sell time should be entirely in the hands of the licensee or in the hands of the Commission" and that he "personally thought the licensee should be the one to market the time."

"Coming next to that portion of the bill which he called 'fairness of the air' in political discussion", Mr. Paley expressed the view that he thinks that legislative guarantee is not the answer but that broadcasters should equalize the time so both sides of all controversial issues are covered. Should legislation on this topic be enacted he pointed out "one or two unfortunate results which might flow from such a statute. It is impossible to prove scientifically and mathematically in any particular case that there has been absolute fairness in the presentation of the opposing views on any subject. Since such proof is impossible the result will be I fear that many broadcasters will solve the problem of avoiding unfairness by simply not broadcasting political programs. This result would amount to a great public disservice.

"There is moreover a provision in these sections that the Commission shall make the rules and regulations to insure the fairness of the air. It is precisely in this area of political discussion that temptation is most likely to beset a politically appointed agency. That is why in this area especially it is most urgent that control by the Commission be avoided.

"We urge you, do not give the same agency which already dominates the ultimate destiny of each station the power also to use that domination in the political field. Do not permit the Commission to combine the basic licensing control with the political powers to decide what it is fair for listeners to hear."

The Chairman inquired then as to how you could correct a situation when only one viewpoint is aired and cited the situation where a full network might carry the proponents of a measure and the opponents could secure only a few stations on the network. Senator White pointed out that an attempt to reach that objective had been incorporated in the bill. In this connection, Mr. Paley cited one of the practical problems facing a broadcaster in this regard. That is, if one speaker raises say four controversial issues all within the same time, the next speaker granted time might use his entire time answering only one of the issues raised by the first speaker.

Mr. Paley said "if the Commission is to be divested in Section 8 of the Bill, of authority to determine what goes out over the radio stations of the country, it should not be given this backdoor entrance in section 10. If it is your final decision to write a fairness provision governing political broadcasts into the law then let the Court, not the Commission determine what is fair." It was here that Senator Smith observed that he thought that one of the reasons we are here today is because of a Court decision. Mr. Paley agreed and Senator Smith replied, "Well, in God's name what do you want to go back there for?" Mr. Paley said that the Commission had used Section 311 of the Communications Act as another backdoor into the field of business and program regulations. He said that he thought

that change in the law in this section was also desirable. "Though we cannot believe it was conceived for any such purpose ('that is, into the field of business and program regulations'), Section 311 has been advanced by the Commission as a main source of its power to dictate policy. The FCC announced that Section 311 somehow imposed on it an obligation to apply to broadcasting 'the policy' of the Sherman Act, as the Commission chose to consider that policy. I believe 'the policy' of the Anti-trust laws should apply to Broadcasters as to all other business, but the point is that these laws are enforced by other agencies and their 'policy' is applied by the Court."

Mr. Paley said—"let me make it perfectly clear—that I do not come to you asking that radio be relieved from any of the restrictions which are imposed on all other businesses. We do not seek a privileged place. We are bound by and should be bound by the various laws which have been designed to protect the public interest. The Anti-trust laws are ours to face and comply with like anybody else. We ask merely in this respect we be restored to equality with other American enterprises. This would seem to require that Section 311 be eliminated."

Senator Wheeler pointed out that other companies, such as railroads, and businesses regulated by the ICC and the SEC have brought this regulation on themselves as a result of certain abuses. And said however "that the FCC should not enforce the anti-trust laws." Mr. Paley said he hoped for freedom of broadcasting but that if regulations were required "please make them law." "Give us a law which permits no Commission with limitless authority to make rules this week, revoke them next, change them at will and extend their effect to the entire field of broadcast operation." Mr. Paley said further, "Each of those 900 stations is in active competition, often with a dozen or more stations for all or part of its audience. Each of them is thus responsive to the public and is subject to the checks and balances which such competition imposes. The public's retribution upon bad broadcasting is as swift as the flick of a switch or the turn of a radio dial. Public approval is vital to each licensee. It is not vital to any government commission endowed with unlimited power. Is it not far better to divide program control among 900 broadcasters, each under the discipline of competition and the constant need for public approval than to concentrate it in the hands of one Commission free from both restraints?" He said "the absolute power of the Commission does not even need the instrument of written regulations to assert itself. I once mentioned 'regulation by raised eye-brow'. The mastery which the Supreme Court Decision has assured to the Commission has brought that stage to our doorstep. Thus when the Chairman of the Commission or a Commissioner, either as an individual, or in his official capacity, makes a statement that news and news analysis should be handled in a certain way or time should be sold to certain groups or individuals, he makes such statements on a different level than anyone else. What he is really saying is this: 'In my opinion it is in the public interest that each of these things should be done.' As the Commission issues and revokes licenses, under the present law, on the basis of its own opinion of what is in the public interest, any such expression is unmistakable notice to all broadcasters that they conform their operations to such views or make the threat that their licenses may not be renewed.

"This does not mean that I wish to see either Mr. Fly or the Commission silenced. I think it is wholesome thing for our administrative officers to express their opinions clearly and openly. What makes Mr. Fly's views harmful is neither their content nor that they are his views. It is only that he now has such authority that his mere expression of opinion will, in many quarters, be taken as a mandate. It has been said, 'Whoever can do as he pleases commands when he entreats.' Certainly by reestablishing the principle that the Commission cannot do as it pleases, the Commission's arguments and suggestions can be received and considered on their merits. This will remove the Commission from the pedestal of dictation to the platform of debate.

"For fifteen years radio has served one master—the public. Public needs and public desires have been, inevitably, the guiding principle of every successful radio operation.

"Since the May 10 decision we have learned we have a second master—the Commission. The result has been that broadcasters can no longer devote their full attention to the service of the public. Today their energies are diluted by an increasing concern to avoid any disapproval by the Commission. No longer can broadcasters gauge their program service by the yardstick of listener survey and audience response. Now they must scan the latest speech by a Commissioner for the current pronouncement on what the public should hear.

"William Pitt has said, 'Unlimited power corrupts the possessor.' I do not mean to charge the present Commissioners with sinister motives. But sooner or later power will be used. Just how tempted any power in administration would be to use this instrument to guarantee to its own future success at the polls or to mold public opinion in certain directions on controversial public issues, is of course, hard to ascertain. But for us to allow such temptations to exist, knowing the human failings of men, especially when they are badly pressed, is to do injustice to everything we stand for as a nation.

"The freedom of thought of the American people cannot be left dependent on the self-restraint of any Commission, however well-intentioned.

"Yet that is where the Supreme Court decision leaves it. The Supreme Court told the Commission that hereafter it would have 'expansive' powers; that it must not 'merely police the wave lengths' and supervise the traffic over them, but

must hereafter also bear 'the burden of determining the composition of that traffic.'

"And so the Court confirmed a new power, unique in our democratic history. It gave to an administrative bureau not only the right, but the duty, the task of determining what the people shall hear over their radios.

"We come to you, finally, as the court of last resort. Only you, the spokesmen for the public, can reverse the effect of the Supreme Court's decision. Not only did the Supreme Court point this out—it also disclaimed any responsibility for the practical results of its decision. Justice Frankfurter said 'Our duty is at an end when we find that the action of the Commission was based upon findings supported by evidence, and was made pursuant to authority granted by Congress. It is not for us to say that the 'public interest' will be furthered or retarded . . . the responsibility belongs to the Congress. . . .'

"I do not doubt that you are weighted down today with many grave and difficult problems. We are in a desperate war against tyranny and the Congress has much pressing work to do.

"But I urge you to consider the problem I have presented as not the least of your tasks. If under the stress of other important issues the freedom of radio should be neglected, your work to win the war will be incomplete. It is not too much to say that when radio ceases to be free and democratic, the whole fabric of our freedoms is imperilled.

"The danger is here and the time is late. The broadcasters ask your help. The whole public needs and deserves it."

The hearings were recessed until 10:30 a. m. Thursday, November 11.

Resumé of Senate Hearings, Thursday, November 11

Present: Senators Wheeler, Chairman; Hawkes, White, Tunnell, Brooks, Smith.

Mr. Fly was the only witness and the principal topic of discussion was program content of broadcasting stations and networks and followed the question and answer procedure, as has been the case heretofore with Mr. Fly's testimony. Mr. Fly commenced his testimony concerning "new fields" in radio—to which Senator Wheeler suggested we call in the Engineers. Mr. Fly then turned to a suggestion that the Commission be given authority to look into the relationship of ownership of stations where less than a majority of stock was transferred.

In commenting on Mr. Paley's statement, Mr. Fly said he believed Mr. Paley's strategy is to create fear "by dragging in censorship by the tail in order for two New York Corporations to again secure monopolistic control."

Senator Brooks asked Mr. Fly "whether freedom of speech applied to radio and if so whether the action of the Commission in the "Boston" case was not censorship." Mr. Fly replied that "that station had had its own editorial staff, and when a station promotes its own idea it is not operating in the public interest."

In response to a question Mr. Fly said he could not believe that public owned frequencies should be granted to serve the selfish interests of a licensee. The Chairman presented the hypothetical case where three simultaneous applications from the same area were before the Commission and all three applicants were legally, financially and technically qualified, whether or not it wouldn't be necessary for the Commission to grant the license to the applicant who made a showing that he could best serve the public interests.

Mr. Fly replied that the Commission would have to give consideration to the types of programs the station would carry before they could reach a conclusion that the service would be in the public interest.

Senator Brooks inquired if an applicant was a newspaper whether that would have a bad effect on the application being granted to it. Mr. Fly said that it would be a question of the individual case as to whether the granting of a license to a newspaper would tend toward dissemination of news in that area in a monopolistic manner.

Senator Brooks asked whether the Commission contemplated rendering a decision finally in the newspaper investigation and Mr. Fly replied "Yes."

Senator Tunnell said "I understand you believe that stations should have no editorial policy" to which Mr. Fly replied that he believed a licensee's duty is to the public.

Chairman Wheeler interposed—if editorials are to be carried they should be branded as such. Senator Brooks inquired as to whether foreign language station renewal applications have been held up due to program content and Mr. Fly said that situation had been cleared up and that no license renewals were now being held up—that "that's no longer a problem."

Mr. Fly then took to task Mr. Paley for his testimony and stated that what Mr. Paley wants is to make broadcasters "legalized outlaws," by putting the authority to exercise control "where it won't be effective" and said further if you can't trust the Commission then "abolish it" and set up some other effective control.

Mr. Fly said it was most unfortunate, but it seems to be true that the more prosperous stations are the fewer public service programs they have on the air and what it seems to come down to is whether a station is in business purely to make money or whether an obligation should be put on it to render public service programs. The Chairman said "Just thinking out loud—what do you think of regulating networks as networks," to which Mr. Fly replied that he did not feel very strongly about it, but the time is coming when public service laws should be enacted to apply also to networks. The Chairman then asked whether Mr. Fly felt that in view of the huge network profits they should extend the service to areas even where it would not be profitable in

the individual case to the networks and Mr. Fly agreed that this was a desirable objective.

The Chairman then inquired as to whether developments after the war might entirely change the system of broadcasting and Mr. Fly indicated that the change might be pretty fast after the war and might be considerably different within a decade. He said that consideration was being given to higher frequencies for many types of service but of course the question of allocation and assignment of frequencies was a fairly long drawn out process since they had to be given thorough consideration and eventually covered by international regulation.

Mr. Fly then referred to Mr. Paley's comment about "censorship by lifting an eyebrow" and said that while he is strongly opposed to the preponderance of soap operas on the air, you can't get them off with a crowbar much less an eyebrow. He said that if there is danger of censorship he had language to remedy censorship and then sarcastically read the language of the existing Section 326 of the Act.

Senator Hawkes inquired as to who is going to judge what the public should hear, to which Mr. Fly replied that he thinks the broadcasters themselves should make that determination but that eventually Congress might have to act.

Mr. Fly agreed with the Chairman that when a Commentator "slanders" someone that Commentators time should be turned over to the one slandered for reply.

The Chairman indicated a desire that Commissioner Craven appear and give testimony.

The hearings recessed until 10:30 a.m. Friday, November 12.

National Association of Broadcasters
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November 19, 1943 SPECIAL LEGISLATIVE BULLETIN No. 23

Hearings on White-Wheeler Bill Continue

The hearings were resumed November 15, 1943.

Present: Senators Wheeler, Chairman, White, MacFarland, Tobey, Truman, Clark Tunnell, Moore, Reid.

The Committee convened at 10:00 o'clock as scheduled, but Mr. Burke of KPAS, Pasadena, California, who had asked to appear at that time was not present. Neither was Mr. Frankenstein who had asked for time to testify present. Consequently, the first, and only witness for the day was Neville Miller, President of NAB.

Mr. Miller pointed out that NAB had been organized 21 years ago. Of the 547 stations now active members of the Association the breakdown by network and nonnetwork affiliation is as follows:

	Members of NAB
Mutual	130
Non-affiliates	123
Blue Network	113
NBC	108
Columbia	107

Mr. Miller showed the geographical separation of stations was pretty evenly divided over the entire country and that the membership represented about 90% of the revenues of all broadcast stations. He then submitted, as exhibits, the following:

Exhibit No. 1, Showing active members of the National Association of Broadcasters, listed by States, in 17 geographical districts, as of November 1, 1943.

Exhibit No. 2, Analysis of Broadcast stations by class of stations, showing the membership of the National Association of Broadcasters within each classification.

Exhibit No. 3, Analysis of Broadcast stations by 1940 population of metropolitan districts and cities showing the membership of NAB.

Exhibit No. 4, Analysis of U. S. Stations by network affiliation showing the membership of NAB.

Exhibit No. 5, National Association of Broadcasters Associate Members.

(The last four exhibits being as of November 3, 1943.)

Mr. Miller pointed out that the membership had increased since the Sanders hearing, at which time there were 924 licenses and construction permits and NAB had 494 members—while at the present time the number of licenses and construction permits is 913 and NAB memberships number 545, that is a net increase of 51 new members during the time that charges were made that NAB did not represent the industry.

Chairman Wheeler observed "Well, the networks do have a big say in the NAB, do they not?" Mr. Miller replied that the Board of Directors consisted of 25 members, of which NBC has one and CBS has one, and explained the democratic manner in which it operates. The Chairman said "Because of the fact that they (the networks) are a large percentage of the industry, you know and I know they do exercise a large influence in the organization." To which Mr. Miller replied "Yes, they are like any other group. But I should like to give the picture for the record, and will say very positively they are not the dominating force they are pictured to be by Mr. Fly. Far from that." Mr. Miller went on to say that NAB is largely a service organization consisting of personnel specializing in several lines of endeavor, all of which tend to the general benefit of the broadcast industry. Senator Wheeler wanted to know specifically what the industry had solved that NAB had fostered. Mr. Miller said that a large portion of its work had been adopted by the industry in the form of the Code—and explained how the Code itself was created, i.e., first the industry was circularized for policies—the Code Committee took those policies and drew up a tentative code. Mr. Wheeler observed that "NAB hasn't done a very good job in some cases." Mr. Miller pointed out that the National Association of Broadcasters could only educate and recommend to stations what they should do, since as he thought, the license itself carried the authority for the licensee to control programs. Senator Wheeler observed that he didn't ever want to see the Government take over broadcasting but he did want the industry to regulate itself so it wouldn't be necessary for the Government to take it over. Mr. Miller pointed out that the only rights a broadcaster has result from a grant by Congress—that we are now operating under a 16-year-old law which has covered a period of vast development of broadcasting and reviewed the uncertainties which face broadcasting today. He cited as an example of the uncertainty of rights of a broadcaster, the fact that 17 judges sat on the KOA case and 10 opinions resulted,

5 for the right of intervention and 5 against the right of intervention. Mr. Miller said that the network cases which covered a period of 5 years had also served to further confuse the rights of a broadcaster.

Mr. Miller said that in his statement he would cover both the substantive and procedural provisions of the proposed bill. With reference to the network regulations, Senator Wheeler said "The Commission couldn't regulate network directly so the Commission did it by the indirect method of regulating the stations on the network." Senator White observed that that was one of his complaints—the method followed, not the objective of the network rules.

Senator Clark said that he agreed that the procedural provisions should be made perfectly clear —but that when you come to the substantive provisions you are in more difficult territory. You are confronted there with changing conditions and to set up statutes in a field of such changing conditions would tend to make static a situation that perhaps should be changed. He said that leeway should be available so that policies could be changed sometimes even from week to week. Mr. Miller observed that while this was true, the basic policy should be written into the law and should be set up as guide posts. He said that one of the things that would assist in stabilizing the industry would be an extension of license period from the present two-year period to from ten to fifteen years, with the Commission given power to cite stations and enforce penalties set up by the statute itself.

Senator Tobey observed that he had to go back every six years to get his "license" renewed, to which Mr. Miller said that he thought that might be an appropriate term of license. Mr. Miller said that he thought that the program structure as it has been developed by broadcasters was in general of a very fine character, to which assent was expressed by various members of the Committee. Mr. Miller pointed to the booklet "The Elements of a Successful Radio Program". With reference to the "increased revenues" of the broadcast industry, Mr. Miller pointed out that part of these revenues came about as the result of sponsorship of such programs as the Philharmonic and NBC Symphony, pointing in this connection to the benefits to the public which resulted. The fact that these programs had been increased from 30 odd weeks to a year-round program certainly was a benefit to the listening public.

Mr. Miller pointed out that the May 10th decision had "extended the Commission's powers" which was a further disturbing element to the broadcasting industry. Mr. Miller read from the Pottsville case Justice Frankfurter's "recommendation" that "we go to Congress." Mr. Miller pointed out the necessity for immediate action concerning the law in order that at the termination of the war the experiments and developments coming out of the war could be fully developed and thereby create added employment. He said that the door should be closed to any further intrusion by the Commission into the program field. Continuation of this course will deter many prospective investors from entering the radio industry who would otherwise contribute large sums to the development of new uses for radio.

The session was adjourned until 10:00 a. m., Tuesday, November 16, 1943.

Following is a report of the proceedings on November 16, 1943.

Present: Senators Wheeler, Chairman, White, Moore, Tobey, Clark, Tunnell, Truman, MacFarland.

Mr. J. Frank Burke of KPAS, Pasadena, Calif., and KFBD, San Francisco, Calif., was the only witness.

The Chairman stated that Mr. Fly and Congressman Voorhis had advised him that Mr. Burke wanted to be heard. Mr. Burke said that he had not expressed any desire to be heard but was perfectly willing to appear. The Chairman said "then I have been misinformed, but since you have written some articles regarding the subject we will be glad to have your views." Mr. Burke said that at one time he had been chairman of a Legislative committee for a group of stations, but when the Committee proposed a letter supporting legislation he had refused to sign the letter, and had withdrawn from the chairmanship of the Committee, but that since that time he had given much consideration to the Supreme Court Decision and to pending bills and was opposed to legislation "since it takes power away from the Commission." The Chairman requested that Mr. Burke explain how he had secured a license for Station KPAS subsequent to the "freeze order." Mr. Burke was vague as to the details and said he had been advised from time to time by his engineer and commercial manager that certain technical difficulties were being encountered.

Mr. Burke indicated that he "had been trying to get on the air at night for about five years" and that the difficulties and expense and worry put him to bed with ulcers. The Chairman observed "well you've done a lot better than a lot of them have been able to do."

When asked by Senator Tobey whether or not he approved of the policies of the FCC Mr. Burke indicated that in nearly all cases he did approve.

The Chairman asked whether he had had a hearing before the granting of his license and Mr. Burke said there had been no hearing, but that the presentation had all been made through application blanks and since then his primary interest had been in "getting on the air at night to give his editorials". The Chairman asked whether he felt a station should have an editorial policy to which he replied that "editorials express my policies as an individual and not those of the station." He said he believed a designated agency of the Government could tell a station what to do better than a person whose finances were involved. He said

he considered a station as an "agent" of the FCC holding its license in "trusteeship."

The Chairman delved into the financial set up of the station and asked who owned the stock. Mr. Burke was quite vague and said he would have to have the books before him in order to answer the questions propounded. He said he personally put up $82,500. and then sold $45,000. to others but was unable to give a complete breakdown of the stock distribution. The Chairman remarked that Mr. Melvin Douglas was shown as a Director and Mr. Burke explained that in his early efforts to secure the station Mr. Douglas was to put up $10,000. but later Mr. Douglas refused to buy stock on advice of his manager. Mr. Burke said he "had given stock to people who helped get it (the license) through." He said he was primarily for freedom of speech but could not explain why he felt it was necessary that those opposing his "editorial policies" should be given free time.

He stated that a Federal agency should be given broad authority to regulate conditions which would "control" radio in the public interest and cited as an example the exclusive lease of Mt. Wilson in his territory, which exclusive feature prohibited another FM station being built at the same site held by the lessee. He said that when this contract was submitted to the Commission by the applicant for an FM station that the Commission had told the applicant to get rid of the exclusive clause, which the applicant had done. He said this was the right kind of authority for the Commission to have. When queried by Senators MacFarland and Moore as to whether he thought the Commission should have the power to tell the owner of a piece of property he could not make an exclusive lease with someone, he said the Commission's power should not go to the owner of the land, but to the control of the person leasing the land. The Chairman stated that any such authority would be beyond the authority of Congress to delegate, as he felt it would violate the "due process" clause of the Constitution.

Mr. Burke then read from a prepared statement that he felt that such questions as "dual ownership" and "newspaper ownership" are not to be handled by station control but should be handled through discretion of the Commission in individual cases—that he felt that blanket laws covering either situation would not work.

The session adjourned until 10:00 a.m. Wednesday, November 17.

Pres. Miller resumed on November 17, 1943.

Present: Senators Wheeler, Chairman, White, Moore, Tunnell, Barkley, MacFadden, Gurney, Clark, Hawkes.

Neville Miller, President of NAB, was the only witness on Wednesday, November 17. His testimony covered two of the remaining portions of his presentation.

He explained that he endorsed in principle the recommendations of the Federal Communications Bar Association, pointing out that "the law does not sufficiently specify the procedural steps which must be taken by the Commission in disposing of many controversial matters. Another is that it is well nigh impossible in the present state of the law to secure judicial review of Commission action, no matter how onerous or capricious." He cited the KOA case as an example, pointing out the growing tendency of the Courts to refuse to review actions of the Commission, and said that "more or less under the encouragement of Mr. Justice Frankfurter, there has grown up a feeling that the courts should not review actions of the Commission. Now I think that until the idea became as prevalent as it is today, Congress more or less relied upon the courts putting a brake upon some of these administrative agencies. But since the decisions have taken that brake off it would seem even more important that Congress should come back into the picture and put some definitions, guideposts and checks into the statute, to make perfectly clear the intent of the Congress and which have been more or less removed by the action of the Supreme Court.

On the question as to whether the May 10 Supreme Court Decision had reversed the Sanders Bros. case Senator White said, ". . . We have the Sanders case still standing as a general declaration of the principle of the law, that there is no general authority in the Commission to invade the business field. But alongside that there is upheld a particular exercise of power in the regulations." He said further that the "Supreme Court has permitted the Sanders Bros. case to stay upon the statute books, it neither being overruled by it nor modified by it except in limited particulars. That is the position I am inclined to adjust myself to." He said further, "I think the United States Supreme Court was a thousand per cent wrong in its conclusion in the latter case, but I bow to it." Mr. Miller replied, "The thing that worries the radio industry is the fact that on Senator White's explanation, that the last decision made an exception, they put no limit to exceptions, and so the exceptions might extend to the point of wiping out the entire ruling in the Sanders Brothers case. The other thing which I think is very important is this: that where there is indefiniteness or dispute as to what is really meant, the Court is merely trying to interpret what Congress itself decides is the law. And I think for the purpose of speeding up action, fighting a lot of lawsuits and things of that sort, and while we are in the field of wanting to know what was passed 16 years ago and what the Court means about what was passed 16 years ago, the best illustration is at that time Senator White was on the House Committee that passed that Act. I think, as he has just said, the Court has not interpreted the Act in the way Congress meant it. It seems to me a good result would be accomplished for all parties if this committee or this Congress would lay down definitely now what the law is."

The Chairman interposed that while he appreciated that what the industry wanted was "to con-

fine the Commission merely to regulating the question of the giving of licenses and deciding interference, and so forth, merely electrical apparatus. But I for one will say that if you are going to have a commission and just simply limit it to that field, you might as well not try to regulate the industry at all, except as to those minor details of interferences and so forth, as to power. Now as I gather from what you say if we are going to regulate business practices, what you want is to have the business practices we regulate spelled out to a large extent in the law." To which Mr. Miller replied, "I think we ought to spell them out in this law like they are spelled out in the ICC law and as I understand it in the SEC law, and in some other laws. I think, although I differ with your statement, our primary view is that the Commission came into existence to regulate the physical aspects of radio. The Chairman agreed that the radio act came out of chaotic conditions existing at the time when Congress wrote the law and 'other provisions were written into it.' "

With reference to dividing the Commission Mr. Miller said, "We feel, I think, that it would be very advantageous to have the Commission divided into two permanent divisions, because the laws and concepts of regulation of public utilities, like telephone, telegraph, cables and things of that sort which are public utilities, these concepts are entirely different from the concepts that should govern the regulation of broadcasting, which is a means of communication of news, information and entertainment, especially as the Act provides that broadcasting is not a public utility." . . . "I think that would be advantageous both from the standpoint of personnel and of operation because it would define the responsibility of those who had jurisdiction over broadcasting, and would produce, I think a better result."

Taking up the NAB proposals, Mr. Miller said that Section 15 of the pending bill "dealing with declaratory judgments is designed to provide a method whereby applicants and licensees can obtain a judicial determination of the Commission's power and authority with respect to a particular matter without at the same time placing their right to do business in jeopardy. I commend it to you and invite your serious consideration of this subject, because I believe that of the several legislative changes proposed by NAB this is the most important to the entire industry." Senator White observed, "I think there has been some misunderstanding of the scope of those sections dealing with declaratory judgments and am glad that you emphasize that the only instance in which the issuance of a declaratory judgment is mandatory is where there is involved the rejection or modification or renewal of a license. In all other instances it is wholly within the discretion of the Commission whether they will or will not issue a declaratory judgment."

In connection with the Network regulations, the Chairman said, "Suppose you had said to one of these stations: You must divest yourself of your connection with that network, if not we will revoke your license. When it comes to revocation of license the station would have had the right of appeal." To which Mr. Miller replied that "But by that time the station would have violated the rule, and if it lost on appeal the Commission would then either have to revoke its license, in order to maintain its authority, or say that anybody can violate any regulation and then after we get into Court if we find out you have violated the regulations we still won't enforce the penalty."

Senator Wheeler said that a licensee who violates the rules of the Commission has a license that is liable to forfeiture—but where a large investment was involved a licensee who is undertaking to conform to the rules and provisions of the law and treaty provisions "a situation may arise where he is not quite sure of the regulations of the Commission, what a regulation means; is not quite sure what a statutory provision means. This suggestion would permit him to come in before the Commission and declare the facts which are pertinent, and ask the Commission whether in the circumstances of his case he is or is not within the letter and spirit of the regulation, or within the letter of the law.

"He could then acquiesce in the declaratory judgment of the Commission and conduct his business accordingly. If the declaratory judgment gave him a clean bill of health he could go right along without the expense, delay and difficulties of an appeal to court, in the knowledge that he was wholly in the clear.

"On the other hand, if the Commission issued a declaratory judgment which was adverse to his position, then he could go into Court and test the validity of the Commission's action."

With reference to securing declaratory judgments, the following exchange took place between the Chairman and Mr. Miller:

Mr. Miller: "Such action would, in our opinion, furnish a reasonable formula for the solution of many problems which now confront the industry and which will continue to confront it as long as the system of licensing is the accepted method of regulation. Since regulation, rather than the imposition of sanctions, is the proper function of the Commission, we can see no objection to requiring that a declaration of rights precede the imposition of penalties in any license proceeding. We strongly urge the enactment of this section."

Coming next is Section 16 of the Bill, Mr. Miller stated:

"It relates to the imposition by the Commission of penalties, denials, prohibitions and conditions not authorized by the statute: the unauthorized withholding by the Commission of rights, privileges, benefits and licenses from certain persons or classes of persons; and the manner employed by the Commission in imposing sanctions or withholding privileges, benefits or licenses when such action is authorized by the statute. * * * The necessity for such provisions in the Communications Act arises out of the fact that all too frequently it has been the practice of the Commission to condition grants of an

application upon the performance by the applicant of some act which is beyond the proper scope of any issues presented by the application in question. In many cases the condition imposed has been performance of some act which the Commission has no authority to compel, or concerning which the Commission's authority is at most doubtful. Typical conditions are those requiring an applicant who owns two stations in the same locality to dispose of one before a power increase for the other is granted, or those in which an applicant for radio broadcast facilities is required to divest himself of stock in other enterprises as a condition of the grant. Sometimes these conditions are taken up and discussed with the applicant or its representative before they are imposed; in other cases such conditions are merely imposed as a condition of the grant, without previous consideration or discussion with the applicant.

"Now, I don't know that I can give any better illustration of what this section is aimed at curing than the illustration that Mr. Burke gave on the stand yesterday, and that is, here was a company that was interested in FM and they went out and made an exclusive lease on Mount Wilson. Then the Commission evidently, from the terms that Mr. Burke stated, the Commission said, "If you want an FM license, you have got to let anybody else that wants to move in on the mountain with you." Now, that is not regulating the license. That is regulating contracts between individual citizens. If I own a building and I want to rent a building to a man who is interested in FM and I feel I can get a premium on that building by renting it to him and not letting anybody else in the building, I should be able to rent the building the way I want to. But at the present time, without any authority in the law, the Commission by this use of licensing would say that if that licensee wanted to use my building he would have to give up the exclusive privilege and I would have to rent that building to as many people as the Commission thought ought to have it."

Senator White: "In other words, the Commission would use the licensing power to change the terms of a contract?"

Mr. Miller: "That is made between two individuals."

Senator White: "You are referring in this connection to Section 16 of the pending bill which is aimed at that sort of thing?"

Mr. Miller: "Yes, sir. Section 16."

Senator White: "Could you give other illustrations?"

Mr. Miller: "Yes. As I recall it, there was a case—I think the Commission can furnish some illustrations—there was a case as I recall about a year ago where a man had a newspaper, I think it was down in West Virginia, and to get a license the Commission required him to divest himself of the newspaper. I think there are any number of cases, you will find they won't be on record because those things are not made of record, where a man has two stations, where the question of covering the community in which he is located is involved and he makes a case whereby he is entitled to increased power in one of those stations and the Commission will not give him the increased power unless he divests himself of the other station."

Following an expression by the Chairman as to his opposition against one licensee holding two licenses in the same town, Mr. Miller said:

"Senator, so many of these provisions are aimed at securing an orderly procedure and a man's rights. Here you take a man has got two stations. He comes in and he has a hearing as to whether or not he should get increased power, and they say, "Yes, you should get increased power," but they decide he has got to sell his other station and they have never had a hearing as to whether two stations in that town are proper or not."

The Chairman replied, "Well, I agree with you about that." Mr. Miller said, "This section, which is Section 16, merely provides that penalties, denials, prohibitions and conditions not authorized by the statute should not be exacted, enforced, or demanded by the Commission in the exercise of its licensing function or otherwise. No sanctions not authorized by statute shall be imposed by the Commission upon any person. Rights, privileges, benefits, or licenses authorized by law shall not be denied or withheld in whole or in part where adequate right or entitlement thereto is shown. The effective date of the imposition of sanctions or withdrawal of benefits or licenses shall, so far as deemed practicable, be deferred for such reasonable time as will permit the persons affected to adjust their affairs to accord with such action or to seek administrative reconsideration or judicial review. Now, this would simply put a very definite limitation upon it, which I think we are all agreed upon, but which we in the industry today feel that through the power of licensing the Commission has exceeded.

Senator White: "You take the general position that if there are penalties, prohibitions, or restrictions, which this Commission should have the power to put into effect, that Congress should write them in."

Mr. Miller: "That Congress should write them into the law. I think you get back to the old saying that the right to tax is the right to destroy. You have here a question where the right to license is the right to destroy. You not only destroy the value a man has in his radio station but the value private citizens have in wanting to deal with that radio station. If you extend that continually further you will find that the very power to license radio stations controls not only the business practices of the radio stations but the business practices of property owners in that town who want to deal with that station."

Senator Hawkes: "What you are saying, Mr. Miller, is that you would like to have your industry controlled by rule of law rather than rule of man."

Mr. Miller: "Yes."

Senator Hawkes: "In other words, you would like to know what you have a right to expect so that you can proceed with your business in an orderly way?"

Mr. Miller: "Yes, sir. We would like to have those things out, so that we would know what our rights are. Take the question of dual ownership. Here is a man that has a station today; he doesn't know whether he can pioneer in the FM field. If he cannot pioneer in the FM field, he who knows more about it than anybody else, there perhaps will be no pioneering in that field. The condition of a man who is willing to pioneer in that field—he may go in there to do pioneering and get an FM license and then come back a year from now and want to increase the power on his FM and they say, "We will give you increased power provided you sell your other station."

There follows the testimony regarding Section 8 of the proposed bill.

Mr. Miller: "The remaining proposal in this bill, advanced by the Association, namely, section 8 (p. 12), provides for the inclusion in the Act of certain language which would codify an interpretation heretofore placed upon the Act by the Supreme Court of the United States in the case of Commission v. Sanders Brothers Radio Station, decided March 25, 1940 (309 U. S. 470)."

Senator White: "That is the section which writes in the language of the Sanders case?"

Mr. Miller: Yes, the language of the section practically takes the decision of the Supreme Court and writes it into that law. In that case the Supreme Court was called upon to decide a fundamental question concerning the functions and powers of the Federal Communications Commission under existing provisions of law. More specifically, it was called upon to determine the rights and remedies of an existing broadcast station which objected to the establishment of a rival station in the same community where it appeared that the establishment of a second station would result in economic injury to the first station which would or might affect the service.

"In its consideration and decision of this question, the Court had occasion to examine those provisions of the Act relating to broadcasting and to compare them with those provisions relating to common carriers of communication. It pointed out that, as opposed to communications by telephone and telegraph the Act recognizes that broadcasters are not common carriers and are not to be dealt with as such. It further pointed out that the entire scheme established by the Act for the regulation of broadcasting was premised on the principle of free competition and not on the basis of suppression of wasteful practices due to competition, the regulation of rates and charges, and other measures which are unnecessary if free competition is permitted.

"In summing up on the question of the nature and character of the Commission's jurisdiction over broadcast stations under existing provisions of law, the Court said (page 465):

'But the Act does not essay to regulate the business of the licensee. The Commission is given no supervisory control of the programs, of business management, or of policy. In short, the broadcasting field is open to anyone, provided there be an available frequency over which he can broadcast without interference to other, if he shows his competency, the adequacy of his equipment, and financial ability to make good use of the assigned channel.'

But notwithstanding the fact that no language can be found in the Act which confers any right upon the Commission to concern itself with the business phases of the operation of radio broadcast stations, we have found the Commission concerning itself more and more with such matters. This it has done by requiring all licensees to file with the Commission voluminous reports showing in the minutest detail practically every phase of their financial operations. It has also by regulation required the filing of practically all contracts relating to the acquisition and broadcast of certain types of program material. Further than this, it has now attempted by regulation to control the source, and consequently the character, of network program material through the contractual or other arrangements made by the licensee for the acquisition of such material. This authority has not only been affirmed but, as already pointed out, in a manner which invites further regulation of program material."

The Chairman: "Let me ask you this: Don't you think that the Commission in deciding the public interest should have the power to say whether or not in a community where there is, say, one small community, where by establishing several radio stations there, they might reduce the kind of programs put on that did affect the economic interest? I mean, that is something they should take into consideration."

Mr. Miller: "That raises the whole question in the Sanders case about the economic effect of programs and public service."

The Chairman: "I am asking you whether or not you agree that the Commission should be given the power. I don't know. I am asking you the question."

Mr. Miller: "I think the question of economic interest comes into the question of public service and whether or not the Commission has gone all over that, I haven't followed that argument to its last place, but the Court in deciding this case very definitely limited the authority of the Commission to that extent. Also it raises the question of financial ability when a man comes in and wants a license. Has he the financial ability to operate the station in the public interest? All those questions come up."

Senator White: "The statute covers that and requires financial ability of a man to operate a station."

Mr. Miller: "Yes. Those are points that are raised in the granting of the license for the purpose of establishing a radio station. I think the

Commission should be given adequate power to decide what is in the public interest, but as to going further to control after the station has been operated is a question which I think is an entirely different question."

The Chairman: "I think that is true. Your idea is that when the Commission acted to put out of business the Baker station out here in Iowa and the Schuler station down in Los Angeles and the Brinkley station out in Kansas, that they acted without authority?"

Mr. Miller: "I think they acted without authority."

The Chairman: "Of course, that took place before Mr. Fly became chairman."

Mr. Miller: "Yes. We do not blame those things on him at all, but the thing about it is this—"

Senator White: "I think you have got enough on him without going back."

The Chairman: "Well, anybody who is chairman of the Federal Communications Commission has got a difficult job at the very best. I don't envy him any."

Mr. Miller: "We appreciate his position. He is in a very difficult position. I think if he doesn't take the power sometimes he is criticized for not taking it, and if he does take it he is criticized for taking it. We think that Congress can make him much happier if they would decide exactly what his power is to be."

Senator White: "That is your real objective here, to try to make Mr. Fly happy?"

Mr. Miller: "Yes, I think if this bill was passed he would be a much happier man."

The Chairman: "That has not been the attitude of some of the committees and some of the criticism."

Senator White: "Mr. Fly hasn't emphasized that thought either."

Mr. Miller: "Still, we want to do him a good turn, even though he doesn't want it done."

The hearings resumed November 18, 1943.

Present: Senators Wheeler, Chairman, White, Tobey, Tunnell, Gurney, Moore, Hawkes, Barkley, Clark, MacFarland, Brooks.

Mr. J. Leonard Reinsch of Atlanta, Georgia, after summarizing his position as directing head of WSB, Atlanta, WHIO, Dayton, Ohio, and WIOD, Miami, Florida, pointed out that all these stations were affiliated with newspapers owned by Governor Cox, and said that Station WHIO, Dayton (affiliated with CBS) is in competition with one other station in that area, WSB, Atlanta, (affiliated with NBC) is in competition with three other stations in that area and WIOD, Miami, (affiliated with NBC) is in competition with three other stations in the metropolitan area of Miami.

He described the organization of each station as a separate entity with its own management and stressed the independence of each station with reference to the newspaper affiliation. He said that each of the newspapers had its own editorial policy, whereas the stations themselves had no editorial policies and pointed out that each station had its own news staff and news service separate from that of the newspaper—and was in active competition for advertising—that they had no joint rates and were operated as completely separate enterprises.

He said he was not appearing for any group but for himself, for the purpose of expressing the need for new legislation. He summarized the public service rendered by the stations pointing to the extent the Atlanta station had gone in order to render service to the farmers through an agricultural program at the time when they wanted to hear it, even though it conflicted with a commercial program.

He explained how the station had collected broadcasts by portable transcription pickups by going out to the farm area rather than having the farmers come into the station. He cited the service rendered by stations during disasters or inconveniences caused by utility breakdown, etc.

Mr. Wheeler asked how he felt about super-power under such circumstances, when in local emergencies a local station could best render a service. He pointed to the fact that super-power was becoming less of a problem due to prospects for additional frequencies and stations.

Asked directly what he thought of the possibilities of FM he gave as his personal view—that with manufacturers including FM Bands in receivers after the war, he felt the development would be quite rapid, and pointed out as far as his situation was concerned their FM planning had been stymied at the present time by the Commission's newspaper hearings and said in this regard he should like to know what his rights are.

Senator Clark asked whether he had been hurt by the network rulings to which Mr. Reinsch replied that he had not but he felt the network rulings were accepted by some as an easy way out. He said he had from time to time run into difficulties with networks on programs, time clearances, etc., but they were the usual business difficulties and no more burdensome than other business difficulties which all business men run into.

When asked by Senator Clark the hypothetical question as to whether he thought a lone station should be granted to a newspaper owner in a town of say—25,000 population Mr. Reinsch said that he felt that there might be instances where the newspaper would be the only interest who financially render radio service, and in that case it might be well to grant the newspaper owner a license. He felt that it depended largely upon the integrity of the owner as to whether or not a license should be granted to him. He said he thought it should be left to the individual case—to be passed upon by the Commission, rather than by setting up a statutory rule which might well work a detriment to the public in some cases. He said that the chance we take in having a few bad

situations is the price you have to pay for the freedom of radio enterprise.

Mr. Reinsch pointed out the ability of a local citizen to determine what his neighbors wanted to hear, and that he knows broadcasters are the type of persons who are members of the Rotary-Kiwanis, War Bond Campaigns and generally substantial citizens in their communities.

Senator Clark asked whether he was "afraid of the Commission" and Mr. Reinsch replied that he was fearful of the "innuendos" and of the "unknown" and "the trend toward program interference."

With reference to program appeal, Senator Gurney asked whether he was in possession of any knowledge as to the reaction in Europe to the setting up of American stations and Mr. Reinsch replied that while the American stations, run by the Army, carrying regular American programs, covered only about a 25 mile radius, a recent survey had shown a 40% preference to the American programs, 42% to the British programs and 18% without any option.

He called the attention of the Committee to the fact that the broadcaster is confronted with the best censor of his program—the "listeners who can by a turn of the switch, or in the more modern sets the punch of a button, cut you off, and if enough of them do that you have got to change your programs or go out of business."

Mr. R. J. Thomas, President of United Automobile Aircraft Agricultural Implement Workers of America, CIO, was the first witness. His testimony was directed to opposition to the Code. He directed his attack primarily to the censorship by WHKC of a talk to be given by Richard C. Frankensteen. He pointed out that while Mr. Frankensteen did speak he of course couldn't say what he wanted to.

When confronted with the question as to whether or not the subject matter of the proposed speech by Mr. Frankensteen was controversial he said that it related to "The Rising Cost of Living" and to the issue "The necessity for rolling back prices and maintaining the anti-inflation front" (The program over which Mr. Frankensteen spoke is a commercial program. The station took the position that the subject matter was controversial and that as it subscribed to the policies of the Code it could not carry controversial subjects on paid time).

In connection with the UAW transcriptions which were sent out last summer he said they had been refused time by many stations on a commercial basis to carry these announcements. He stated "You will note that the NAB defended its warning against sale of time for those transcriptions on the ground that stations should afford free time for discussion of such issues but —here is the heart of the matter—not one of the stations which refused to sell us time for these transcriptions offered to give us time. Thus labor's point of view is effectively kept off the air—but as you know the views of those with goods to sell are aired day and night ad nauseam."

"Nor—and here is another example—can the UAW even get time to answer a direct attack about it. On June 8 of this year Fulton Lewis Jr. devoted more than half of his time to a direct attack on Donald Montgomery, Consumer Counsel of the UAW. I submit for the records a copy of that attack. Among other things Fulton Lewis charged, and I quote him directly 'Mr. Montgomery's program actually is selling out his own CIO Union members'. Now that is a pretty serious charge to level against any man. It is precisely similar to charging in a radio talk 'Senator Blank's program actually is selling out his own constitutents'. Mr. Montgomery wrote to the Mutual network which aired Fulton Lewis Jr. on June 17, 1943, and asked for time to reply. That was five months ago and to date neither Mr. Montgomery nor the UAW has been afforded an opportunity to answer Fulton Lewis Jr. false charge and serious misrepresentation."

Senator Wheeler asked whether he thought that a requirement, where anyone is attacked that he should have offered to him the same opportunity to answer the attack with the same audience listening in would be satisfactory—Mr. Thomas said Yes—and Senator Wheeler went on to say that he thought that such a provision would eliminate many personal attacks because of the fact that all the time of a station would be taken up to these answers. Senator Hawkes asked Mr. Thomas whether the refusal of time to labor organizations had been on the basis of the fact that they were labor organizations or to the program content. Mr. Thomas replied that these refusals of time had been based on the contention that the labor programs proposed were of a controversial nature.

He said that he had two proposals. They were: "First the NAB Code must go. It is a set of private regulations set up without a shadow of official sanction which serves merely to gag the free use of radio in the United States. Second: Labor and other groups must be guaranteed access to the radio of this country by legislation if necessary and subject to the same conditions that other groups notably manufacturers with goods to sell have access to the radio." He said further that there should be an investigation of the whole subject but that the first two proposals should not wait for a long drawn out investigation to come to some conclusion. Senator White pointed out that his tentative proposals should tend to remedy the situation Mr. Thomas had in mind. Mr. Thomas replied that he did not think the proposals in the pending bill went far enough.

Senator Wheeler asked that he submit a proposal for consideration of the Committee in executive session but pointed out the difficulties in writing such a statute should be borne in mind—that you would not want to write the thing in such a broad manner as to let every Tom, Dick and Harry who had an idea get on the radio—that that kind of policy would take up all the time there was on the air.

The session adjourned until 10:00 a.m. Friday, November 19, 1943.

National Association of Broadcasters
1760 N STREET, N. W. ★ ★ ★ ★ ★ ★ ★ WASHINGTON 6, D. C.
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Industry Leaders Testify on White-Wheeler Bill

Leonard Reinsch of WSB, Atlanta resumed the stand on Friday morning, November 19, 1943.

Present: Senators Wheeler, Chairman, White, MacFarland, Gurney, Moore.

In concluding his testimony on newspaper owned stations, he said "It appears to me that all concerned are in agreement on one thing—that Congress should decide the policy, so that the Commission will have available for its guidance, in crystal clear language the scope of its authority." He pointed out on the question of public service programs that "quantity" was not the controling factor but that quality of the public service program was the important element.

He said that "the difficulty now is that the Supreme Court has shifted the entire idea of radio regulation by giving the FCC the duty of 'determining the composition of the traffic.' I do not think that is what Congress ever intended. . . . My plea, as an independent broadcaster is purely and simply that Congress assume its Constitutional function of writing the 'rules of the game' for radio regulation. We do not expect the law to put the FCC in a strait-jacket and I feel that a new law properly expressing the broad Congressional intent and given fair and honest administration by the Commission, within specific limits clearly set by Congress, will, to a great degree, remove the difficulties that plague us today."

In response to a question from the Chairman as to whether the Chains should be licensed, he replied "I do not believe that is practical, Senator." The Chairman said "I have been provided with copies of complaints made by one Abe Aronovitz, who was a candidate for the office of City Commission of Miami, Florida"—in which the complainant charged that he had not had the opportunity of giving the public the facts except by paying double and triple rates for radio and newspaper political advertisements. Mr. Reinsch said that while he was not familiar with the particular instance their practice was to have the same rates for political as for commercial broadcasts.

Mr. Reinsch said "I agree with your sentiment that when a commentator does get into that field (political) the opponent has the full right to equal time, and I mean by that, the same time, and have an opportunity to reach the same audience."

The Chairman read from the script of the commentator over WIOD, as follows: "These are critical times, not only in the affairs of our nation, but the affairs of our city. The days that lie ahead, the planning that must be done for the postwar period requires the service of men familiar with the affairs of the city. I would not for a moment cast aspersions on the honesty, ability, integrity or sincerity of Mr. Aronovitz or Mr. Pittmen, but they are untried in city government, they are not familiar with the problems which must be solved now and in the future, and we cannot afford to experiment in these times with the unknown.

"It is my honest considered judgment that the best interests of Miami will be served in the voters return to office tomorrow Commissioners Dunn, Hosea and Thomason. 'But again let me urge you that no matter who you cast your vote for, go to the polls tomorrow and vote. If you are not sure of the polling places in which you vote, you can easily learn it by phoning the office of the City Clerk. Do your duty as a good citizen and vote tomorrow in the city election.'"

Certainly there is the night-before-election appeal by radio commentators. Now, that happens all over this country, the night-before-election appeal by commentators coming out of Washington, who might favor one administration as against another administration, and of course in that instance the man would hardly have any time to answer it unless he was notified in advance that this was going to be done and that he could answer it.

"Mr. Reinsch: Senator, I agree with you that that is wrong. Incidentally, Malone does not work for WIOD any more.

"Senator White: Mr. Chairman, may I interject a comment? Of course we are getting into a very troublesome field. Under the present law we deal only with duly qualified candidates for office and provide that if one of them is permitted to speak over the radio his opponent shall be given like opportunity. Now in S. 814 we have expanded that somewhat. We have expanded in particular the principle of identification, and we have written in language which I believe will make very much more certain to the listening public just who is talking over the radio to that public, whether the person is speaking in his own right and on his

own responsibility, whether he is speaking in behalf of someone else. That is we are pushing that principle of identification much further than the present law now requires it to go.

"There has been a question in my mind whether we have gone far enough in what the chairman and I are offering to you for discussion. I am not sure that we ought not to go so far as to include language which will call for the identification of the person, which shall require him to indicate whether he is speaking in his own behalf or at the solicitation of somebody else, or whether somebody is paying him, and generally a complete identification of the interest which prompts the broadcast.

"Now, as I say, in the proposed bill we have taken a step beyond the present law, but I still think there is quite a question of whether we have gone so far as we should have.

"Mr. Reinsch: Yes.

"The Chairman. Of course I think the Columbia Broadcasting Company, when they took the position that these commentators and news analysts should not inject their own personalities into it, have taken the right kind of stand, because something has got to be done by these radio stations, the radio industry itself, and it should clean up that matter. We are constantly getting mail of things of that kind being done.

"Mr. Reinsch: Senator, I believe that the role of the news man on radio is pretty well expressed in the Columbia writing. The news man is a reporter of news. It is a factual report. Let the people make up their own mind. We are not here to make up their mind for them. And let the man that is before the microphone give the news as it is happening. And as long as he doesn't give prejudiced news, then we have the finest medium in the world of expressing that news.

"The Chairman. I agree with you. All right."

NATHAN LORD OF WAVE TESTIFIES ON PRACTICAL ASPECTS

Mr. Nathan Lord, of WAVE, Louisville, Kentucky was the next witness. He requested that Section 11 (Anti-censorship of political broadcast section) which states "however that no licensee shall be required * * * to broadcast *any material for or upon behalf of any person or organization which advocates the overthrow of government by force or violence*" be revised so as to make clear the meaning as to whether it applies to the "material" broadcast or to the "person." "In other words, if it means broadcast material only, I think if those words are stricken then it is clear. If it means broadcast material and any individual or organization who has ever advocated overthrow are barred from the air, it should be clarified". Senator White said that he did not think it meant the latter.

With reference to Section 8, Mr. Lord said that he would like to see the language of this section explained in detail "and be made more explicit in denying program control to the Commission. The programming of a station is a responsibility resting solely upon the licensee, and this responsibility should not be divided or abridged."

The Chairman asked "Now are we just going to give some fellow who gets hold of a station the right to go ahead and do anything he says and anything he likes and conduct that station—and it is really owned by all the people—to use that and monopolize that particular wave length to do anything that he wants to do with it? to which Mr. Lord replied "Senator, my philosophy on that is that over the course of years abuses in actual broadcasting have been diminishing. I would rather see the monopoly of programming left in the hands of 900 broadcasters rather than narrow it into the hands of a bureau in Washington. In other words, I think a licensee should have the final responsibility for what goes out on his air.

"The Chairman: Yes but—

"Mr. Lord, I think he has a better feeling of what are in the interests of his listeners in his community. Now, if you give program control to the Commission practically how in heaven's name can they exercise it—

"The Chairman: They can't.

"Mr. Lord—except by establishing, in every community where there is a station, a sub-bureau to check the interest of the listeners, because, after all it is that radio station's—

"The Chairman: I would not want to see anything like that done, but I wonder sometimes, for this reason: A station on a particular wave length has a monopoly of that wave length."

Senator Wheeler's stock question as to whether the Brinkley station should have been put off the air resulted in the following discussion:

"Mr. Lord: Of course you have got to be controlled by your judgment of what is in good taste.

"The Chairman: Yes, but are saying in one breath. Let the radio station have that privilege, but, on the other hand, you are saying that Dr. Brinkley ought to have been put off the air. Now, where is the line? There is some place in there that ought to be a line of distinction that you could draw. Now I do not know where it is.

"Mr. Lord: Maybe what I am trying to say, Senator, is that in the years we have had radio in America—

"The Chairman: What you are trying to say is that you ought to have a commission that would use good judgment and reason with reference to it.

"Mr. Lord: What I am trying to say is this: that we have done a good programming job over the period of years.

"The Chairman: I think that is true.

"Mr. Lord: Which is attested by the 30 million people, families, owning radio sets, and we do not see any reason for changing that.

"The Chairman: And you think the Supreme Court has changed it?

"Mr. Lord: Yes sir, I do."

Mr. Lord said that while he agreed with the objectives of Sections 9 and 10 of the bill (the identification and equal distribution of time on public issues) he was opposed to their adoption on prac-

tical grounds since he felt it precludes the exercise of any judgment on the part of the licensee and would require if carried to its extreme the broadcasting of programs which at best would not be of interest to it and at worst may even be positively objectionable to its listeners.

Senator White said that what you are proposing is to make certain if you let one of the crackpots as you call them on then you must let another go on to answer him—to which Mr. Lord replied "I think on the whole the majority of stations are doing today exactly what those sections want us to do. I am afraid that if you put these sections into law we shall have to operate occasionally in a way that will not be in the public interest." and further "I say I am in sympathy with what that provision wants to do, but I am afraid it goes too far, that it just opens the door wide for a hundred people to have a hundred views on one subject, a subject of interest that has three or four important, interesting views to the public and 97 individual, personal of-no-interest views that we have to put on the air."

"The Chairman: I understand what you mean "While I might disagree with him, and then somebody else might come along and say, "Well I don't agree with either of them, and Senator Wheeler has expressed the opposition to Senator White but I have got another theory which I think is opposite from what either of them are".

"Mr. Lord That is exactly what I am saying."

"The Chairman: Of course that is something as I say where it is a very difficult thing to work out any definite legislation, and the question is whether you are going to leave that up to the Commission to say whether you have to do it in the public interest or whether you don't, or whether you are going to specify it in law. Now, some of them are asking that we specify it into law and others say leave it up to the Commission; others say don't give the Commission any authority at all excepting over purely mechanical matters.

"Mr. Lord: Yes.

"The Chairman: I cannot subscribe to that view and as I understand it you do not subscribe to it.

"Mr. Lord: No, not wholly."

Mr. Lord endorsed the procedual provisions in principle.

The testimony given by Don S. Elias of WWNC follows:

Mr. Elias: My name is Don S. Elias, vice president of Asheville Citizens Times Company, Asheville, North Carolina, and executive director for the corporation of Station WWNC which the corporation owns and operates.

Senator Gurney: In other words, a newspaper-owned station; is that right?

Mr. Elias: It is a newspaper-owned station, complete.

Senator Gurney: Are there any other newspapers at Asheville?

Mr. Elias: No other daily newspapers.

Senator Gurney: Are there any other radio stations?

Mr. Elias: Yes, sir.

Senator Gurney: How many?

Mr. Elias: One. Our station is on the Columbia Broadcasting System. The other is on N. B. C.

Senator Gurney: What is the relative power?

Mr. Elias: Theirs is 250, and ours is 1,000 day and night.

Prefacing what I had planned to say, I would like to make this remark. I had the opportunity to listen to the first day's testimony of the chairman of the F. C. C. To my mind he occupies a quasi-judicial position, and I was shocked at what seemed to me to be the intemperance of language and expression indulged by him, his bitter, scornful excoriation of the leading networks of this country, and the N. A. B., which he termed as a stooge organization.

He made the declaration, for whatever reason he had, that the only reason why anybody was up here trying to get new legislation was that we were trying to restore to these monopolistic two leading chains monopolistic practices that they had indulged in, which the Commission had broken up with the network regulations, and that the Supreme Court of the United States had sustained their position on those regulations.

Well, I disagree with him completely, 100 percent. A man ought not to have to defend himself for coming in to the Congress of the United States to advocate anything.

We have been trying since 1936, in the radio industry, to get a new law written. Senator White, a member of this committee, introduced a resolution in 1937 geared to making a new law and a complete investigation of the radio industry. And then you can go back earlier than that. Before that, to be exact, on June 13, 1934, in a message to the Annual Convention of the Radio Manufacturers Association, President Roosevelt said, in part, "Radio broadcasting should be maintained on an equality of freedom similar to that freedom that has been and is the keystone of the American press." And again on January 25, 1939,—

The Chairman: The American press sometimes complains that they have not had complete freedom, don't they?

Mr. Elias: Well, I haven't been a party to it. I don't know whether they have or not. But I think there are people that would restrict the rights of the press. The chairman of the F. C. C. called in, since this war started, representatives of the A. P. and the United Press and the radio networks and told them that he thought they ought to pipe down and go slow on saying that Russia could survive and had any possibility of lasting through the war. I think he was out of step.

The Chairman: Who said that?

Mr. Elias: The chairman of the F. C. C., the existing chairman.

And in 1939—this is before any of this came up or before the network regulations were ever suggested, so far as I know—the President wrote to Chairman Wheeler this letter which I read:

> "Although considerable progress has been made as a result of efforts to reorganize the

work of the Federal Communications Commission under existing law, I am thoroughly dissatisfied with the present legal framework and administrative machinery of the Commission. I have come to the definite conclusion that the new legislation is necessary to effectuate a satisfactory reorganization of the Commission."

The Chairman: That was when Mr. McNinch was chairman, was it not?

Mr. Elias: That was in 1939. I think he was.

The Chairman: 1939? Oh.

Mr. Elias: January 25, 1939, he wrote this letter to you as chairman of this committee.

The Chairman: That was when McNinch was chairman.

Mr. Elias: Yes.

The Chairman: And McNinch at that time was advocating some new legislation, as I recall it, that the chains and some others did not want.

Mr. Elias: I do not know what the nature of it was, but I am only making the point that this is not something that came up after the network regulations and we rushed in here to try to restore to them practices which he did not like, and I have never completely agreed with him on that. But that is another question.

The President says further:

"New legislation is also needed to lay down clearer congressional policies on the substantive side—so clear that the new administrative body will have no difficulty in interpreting or administering them.

"I very much hope that your committee will consider the advisability of such new legislation."

That is from the President. Now, I am not going to attempt to suggest for whom he was stooging, but I would think that it was the hundred and thirty million people of the United States. But in the same year, in a recorded broadcast on May 9, to be exact, he assured us that, except for such controls of its operation as are necessary to prevent "complete confusion on the air," radio in all other respects "is as free as the press."

At practically every national convention that we have had in the last six, seven, or eight years, N. A. B. has passed a resolution urging Congress that we have a new radio law. We have had our fears, based upon our experience, about the proper protection of the industry under the law as it is now written, and those fears were reemphasized by the Supreme Court decision handed down on May 10.

Senator White: May I interrupt right there?

Mr. Elias: Yes, sir.

Senator White: It is a fact, is it not, that this pending bill, Senate 814, was introduced in a prior session of Congress substantially as it now appears, and that was before the Supreme Court decision in the regulations case?

Mr. Elias: That is my—

The Chairman: That was in the House.

Senator Gurney: Yes.

Senator White: Introduced in the Senate.

Mr. Elias: The Senator's bill has been in, and there have been quite a few of them.

So that, of course, in rendering that decision the Supreme Court stated they were simply interpreting the law as written, that they were not passing on whether it was a good law or in the public interest, and that if anybody felt that it should be changed then we should come to Congress. So we are not in here, I respectfully submit, at the instigation of the networks but by the invitation of the Supreme Court of the United States.

The Chairman: I do not think you are in here by any invitation of the Supreme Court.

Mr. Elias: They suggested that if we did not think well of the law as they had interpreted it, that is where they would advise us to go, and we didn't lose much time in trying to get over here.

The Chairman: I have observed that.

Mr. Elias: The hearings have been a little delayed, so we have been anxious for them ever since last May, as you are familiar with.

The supreme need of the broadcasting industry at the present time, I feel, is a new radio law that will clearly and unmistakably establish the essential freedom of radio against even the suspicion—not to say, the accomplished fact—of governmental censorship or manipulation.

I say this in no criticism of the Congress which enacted the 1927 radio law. Considering the times for which this law was designed, it was a progressive and adequate act. Sixteen years ago radio was still a young and relatively undeveloped industry in this country, and Congress necessarily had to grope in framing a law.

Much has happened since then. Radio has grown prodigiously. Broadcasting has become an important, even indispensable, vehicle of information, opinion, and entertainment.

Most important of all, we have learned from the experience of other countries how important it is to the liberties of a people that their broadcasting facilities be kept free. When the Communications Act of 1934 was passed, Adolf Hitler had just begun to use a controlled radio for subjugating his own people.

The need for a new radio law was thrown into sharper relief by the highly disturbing decision that I referred to, and that decision of the Supreme Court overturned the generally accepted concept of the authority of the Federal Communications Commission and found that agency possessed of the power, and even charged with the duty, of regulating the programs broadcast by the licensed stations of this country.

If you remember the language, they said that they not only had the authority to determine the composition of the traffic, but the burden to determine the composition of the traffic. They gave them not niggardly powers but expansive powers. And I had occasion to look up another Supreme Court in this country, which has been sitting for about a hundred years, and that is the Webster's Dictionary. Noah Webster wrote it, and succes-

sive scholars for the last hundred years have rewritten the definition of "expansive," and I found four definitions there. It says:

1. Having capacity to expand;
2. Unrestrained;
3. Capable of expansion;
4. Characterized by exaggerated euphoria or by delusions of greatness.

And you can take your choice, but, whatever it is, it will be highly unsettling to those of you who have been imagining that the freedom of radio is inalterably imbedded in the law of the land. Personally, I suspect that they referred to No. 2, "unrestrained," but in actuality it becomes No. 4, because when you give a bureaucrat unrestrained powers you give him delusions of greatness.

The Chairman: That is true not only of the bureaucrats, but it is true of some of the radio.

Mr. Elias: It is true of anybody. Old Thomas Jefferson wrote, two hundred—

The Chairman: It is true of anybody who has too much power.

Mr. Elias: That is right. Thomas Jefferson wrote more and did more deep thinking on that than anybody else, and he said: You give a man too much power and don't surround him with proper restraints, and you make wolves of all of us. At one time he was even opposed to—he gave a great deal of thought to—restricting the freedom of the press because they had gotten rather antagonistic; and we see other instances when that feeling rises up—at least begins to be felt some.

So that the point I make is that the Supreme Court may have erred in reading the intent of the Congress that passed the 1927 and the 1934 laws. That is not for me to affirm or deny. The fact remains that until the Supreme Court reverses itself or Congress speaks its own sovereign mind in contrary language, that is the law of the land.

The Chairman: Some of these commentators get delusions of grandeur too, don't they?

Mr. Elias: They certainly do, and personally I am right down the line with you, that I think Columbia's policy is right and that they should not be permitted to go on there and take the Associated Press and the United Press, just like a barker outside a circus tent, and get you in there by telling you, "We are going to give you a report of the news," and it isn't their news they have collected. They would have you get an idea now that they had done all this. They have A. P. and U. P. and the I. N. S., and they go along in there and inject their personal pet peeves and prejudices in the middle of it, and I do not think it should be permitted, and I am against it just as much as anybody.

The Chairman: Not only that, but sometimes they talk as though they had collected the news themselves: as if they had collected the news from Cairo or they had collected the news from London or they had collected the news from some place else, where they don't even give the Associated Press and the United Press or the I. N. S. credit for having collected that news.

Mr. Elias: Oh, no.

The Chairman: They say, "Flash from Cairo." It is not a flash that they have got from Cario. They are taking the A. P. or the U. P. or the I. N. S.

Mr. Elias: I think that the networks or a station is charged with the same responsibility that the editor or owner of a newspaper is to edit his news, to edit what is going to be said on the air, and that he just can't turn people loose. We leave Drew Pearson out of our paper. We leave him out about every six weeks, I guess, because he sends something that we are fearful that he cannot prove or that we think is bad publicity at the time that he came out with it, particularly in this country, and we don't hesitate if we think that in our judgment. That responsibility is on us. We owe it to our community and to our readers, and I can cite you instances if you want them.

But as along as the Federal Communications Commission possesses that power without exercising it, the fundamental freedom of radio is in peril.

The Chairman: Well, let me say this to you: Nobody wants—I say nobody; I mean very few people want to pass restrictive legislation to regulate any industry. The only reason that Congress does that is because of the fact that the small percentage abuse their privileges, and it reflects upon the whole industry to such an extent that Congress comes in and passes very stringent regulations at times.

Mr. Elias: Yes.

The Chairman: That was true with reference to the utility holding companies, and it has been true with certain abuses that the railroads did, and others. Now, this industry owe it to themselves to try to clean up their own house, but they haven't done it in some instances, and that is the reason why Congress is called upon to pass legislation.

Mr. Elias: I agree with you on that; but, as I pointed out, this is a young industry, and I think if you will read its record that you will find that we have been striving for that very thing as an industry. Of course, there are exceptions to every rule, and you can make all the laws you want to and somebody breaks them, you know; but we write a code of ethics that we think is proper, and then we amend it from time to time in an effort to improve broadcasting and to elevate it and to give a better service all the time, and we have been doing that, and I do not think it will be necessary for Congress to do it. Any time that we do not render good service, we have the best censor in the world, and that is Mr. average citizen, and we would hear from him; he isn't inarticulate at all. If you find a program on the air and people do not like it, you will hear about it, and it doesn't take long, in your own enlightened self-interest, to take it off, because if we don't have listeners we won't be bought, and we want to make money.

The Chairman: Unfortunately, everyone doesn't have an enlightened self-interest.

Mr. Elias: Well, they will get it if enough

preachers and club women and others come in and condemn their practices.

The Chairman: Well, take the illustration which you have given. You had an enlightened self-interest, and you threw off or cut out certain programs by certain commentators; as you said, you refused to take their stuff because you thought it was not in the public interest.

Mr. Elias: Well, we have never had Drew Pearson on our air, on our station, but I am speaking of the paper. We did carry him and do carry him in one of our papers. But if we had had him on the air we would have done the same thing if we had known what was coming. And right there is where I say the originating point, and that is your station at which it originates, should say, "No, Mr. Commentator, you can't say that because it isn't in the public interest. It isn't good broadcasting."

The Chairman: Exactly. But they haven't done it. They have sent it out.

Mr. Elias: Well, I have no desire, Senator, to editorialize on the air. I do not think that it is the proper function of this medium that has been entrusted to us.

I just want to make this point: that if we concede that the Commission as now constituted could be trusted to refrain from clamping any censorship on broadcasting, the fact still remains that the members of the Commission are subject to all the mutations of life and of politics. Some day there will be another commission succeed them, and that commission may not be so squeamish about employing the vast powers which the present commission enjoys. They can't commit their successors.

And that is the reason we are in here and asking for some changes in the law, because it is apparent that we are in peril. I do not think any commission, however angelically constituted, should possess the authority to control the programs broadcast by the licensed stations of this country.

And I might just point this out. I have heard you, since I have been in here, say that you didn't think so either. And I noted Mr. Fly when he was in here the other day; you asked him if he wanted to control them. "Why," he said, "gentlemen, that's the furthest thing from our minds. Why, never in any instance since we have been operating have we tried—told any station what programs to put on or what to take off Why, that's ridiculous. That's some more of this monopolistic talk." I don't remember that he ever said that he never would exercise it, but he may have. He was on after I left, some more. If he was sincere, and I think he was, then he is opposed to it; certainly we as an industry are opposed to it; and if your committee are, we are all unanimous on the point. So let us just write it into the basic law of the land.

The Chairman: Haven't you already got it written in there?

Mr. Elias: I do not think we have, because he is continually trying to influence our programs, and I would like to make it so that a fellow wasn't under the fear that now exists of the Commission, because whenever the chairman—

The Chairman: You fear the Commission?

Mr. Elias: Yes, sir, I do.

The Chairman: Mr. Fly said he would like to have the picture of a fellow who did.

Mr. Elias: Well, he can get mine. Fortunately to me, I may get some reprisals from what I am saying here this morning, but I have a newspaper and I will still live, because I am going to be over there asking for 5,000 watts, which has been granted to us, but on account of the war we didn't get the bill, and I will be back, and I don't know what that will be.

But, be that as it may, the broadcasters of this country today are under a compulsion that is invisible, but whenever the chairman of the F. C. C. states any opinion it becomes tantamount to a command. A fellow who is going over there for more power, or anything that he has got to take up, realizes that he had better be in line. He has that feeling, and it does have that effect. And the law has held that that is oppressive: when you are in a position of authority to do things to me that might be serious, that you have an oppressive control over me, and we would just like to be out from under that fear of compulsion.

The Chairman: Well, of course——

Mr. Elias: He is not very consistent always. I remember reading in the paper that he did not think he ought to comment on this commentator row that got up in New York; that he didn't think as a commissioner that he ought to. Later I saw in the paper that he was up in New York making a speech on the very subject, to the executive committee.

So that we stay continually under the fear that we don't know, and we want the Congress to write down in unequivocal language how we shall operate and what the rights and authority are and what they are not. And then we shall know that we do not have to worry about certain practices that he may try to impose. Not Mr. Fly. Maybe he will be perfectly fair with us. I do not question his sincerity or his honesty or his integrity at all. But we are all human.

The Chairman: But you ought to be out from under it. I agree with that. You ought to be out from under fear that if you come up here and testify or if you disagree with the Commission you are going to be punished by it.

Mr. Elias: I have heard big broadcasters say that their lawyer had called them up.

The Chairman: What?

Mr. Elias: I have heard big broadcasters say that their lawyer in Washington had called them up and said, "You had better get down here and see the Commissioner. What you said and did, you are in bad." And all that. And I have heard some of them say they were afraid to come in here and testify in this hearing because they had matters to take up.

Well, that is an unholy situation, and it exists, and I am telling you in all sincerity it exists be-

cause I have talked to them—good, decent, honorable fellows trying to do a job.

I have read with keen interest and some sense of personal confusion the testimony which has been offered at these hearings with regard to the so-called undesirable programs.

Of course, programs that are indecent or obscene or blasphemous should not be broadcast. Furthermore, if any stations are broadcasting programs that violate the lottery ban, they should be brought to book. It is reasonable to assume that the Department of Justice has not found any notorious violations. If it had, it would, I am sure, have acted on the lottery complaints which the Federal Communications Commission, according to Mr. Fly, has filed with the Justice Department. After all, they have to pass on whether they can make a case when you send them a complaint.

As I gather, the programs to which the most spirited exception has been taken cannot be classified as indecent or obscene or blasphemous in the commonly accepted interpretations of these words. The general indictment against them is that they are not in good taste.

This whole discussion has raised some very significant questions: Is radio to appeal only to the intellectual and cultural uppercrust in its music and its drama and its humor? Are we to set up a standard—the standard of the exacting minority—and say to the American people: "You must come to this standard. Radio will not come to you. You have the freedom to listen only to what we want you to hear"?

Take hill-billy music for illustration. I realize such music makes the musically sophisticated froth at the mouth. But to millions of Americans, hill-billy is the most satisfying music. Perhaps they should prefer grand opera and symphony—but they do not. These are, to be sure, humble people who live at the heads of the creeks and on the farms and in the industrial districts. But I cannot escape the conclusion that radio has a great responsibility to these people—a responsibility to give them music that by its very simplicity and earthiness will bring pleasure into their lives.

So it is with swing music and with crooning. Personally I like neither. But millions of the American people like and demand swing and adenoidal crooning. Shall radio say to these people: "You shouldn't like swing and crooning. They are not elevating."

After all, the question of taste is a most difficult one and is settled in every instance by the standards of the person who happens to be doing the talking at the moment. It is like orthodoxy: "Orthodoxy is my doxy. Heterodoxy is your doxy."

To illustrate: the late Justice Holmes was said to have liked vaudeville and burlesque shows, even remarking on one occasion: "Thank God, I am somewhat vulgar in my tastes." President Wilson read detective thrillers with vast enjoyment. Mr. Beveridge shocked many sedate people by recounting in his life of Abraham Lincoln that the great President back in his Illinois days told stories that were somewhat earthy. I do not think that we will assert that either of these three men was necessarily degraded.

Senator White: A good many years ago we had a Chief Justice in Maine who told a good many stories and did a great many things that might subject him to criticism. A later Chief Justice in speaking of him said, "Yes, his stories are pretty bad, but his vulgarity is vindicated by his wit." There is something to that.

The Chairman: There is a vast difference, of course, between a man telling stories like some of the men you have mentioned, and broadcasting them generally over the air, where they go into the homes and are heard by the children. The average man like you have mentioned doesn't go out and broadcast those stories or tell them in the home in the presence of women and children. He does not broadcast them over the air and the newspapers do not carry them.

Mr. Elias: Senator, I had this experience—

The Chairman: You would not do it yourself—

Mr. Elias: With broadcasting hill-billy music.

The Chairman: I mean that is entirely different.

Mr. Elias: No—anything in bad taste—no. But it is the question of taste I am talking about. Personally, I remember when I went over from the paper to take charge of the radio station which was in a different building at that time. The operators of that radio station had lost $45,000 in just a few years and they asked me to come over and see how they could make some money. So I went into it. I had never had any experience in radio, but one of the first things that impressed me was the hill-billy music. I said, "I think that is terrible. We want to bring up our programs, make a better program for our listeners." So I had them fix up a show boat program, we got in a good orchestra, and a humorist, and a singer, and we fixed it up and went down and sold the fellow on switching to this program. He had been getting about 40 or 50 answers a day. He had had little jingles and people would write in these jingles. So, his mail dropped down from 45 or 50 answers a day to 5 or 6. Of course, he complained that was because we had switched the show to something else. Finally we lost his business. Well, I was trying to elevate the taste of the listeners, but they wouldn't listen. So, we lost the business. We finally got him back with the "Sons of the Pioneers." That is some cowboy music. We are now using hill-billy music again. He is doing a good business and his listeners like it. You cannot make them listen. They just turn the knob on you. So that I think in studying these programs, as I suggested, you will find a large portion of the people that just won't listen to these so-called elevating programs. They just have not been educated up to Wagnerian operas. They are a little heavy for me too.

Then, gentlemen, each generation insists upon findings its own standards of what it is in good moral taste. The puritanic critics of Hawthorne's day thought that his "Scarlet Letter" was wicked.

A hundred years ago in this country the moralists looked askance even at Shakespeare on the stage. There was a time not so long ago when Negro spirituals were regarded as vulgar music. Dvorak and John Powell did much to change that. Our pedagogues of today contend that the McGuffey's Readers of your youth were too moralistic.

Since the question has been raised, your committee might find it illuminating to invite an analysis of all of the programs broadcast during a typical week by a group of stations, inclusive of affiliated and non-affiliated. I am satisfied that such a survey of the over-all program content will be highly reassuring to your committee. I believe that the study will disclose that there are relatively few programs appealing to what Mr. Fly calls the "lower passions of the people."

Gentlemen, I think that the democratic way of life extends to entertainment no less than to politics. I believe that if the average citizen is capable of choosing his Senators and his public officials generally, he is just as capable of choosing the kind of programs which he wishes to hear.

The Chairman: There is a question in the minds of a great many people whether they are capable.

Mr. Elias: Well, that is a matter of opinion again, like the definition of orthodoxy and heterodoxy that I just gave.

Furthermore, I do not share Mr. Fly's apparent opinion that if left to his own devices the average American citizen will demand, and listen to, "rotten programs"—"the rottener it is, the more people you will get" to listen. Taken by and large, the average American citizen is just as decent, just as clean in his tastes as Mr. Fly or myself. The difference is in the tastes themselves, not in their morality. An old preacher once lamented that the devil seemed to possess the livelier tunes —but I greatly doubt that anyone has gone to hell by listening to hill-billy music or to swing or to crooning.

Let me hasten to make this fact clear: I do not believe that radio should, by its programs, debase the tastes of the American people. I do not believe that we should make them prefer some modern drama to Shakespeare. But I do not believe that radio is in fact degrading the tastes of the American people.

We put a program on with the hope that somebody will want to buy it, and the only way we can sell it is the reaction of the public to it. If they like it they will buy it. If they don't they will listen to it a little while and then turn the knob. So, we have to proceed by a method of trial and error, and by experiment. We heard a good deal in this country a few years ago about the Government making experiments. That is what we try to do. We make experiments. If they don't work we will change and switch to something else. We do that in our business often, and all the time trying to make it better.

The Chairman: But the Government didn't change the experiments, did they, when they failed?

Mr. Elias: There are indications that there may be some changes. I am not talking about radio now.

The Chairman: Some of you southerners want us northerners to do the changing.

Mr. Elias: Well, we differ with that, but that is the right of an American citizen in a democracy.

In this connection, I would like to make one further observation: Nothing would do more to restrict the usefulness of radio to the American people than to fill the air with so-called informational and public service programs and to reduce entertainment programs to a minimum. Here in Washington public issues are naturally the chief stock-in-trade. But politics is just one segment—an important segment but just one segment—of the life of the average citizen. Mr. Fly refers somewhat querulously to the fact that so many programs originate in Hollywood. Well, a movie star can visit any average American community and draw more people than a member of the President's cabinet. We had two movie stars down to our town recently in a bond drive, and you couldn't get into the auditorium seating about 3,500 people. I personally thought they were hams, but that is the way the people reacted to them. You cannot say on that account that the tastes of the American people are degraded or so debased that these people must be protected from themselves. After all, we need relaxation and entertainment. If you are going to try to help a fellow who is sick—when I get sick and they come in and want to read the Bible to me, it is a little late. I would rather they would just bring in a good steak. It would do me more good. You cannot impose a certain kind of entertainment on a fellow that doesn't like that kind of entertainment. That is the point I want to make.

It is universally agreed, I think, that radio stations should not undertake to impose their editorial opinions, or the opinions of the government of the day, on their listeners. But should radio stations be asked or expected to impose their tastes —or the tastes of Mr. Fly or any group—on the people? I am disposed to believe that in a democracy a tyranny of taste is just as reprehensible as a tyranny of opinion.

I can easily understand why some of you have expressed in such sprightly fashion your objections to some of the programs which are broadcast. In expressing your criticisms, you are exercising your rights as American citizens. But, gentlemen, the average radio listener is just as articulate. He is constantly expressing to us his criticisms. We do not shrug these criticisms aside. We welcome them, heed them. We know that by virtue of such criticisms we can chart a program policy broad enough and varied enough to take care of all of the reasonably decent tastes of the American people.

It is argued the broadcasters have it within their power to impose their program likes or dislikes on the American people. This is only a half-truth and like most half-truths, it ends by being absolutely wrong.

Has the Senate of the United States the power

to impose its legislative caprices permanently on the American people? Of course, not. Outside the Senate chamber stands a powerful force that we call public opinion. Sooner or later, that public opinion will prevail. You may thwart it temporarily but ultimately it will triumph.

Similarly, every station in this land depends for its program policies upon the judgment of its listeners. We, to be sure, originate programs, good or bad, but our listeners determine in the long run whether a specific program survives. We cannot impose an unpopular program long on our listeners without forfeiting our audience and injuring ourselves. Enlightened self-interest, if nothing else, induces us to strive constantly to give our listeners the programs they want. Our license to broadcast derives from the Federal Government and runs for two years. But our right to prosper comes from our listeners and must be renewed every day, even every hour of every day of the year.

American radio has a censor. He is Mr. Average Citizen. He lives within easy range of many stations. He is the master of the situation. With a slight twist of the knob, he can turn thumbs down on any and every station.

There are 900 radio stations scattered throughout the length and breadth of the land. These stations are owned and operated by American citizens of all political faiths, of all religious beliefs, of all economic classes. We are Jews and Protestants and Catholics. We are Republicans and Willkieites and New Dealers and Democrats. We are isolationists, interventionists, internationalists. We are economic royalists and semi-paupers and all the financial stages between these extremes.

If there be among us some who in their programming policies are inclined to give preference to their own religious or economic or political faiths, there are others with opposite preferences to give similar priority to their beliefs. The net result is a fair approximation of the political and economic and religious diversity of the American people. What more can you ask of radio in a free country?

The essential freedom of radio is safer in the hands of these 900 broadcasters than in the custody of seven men domiciled in Washington. I say this in no flattery of broadcasters and in no depreciation of the able gentlemen who compose the Federal Communications Commission. We are more representative of the varied social, economic, political and geographical pattern which is the United States of America. We are necessarily closer to the listeners for whom radio exists and are, therefore, more sensitive to the disciplines of listener opinion.

The Chairman: In the case of your national programs, you don't have any control of them? That comes out of Washington, does it not?

Mr. Elias: We do not have any control except on the commercial ones. On the sustainers we can take them or leave them, as we like. We oftentimes do that, we put on our local program in preference to something that originates on the networks. The networks are just in the program business, and naturally in their own selfish interest they accumulate the best talent they can hire and pay a lot more for it than the stations can.

The Chairman: Do you think the networks ought to be responsible for the programs they originate, or do you think the local stations ought to be held responsible for them?

Mr. Elias: Do you mean in the case of libel and slander?

The Chairman: Yes.

Mr. Elias: Well, I really think the networks should, because it gets to them before we have had any opportunity to look it over and see the script.

The Chairman: You believe that both sides should be heard on a controversial question?

Mr. Elias: Yes.

The Chairman: Supposing that your network puts on one side and doesn't put on the other, so that you don't get both sides, should the local station be held responsible—if that is written into the law—or should the network be held responsible?

Mr. Elias: Well, if you are going to be consistent you have to keep it in the network. I am perfectly willing to be held responsible because I have confidence in the people we are doing business with. I have enough confidence in them to take a chance on anything that comes from them, but it does seem a little different if I have to sit down at Asheville, North Carolina, and something I don't see gets to my station that I would have to bear the burden.

The Chairman: In other words, supposing you didn't put on both sides—I mean the network didn't put on both sides. The only person that could be held responsible now is the local station, isn't it? Not the network, because there isn't any provision where they can get at the network.

Mr. Elias: No. That is right. I presume that is right. I don't know what the provisions are. Of course, when you get to a national broadcast on controversial subjects, I think we ought to be fair in the thing, but again the stations have got the right of selectivity and I don't know any way you could get around it. They have got to judge in their own community what they think is the better program for their listeners, and they may run one fellow's speech—if it is a great national issue most people will want to hear both sides, and there will never be any occasion not to run it. I heard you discussing that and I can understand your feelings, but I don't know just how you are going to get the stations—

The Chairman: Well, you can write it into the law as we intend to write it in.

Mr. Elias: On a controversial question?

The Chairman: On a controversial question.

Mr. Elias: I have no fight with that, Senator. I think it is proper. We have got to be fair. The stronger you make your language on that, the better it will suit me.

The Chairman: In the Supreme Court issue, I

have particular reference to, I was speaking in Chicago on a program where the time was supposedly divided between Dean Landis and myself. He took one side of the issue. He was all for packing the Supreme Court. I was on the other side. He had the full network. When it came to my part of this program I was not in on any station west of the Mississippi River excepting the particular network carried a line from Minneapolis over into Montana, so that it would be heard in Montana, but didn't carry in any other states.

Mr. Elias: In that instance I was right with you 100 percent, and I am sure we carried them all.

The Chairman: You could not carry it unless the network carried it.

Mr. Elias: No, not unless they sent it to us, of course I couldn't carry it.

I have covered much familiar ground in what I have thus far said but as the late Justice Holmes once safely remarked, it is sometimes more important to vindicate the obvious than to expound the obscure. I greatly doubt that free speech will be safe in this country if we ever take its security for granted or cease being vigilantly anxious about it.

That is the reason I am up here. I have had free speech and free press drilled into me all my life.

Getting down to the specific bill which is being considered by your committee, please permit me to make these brief observations:

1. If any restraints upon the program freedom of American stations are deemed necessary by this committee and by Congress, these restraints should be written into the law in language which no literate citizen can misconstrue and which no commission can distort.

The Chairman: That is pretty difficult to do.

Mr. Elias: Well, you fellows are pretty smart about writing. I know you will try your best. All I am asking for is for the best brains that can try to put into language these fundamental principles. When you have done that, that is all any man can do.

2. A simple denial to the Federal Communications Commission of "supervisory control of station programs or program material" will not be enough in itself to insure the essential freedom of radio for the American people. If that Commission possesses by specific grant or plausible implication the broad power to regulate the business practices of licensed stations, it can use this power in accomplishing by indirection what you may say that it can not achieve by direction.

The Chairman: It depends on what you mean by business practices. Business practices is a very broad and loose term. You don't think that the Radio Commission ought to be confined, do you, to just regulating the mechanical and electrical devices, or as to whether or not a radio station should have this power or whether it should have that power, or whether it should have power to just interfere with some of the stations?

Mr. Elias: That pretty near describes it in my opinion, yes. We don't need, I think, a protectorate or guardianship, over our negotiations with the networks or anybody else. We buy paper from the International Paper Company. I don't want anybody trying to help me do my buying. Recently a man from a network talked to me about a contract and kept arguing about it in a way I didn't like, so I just went over and transferred to another network. I want that privilege to be mine.

The Chairman: What you mean is, you would like to have those business practices at any rate written into the law, and whatever Congress forbids, you would like to have that written into the law?

Mr. Elias: If we are to have any control over our business practice, I want you to write it in, and not leave it to the caprices and prejudice of any commission. I am not questioning the sincerity of any fellow. I think they are all honest, as they see it, but we do not always see things alike, you know. I don't want anybody to get that impression, that I don't think the present Commission is a fine body and that they are doing the job as they see it to the best of their ability, sincerely and honestly. I sometimes disagree with some of them, but that is American too.

The Chairman: They have not interfered with your station in any way, have they?

Mr. Elias: No.

The Chairman: They have not told you what kind of a program you could have?

Mr. Elias: No. I don't want them to have that right. I just want to make it secure while we are writing a radio law, so that they cannot do it. They have not done anything to us that I could complain about. These network regulations—I don't know whether they are in existence at the present time—I cannot see that they can possibly benefit us or hurt us. There was no demand for them that I know of, except that the Commission got the idea—I always had the feeling that there was some idea on their part that they were out to put a protectorate over the broadcasting stations that we had not asked for. That seems to be the practice that has been engaged in the last few years. We see the thing on the other side of the ocean, people having a protectorate that they didn't want, and they are in there fighting about it now. Certainly they have not benefited the stations. If Mr. Fly had been trying to help our station, I will say this, if he is going to try to tell me he wants to limit the number of hours that I shall contract to the network or that I have got to run a certain number of hours of a locally broadcast program, then I think he ought to provide me a better source of programs than the ones he excludes and he might have improved the station by taking off this restriction about electric transcriptions. I am not testifying for the networks, as you can see, but where we have got to come in and say, "This comes to you by electrical transcription," and then at the end we have to say, "This was broadcast by electrical transcription," it becomes cheapened in the mind of the listener. If we didn't have to say that, there are a lot of very

fine recorded programs that are probably of a better quality oftentimes than what we get from the networks, but the very minute you say, "This comes to you by electrical transcription," you depreciate it in the mind of the average listener, so we go ahead and run the networks.

The Chairman: I don't think that originated with Mr. Fly.

Mr. Elias: I don't mean he originated it, but if he had corrected that it would have been beneficial.

The Chairman: I remember that question was brought up in committee many years ago. As I remember, it was first advocated by the late Senator Couzens of Michigan. There was a great deal of discussion on it at that particular time as to whether or not they should announce it. I think it was the consensus of this committee that it should be done. I don't know whether it originated with the Commission. I have forgotten what the facts are with reference to that, but I do know there was a lot of discussion in this committee.

Mr. Elias: I don't know what his point was, but I am just making the point, we want good program service. That is all we want. If you give the Commission a lot of business practice powers, they may not just come out with something that will hit you directly between the eyes, but they can find divers ways to put pressure on you. If you really want to put the pressure on a fellow you can find ways to apply the heat. If Congress thinks that that regulation is needed, I want it written into the law by Congress and not left to the changing commissions and interpretations that they may put on it, because they change their mind pretty fast sometimes.

The revenue upon which American broadcasting depends comes from programs. If any commission has it within its power to affect the free flow of revenue to a station, it can establish a subtle but effective control over the program policies of that station. If you deposit in any federal agency the power to tighten or to loosen the purse-strings of a station, you give it a power which can result in the slow but fatal attrition of broadcasting freedom.

It is true, of course, that many federal commissions are empowered to regulate the business practices of corporations. But, gentlemen, I respectfully submit that there is a difference, an awful difference, between a railroad and a radio station. In the regulation of a railroad, the vital principle of free speech is not involved.

If the Congress thinks that certain regulations of the business practices of stations are required by the public interest, then write these regulations into the law in the most categorical language. Do not leave them to the capricious determination of changing appointive officials.

3. There is a grave peril to radio freedom implicit in the very fact that stations must be licensed. I need not remind you gentlemen that the English crown in the days of John Milton used the licensing of printing as a device for controlling free speech and that the poet's immortal plea for free speech, Areopagitica, was directed at licensed printing. Licensed broadcasting is necessary, regrettably necessary, due to the physical and technical limitations on radio. We have been fighting over that a long time but I think we have to have licenses to keep chaos and confusion off the air.

The Chairman: You have got to have some regulation written in here with reference to it because while you and the big majority of stations have a sense of public relations, here is a station down in Miami that I just called attention to, and there isn't anybody, it seems to me, that could approve what happened there.

Mr. Elias: No. I agree with you.

The Chairman: On the other hand, as I say, you have instances constantly coming up where a commentator—I can give you an instance of one who told a story about the wife of the President which was absolutely false.

Mr. Elias: Well, there is a lot of that sort of talk. I read the other day about Eddie Rickenbacker, where he was in the hospital in Atlanta. He was at the point of death practically. He turned the radio on and heard it announced, "Eddie Rickenbacker in Atlanta hospital is reported to be slowly dying; no hope for his recovery." Well, of course, that is bad programming. I think you have got to have some power to edit your script on the radio just like we try to edit the news in the paper.

The Chairman: But if you are going to have stations that won't comply with common decency, there is only one thing Congress can do, and that is to write something into the law prohibiting these things, or else you have to let the Commission have that power. You cannot let these people go on lying about people. You may say, well, let them go into court and sue, but as a practical matter you cannot sue every radio station in the United States. A lot of people don't like to get into a contest with a skunk.

Mr. Elias: That is right. I think it ought to be written into the law. But when you come to Dr. Brinkley's case, for instance, there are other laws and other commissions to deal with it, like the Federal Trade Commission and our Food and Drug Act, and the Medical Society, and so on.

The Chairman: This man Baker out there, he was prosecuted for using the mails for fraud and they could take care of him in that way.

Mr. Elias: Yes. I don't think you have to write them all into this law, where you already have laws. You don't have to clutter up the books with additional laws.

On this question of licensing, if we are to preserve for the American people the maximum broadcasting freedom, the Congress must make certain that the power to license does not become the power to throttle. Every station must have the assurance that as long as it obeys the rules and adheres to the policies defined by Congress, its license will be secure against bureaucratic aggressions. If radio in this country ever becomes a cringing, menial institution that must court the

pleasure of a federal commission on pain of receiving a death sentence, broadcasting freedom in the United States of America will be extinguished and radio will be little more than the obedient megaphone of the government of the day. We do not contend that a license to broadcast should be made an irrevocable right. We should be compelled to use this license in the public interest. But, gentlemen, give us freedom from fear—fear that our licenses may be revoked or denied renewal because we have tried to be free and have refused to truckle to the opinions, expressed or insinuated, of appointive officials.

4. May I make a few comments about the moot question of newspaper-ownership of radio stations which has been introduced into these hearings? I am an officer and a stockholder of a corporation that publishes two newspapers and that also operates a radio station. I may for that reason be prejudiced for it is easy sometimes to confuse one's private interest with the public interest.

If the Congress of the United States believes that newspapers as such should be barred from the ownership of radio stations, then let the Congress say so in language easily known of all men.

Senator White: We never have said so. Congress has never said so.

Mr. Elias: There is a question before this committee as to whether we have a right to own and operate stations.

Let it say to the newspapers of the country that they are unfit to operate stations, that they are pariahs against whom a bill of attainder should be directed.

Whether such palpable class legislation would be constitutional is a question which I am not competent to discuss. But I do not think that the newspapers of the country deserve any such proscription. When it comes to business morals and a becoming regard for the country's welfare, they will probably not suffer greatly by comparison with insurance companies, department stores, tire manufacturers, candy manufacturers, undertakers, and the Chicago labor unions.

Senator White: You think they are all about on a par?

Mr. Elias: At least we think we are on an equal with them, if not better. They are not barred from ownership, and I don't think you ought to class us as a lot of pariahs.

If Congress is unwilling itself to say that newspapers are disqualified to operate stations, then I do not think that the Federal Communications Commission should possess the authority, expressed or implied, to reject the applications of newspapers solely because they are newspapers. I do not believe that you will have a completely free radio or a completely free press if any agency of the Federal Government has it within its power to impose such limitations on the newspapers of the land.

5. If your committee feels that there should be governmentally-imposed regulations designed to insure the utmost fairness in the handling of political and other controversial broadcasts, I hope that it will define these regulations in the basic radio law and not leave them to the determination of the Commission.

I do venture to suggest, however, that section 11 of the White-Wheeler bill be amended to the extent of permitting stations to refuse to broadcast any material that preaches racial intolerance, or religious bigotry, or that incites to riot. I need not, I am sure, amplify my reasons for making this suggestion.

Gentlemen, you have listened to me with great patience. I am profoundly grateful to you. Let me make this final observation: If my arguments today seem to be based on a distrust of the present members of the Federal Communications Commission, it is not due to any personal grievances which I may have against them. Yes, I distrust them—but I distrust them because they are human beings, subject to the limitations of human nature. Broadcasting freedom will never be safe in this country if we leave it to the tender mercies of official discretion. It must be imbedded in the basic radio law and those who are empowered to administer that law must be hedged about with restrictions that will prevent abuse.

The Chairman: What is your paper down there?

Mr. Elias: The Asheville Citizens Times Company. We publish the Asheville Citizen, that is a morning paper, and the Asheville Times which is the afternoon paper, and the Sunday Citizen-Times.

The Chairman: When did you get your radio station?

Mr. Elias: From 1925 to 1930 I owned and operated the Asheville Times, the afternoon paper. Mr. Webb and George Stevens ran the Citizen. In 1927 the Chamber of Commerce got a license and established the station that we now operate. In 1928, in the latter part of it, they were about to go broke. They offered it to the Citizen and they offered it to me. I told them I was not interested. The Citizen took the license over and they operated it for six or seven years at a loss of $50,000, and then I took over. We have never made a great deal of money out of it. We regard it as a public service to the community. It is in the black now, making a fair return, but we do not consider it one of our prime assets.

The Chairman: You were granted a permit for increased power on April 30, 1941, were you not?

Mr. Elias: That is right.

The Chairman: Your application to extend construction period was designated under "freeze policy" and dismissed February 15, 1943?

Mr. Elias: The reason for that, Senator, was that they granted a permit subject to approval of the transmitter site and we had to have directional antennae to have that power. From the time we got our design prices from the manufacturers, then we had to go to O. E. M., I believe it was, for a permit to buy the equipment, and they turned it down. I believe it was in November of that year. So that when we went back to the Commission and

asked them just to set it over without prejudice because we could not buy the equipment.

The Chairman: How much of the stock of the newspaper do you own?

Mr. Elias: I own about 48 percent of it. Mr. Webb and I own between us practically all of it, around 97 or 98 percent.

The Chairman: I think that is all. I think that concludes our hearings for today. We will meet Monday at 10 o'clock in this same room.

Senator White: Mr. Chairman, before we adjourn, are you able now to indicate who the witnesses will be Monday and in the general order of the hearing from now on—or is this too early?

The Chairman: Mr. Miller will go on Monday.

Mr. Miller: Yes, sir, and Mr. Woodruff will go on. I would like to finish. I think the newspapers would want to go on Tuesday. I was wondering about Thanksgiving, whether you are going to be here on Friday.

Senator White: I see Judge Sykes here, a former member of the Commission, former chairman of it. I wondered if he was to be a witness for anyone now. Perhaps he could tell us.

Mr. Sykes: Senator, as far as I know, I don't expect to be a witness, but of course I am always at the service of your committee.

Senator White: Mr. Chairman, I know of no one who has had larger and longer experience than Judge Sykes. There isn't anyone who can throw more light on these problems than he.

The Chairman: As far as I am concerned, I would be delighted to hear him.

Well, we will resume on Monday, Tuesday, and Wednesday, and then adjourn until the following Monday.

(Whereupon at 12:30 p. m. a recess was taken until 10 a. m. Monday, November 22, 1943.)

The hearings were resumed November 22, 1943.

Present: Senator Wheeler, Chairman.

Mr. James W. Woodruff, Jr., of WRBL, Columbus, Georgia, was the first witness. After outlining the operation of his station he stated that he had come to testify voluntarily in behalf of legislation which would define the rights and duties of broadcasters—this definition should be by legislation which would set forth when and under what circumstances the broadcaster is entitled to a right of hearing before the Commission and the right of appeal to the Courts. Second, to what extent a broadcaster is to remain as sole judge of program broadcast over his station and to what extent the Commission is to be permitted to exercise control over a station's operations. He suggested that the Congress should seriously consider prescribing in the law lesser penalties than loss of license. In this connection he pointed out that there are many minor and innocent violations of regulations and laws which can be committed in the course of normal operation of any broadcasting stations and that such misdemeanors should not subject a station to a possible loss of its license or to long and expensive hearings before the Commission upon an application for a renewal of its license. He suggested however that if lesser penalties were set up that maximums should be fixed that would not cause the station against whom an assessment had been made to deteriorate his program service and pointed out that these penalties could not be in the form of suspension since that would penalize the listening public.

He praised the NAB code provisions covering the broadcast of controversial subjects and said that it represented the best efforts of the industry to regulate itself along this line. However he welcomed the efforts of the Committee to help out in this respect but warned that legal provisions regarding the broadcast of controversial issues should be so worded as not to require a broadcaster to initiate the discussion of controversial issues.

He further indicated that the broadcast of radio commentators presented a serious problem and that a great deal of opinion expressed by the commentators was accepted by the public as news.

Chairman Wheeler asked whether, in the case of network broadcasts he (Mr. Woodruff) had sufficient prior information on which to base a decision as to whether or not to carry the program and Mr. Woodruff replied that progress was being made in advising stations, and that in some cases the network would put on a "preview" of a program so the station might determine whether or not to carry it in its own area.

The Chairman asked Mr. Woodruff whether the stations should be responsible for programs originated by the networks and Mr. Woodruff replied that he did not feel that the outlet should be responsible for libel or slander for network originations.

In connection with News—and News Analysts, Mr. Woodruff said that he endorsed the CBS statement of policy and believed it is a right step in the proper direction.

The Chairman asked whether he thought that controversial issues put on by networks should be carried on their own option, rather than on the stations' time, stating that this "might of course increase the amount of time networks should have" to which Mr. Woodruff replied that he saw no reason why that might not be a proper solution.

NEVILLE MILLER CONCLUDES TESTIMONY

Mr. Neville Miller resumed his testimony with a question left standing at the conclusion of his previous appearance relating to a statement given by Mr. Richards of the Office of Censorship as to cooperation between OWI and RID on license renewals. The complete portion of Mr. Miller's statement on that subject follows:

"When I was last on the stand, Senator Wheeler stated that his attention had been called to an article in *Variety* of September 21, 1941, with reference to a request made of WBNX that it turn over

to the FBI all matters dealing with controversial issues. In reply I stated that the Select Committee to Investigate the Federal Communications Commission had held hearings on the subject of foreign language broadcasts, in which hearings there was testimony to the effect that the Radio Intelligence Division of the F.C.C. cooperates with the OWI on foreign language broadcasts. In reply to Senator Wheeler's question: "Are you going to cover that in your statement?", I stated that I was not, but would be glad to furnish the Committee with the statement given by Mr. Richards in the hearings referred to above.

On Tuesday, August 10, 1943, Mr. Robert Richards, Assistant to the Assistant Director of the Office of Censorship, testified at an open Select Committee hearing held in New York City and in the course of his testimony he stated that sometime in August 1942 the Office of Censorship determined to give more attention to the foreign language broadcasting field and that he had various conferences with various parties and following each conference he made a written report of the substance of the interview, which report was placed in the official files of the Office of Censorship. The report which he made of an interview with Sidney Spear, attorney for the Federal Communications Commission, at 2 P. M., August 25, 1942, was read into the record at the above hearings.

Copy of said report follows:

(Interview with Sidney Spear
Attorney for the Federal Communications Commission
at 2 P. M., August 25, 1942)

"Mr. Spear, as I understand it, analyzes the analyses made by Mr. Truman. Mr. Spear does this in order to learn whether or not a given foreign language station is entitled to a renewal of license. He said he was glad to learn that the Office of Censorship is going to 'take a look' at the foreign language stations. He said he was convinced that there was much 'funny business' going on and that it should be stopped.

"He related his experiences with Mr. Lee Falk of the Foreign Language Section, Radio Division, Office of War Information. He said that Mr. Falk originally had taken on the job of removing unsavory personnel from foreign language stations, because he, Mr. Falk, believed such a job had to be done and no one else seemed to want to do it.

"Mr. Spear said:

" 'We worked it this way. If Lee (meaning Lee Falk) found a fellow he thought was doing some funny business, he told me about it. Then we waited until the station applied for a renewal of license. Say the station was WBNX and the broadcaster in question was Leopold Hurdski. Well, when WBNX applied for a renewal, we would tip off Lee and he would drop in on Mr. Alcorn, the station's manager. He would say, "Mr. Alcorn, I believe you ought to fire Leopold Hurdski." Then he would give Mr. Alcorn some time to think this over. After a couple of weeks, Mr. Alcorn would begin to notice he was having some trouble getting his license renewed. After a couple of more weeks of this same thing, he would begin to put two and two together and get four. Then he would fire Leopold Hurdski and very shortly after that his license would be renewed by the Commission. This was a little extralegal, I admit, and I had to wrestle with my conscience about it, but it seemed the only way to eliminate this kind of person, so I did it. We can cooperate in the same way with you.'

"I told Mr. Spear that the Office of Censorship did not believe it would need much help, that our main interest as far as the Federal Communications Commission was concerned was the Federal Broadcast Intelligence Service and we did want to use its facilities. He said we could, and he pointed out, too, that the Federal Communications Commission retained a group of investigators who were topnotch and that the group, he hoped, would be expanded soon by the addition of 25 persons.

"He said perhaps we could use them in studying the background of personnel. I told him our first appeal for investigative activity would be made to the Federal Bureau of Investigation, but we would keep his offer in mind.

"Mr. Spear's organization has made some interesting surveys of foreign-language radio stations. They cover such things as the number of languages employed, total amount of time devoted to such languages, names, and nationalities of broadcasters, etc. He recommends that the Federal Communications Commission or the Office of Censorship undertake a survey which will supplement this. He proposes that we ask all stations to list their personnel with us and be required to notify us when any changes are made, and that separate files be kept on each station so that we would have a continuing survey of personnel turnover. I told him I would report his suggestion to Mr. Ryan. Mr. Spear said he would make available to this office the results of all surveys and investigations undertaken by the Federal Communications Commission that touched on the subject of foreign-language broadcasting."

Mr. Wheeler read into the record certain portions of the remarks by Congressman Coffee (D-Wash.) concerning this subject in which FCC was charged with conspiracy with OWI. The Chairman observed there were adequate means of controlling subversive activities through prosecution and said "if the facts bear this thing out it is pretty high handed."

Mr. Miller took up next Sections 7 (Equal treatment of candidates), 9 (Identification), 10 (Equal opportunity to present public questions), and 11 (Censorship) and read into the record the controversial public issues section of the Code, and endorsed the objectives of Section 10. In connection with this requirement he pointed to the specific problems which would be confronted by the broadcasters in determining the proper persons or just who are "the accredited representative of the opposing political party or parties."

He said that four points should guide the Committee in its consideration of this subject. First—A licensee should not be required to open up his facilities for politics. Second—If the licensee does open up his facilities for such purposes the right to reply should not necessarily be limited to a candidate. Third—That specific definition of equal opportunity should be written into the Act and not left to the Commission's determination. Fourth—The identity of the sponsor of an idea might well be required.

Mr. Miller said that specific language had not as yet been worked out and that NAB would be glad to prepare and submit to the Committee specific language.

Senator Wheeler said that the Committee would be glad to have such specific language for its consideration.

The Chairman then read into the record a letter he had received from Norman Thomas the high point of which was a recommendation that a percentage of broadcast time be specified for public service programs.

The hearings adjourned until 10:00 a. m. Tuesday, November 23, 1943.

The hearings were resumed on Tuesday (23).

Present: Senators Wheeler, Chairman; Moore, Tobey, Reed, Tunnell, Gurney, MacFarland, Clark, Hawkes.

The entire morning was devoted to the Newspaper-Radio Committee, with Harold V. Hough, Chairman, and Sydney Kaye, Counsel, testifying.

After reviewing briefly the creation of the Newspaper-Radio Committee at the hearings held by the Commission Mr. Hough said "Last year, in the course of the Hearings before the House Committee on Interstate Commerce, nearly everybody concerned had a chance to express a viewpoint. In your Hearings most everyone has so far been around and, I understand, others are coming. Everyone agrees that Congress should take hold of this matter. The NAB thinks so, The Federal Commission Bar Association thinks so; so does CBS and NBC, so did Mutual, so did Commissioner Craven and so does Chairman Fly. I read where just the other day Chairman Fly was pretty emphatic here in saying to you gentlemen that he thinks the question of a policy as to newspapers is not only an appropriate subject for legislation but he begs Congress to take hold of it and thinks it would be very wholesome if you enunciated a policy. But he added that he doubted if you would do it. I trust you will take action and not disappoint the Chairman."

Mr. Hough continued: "It is now, two years and eight months since Order 79 was issued, suspending the issuance of licenses to newspaper stations, and it is almost two years since Hearings on the subject matter were stopped. Back when the Hearings terminated, we were told that they would be resumed and closed up shortly. Back in July of 1942 Mr. Fly said that the matter would be disposed of "in the course of a pretty short time," or, as he put it at another point, "within a few months." Only the other day in this Hearing he said that the matter would be disposed of "at an early date."

"While this matter is hanging fire, however, newspapermen are deprived of what I feel is their basic right under the law and the Constitution to the same freedom of action in the field of broadcasting as other citizens engaged in lawful occupations. Chairman Fly seems to be very uncertain of his power under the law. He says he hasn't made up his mind yet. He says his lawyers could make a pretty good argument on the subject matter. Now, I have had contact and acquaintance with his lawyers for months and months and I would like to say right here that I feel that those boys can make a pretty good argument on almost anything. The fact is, however, that we don't think that the Federal Communications Commission are the people who ought to rule as to the extent of their own power. We think that ruling ought to come from the Congress, and, as I have said before, there is no one in or outside of the Commission who has expressed a view contrary to that.

"Chairman Fly has been indicating that the rule preventing applications of newspapermen from being considered, and throwing them into a so-called agony file has been pretty academic because of the war freeze order. Here, we do not agree. Many applications have been voluntarily withdrawn, some are being suspended and many others that might have been made never were made at all because of the existence of the suspense file.

"If you know that you are not going to be let in to see the ball-game, you don't bother to take the long trip out to the park. What I have just said relates, you will understand, to the transfer of existing licenses. The fact that newspapermen cannot acquire an interest in a station, not even to the extent of buying more stock in a station they already own stock in, is bad both for sellers and for buyers, and if I am right in thinking that newspapermen have been honest and useful broadcasters, it is also bad for the public.

"The question now, however, becomes acute even as to future construction. It is true that we are now subject to a freeze, but someday there is going to be a thaw. Some feel Spring is in the air now. Certainly the day will come when the war is over and victory is ours and thus the hour when radio equipment will again become available. The building of an FM station requires thousands of dollars of capital and long planning on both engineering and financial problems. If, when the melt comes and everybody else is up to the stove and newspapers are still frozen stiff, whether they have a final legal remedy or not, won't do them much good—they will be so far behind the parade by the time they win their legal victory that the decision of the court will be just a wreath to put on the coffin of the man who came in last. Gentlemen, that is why action by the Congress now is to us imperative."

At this point questions and discussions back

and forth among the Senators took on the appearance of an Executive Session, the discussion centering primarily around how to write adequate authority without granting too much authority to the Commission.

Summarizing, Senator Wheeler said that a regulatory agency must have some control over the controversial equality of time. He said that as he understands it, the industry does not object to having some equal division of time provision written into the law, provided it does not open up the facilities to every crackpot in the country. Senator Hawkes observed that that was the point, "Who is going to decide it?" Senator Wheeler again touched on the matter of option time for networks, stating that maybe the networks should have more option time in order to put on controversial issues in their time rather than on station time, thereby eliminating the situation of a local commercial interfering with a controversial subject put on the networks being carried by the local station. Senator Moore observed that the trouble with the power of licensing is that it is so frequently abused. Senator Moore said further that Congress ought to lay down the rules and Senator Wheeler said that that is what we want to do in this legislation.

Mr. Hough resumed his testimony, saying: "I don't suppose that I am expressing myself too strongly when I say that I think it is a new thing and a bad thing for a Commission to exercise for two years and eight months a right which they themselves say is so doubtful that about two years after the Hearings end they still cannot make up their minds whether they have the bare legal power or not, and yet they exercise that power and refuse to turn it loose."

"Chairman Fly said that after he took his action there would be time for the Congress to review it, and that, I suppose, means that he has some kind of possible action in his mind because the Congress would not have to review his merely dropping the case. It seems to me that if this matter has got to be put up to Congress sooner or later, the public and we and Congress are better off if they consider it while there is still time to render a practical and helpful decision rather than a time when the damage will have been done and it cannot be remedied no matter what Congress or the Courts ultimately do."

"That doesn't mean that I think the Commission has the legal power to do what it is dong. It just means that I know that they are doing it and that they are continuing to do it, and that they have done it for years, and that it is clear to me that we newspapermen have no place to turn for effective protection except to the Congress which everybody agrees should take over the making of the policy in this matter."

He concluded his statement with the recommendation "Out in our country when we ask a man to do something for our protection we feel that he has a right to ask—'Do what?' So I asked our lawyers what they had in mind and I offer that to you now. I pray you will not ask me any questions about this language. It would only be a waste of your time. Frankly, it is a little too legalistic for me to handle but you will hear from these lawyers in a few minutes. Here is the language:

> Insert after the word—SHOWN, Line 10, Page 26, Section 16—"neither shall the Commission deny or withhold any rights, privileges, benefits, or licenses or impose, exact, enforce or demand any penalties, denials, prohibitions or conditions, because any applicant or other person has shown, is or shall be engaged or interested in any lawful business or occupation."

The next witness was Mr. Sydney M. Kaye, Attorney for the Newspaper-Radio Committee. In opening his testimony he said: "More than two years and eight months ago, on March 10, 1941 the Federal Communications Commission promulgated Order 79. * * * Immediately following the issuance of that order, the Commission created a suspense file in which applications by persons who had any interest in newspapers was placed. For more than two and one half years the Commission had followed the policy which it has never officially formulated, of denying newspaper men the right to go into the business of radio broadcasting. For more than two and one half years the Commission has actually been exercising the power which the Chairman of the Commission is not prepared to say exists."

He said that while the power to segregate newspaper men into a group is a pure question of law which could have been decided at the outset of the hearing that the Newspaper-Radio Committee had "requested the Commission to rule on its legal powers. We were told that the question could not be decided 'until the record has been developed and facts and circumstances pertinent to the legal issue are developed'. We do not concede that the powers granted to the Commission by the Congress are susceptible of expansion by a state of facts."

After summarizing briefly some of the high points in the newspaper hearings by the Commission, Mr. Kaye said "Perhaps there is no better way of summarizing the result of the investigation than to say I have heard no claims from any source that the thousands of pages of evidence produced by the Commission's Counsel tended in the slightest respect to the conclusion that broadcasting stations which are associated with newspapers fall short in any respect from the highest standards of public service which are expected of broadcasting stations."

He said further "This left us confronted only with the vague apprehensions of some witness who purported to see, in joint association, some threat, as yet admittedly unrealized, of what was termed 'a monopoly of the pipe lines to the market place of thought!' This fear was expressed most frequently with respect to the seventy-four communities in which there is only one daily newspaper and only one local broadcasting station,

both associated in the same ownership. A study of the facts indicated that these communities do not exist in any spiritual vacuum and that there is no potentiality that one man could deprive the inhabitants of the truth. The communities, as the situation itself indicates, are small communities. In all of them engineering testimony indicates that the residents *can* listen to other stations, and actual listener surveys, made for other purposes, demonstrate conclusively that their inhabitants *do* regularly listen to a number of broadcasting stations. Air waves, of course, are not respecters of municipal boundary lines.

"In all of these communities out of town newspapers, largely from nearby urban centers, circulate freely. The evidence demonstrated that in these communities thirty-five copies of out of town newspapers are sold for every one hundred copies of the local newspaper. In well over half of these seventy-four communities there are weekly or twice weekly newspapers of general circulation, which contain national as well as local news and which are completely disassociated from the daily. Thus there are in effect, no "one-one" communities in the sense that the residents can read only one newspaper and listen to only one station."

Chairman Wheeler asked for a list of the seventy-four communities mentioned.

Mr. Kaye said further: "I understand that in the revision of law which you are considering, you are contemplating provisions with respect to the duty of broadcasting stations to present news in fair balance. It goes without saying that if any such provisions are made, they will apply, with equal force, to all broadcasting stations regardless of ownership associations, and I venture to say that newspaper-associated stations will be in the forefront so far as observance goes, both as to letter and as to spirit."

The Chairman observed that might be the answer to the whole problem.

Continuing Mr. Kaye said: "The Chairman of the Commission has testified that newspaper training is a useful and valuable background for a broadcaster. There has been no case in which the Commission has admonished any broadcasting station associated with a newspaper for editorializing with respect to news."

"What the Newspaper-Radio Committee wants," he continued, "is equal standing before the law, and to that we believe we are entitled. We believe that whenever the Commission seeks to establish classifications in order to avoid the individual scrutiny which each application should have, the Commission abdicates its authority and renounces its function. Segregation of a class by business or professional category for the purpose of discriminatory action, is a grave offense to our Constitutional guaranties no matter what the calling may be. It is present, in its most dangerous form, when applied to the press."

Mr. Kaye said that the FCC has "seized the power to tell a citizen how many instruments for reaching the public he may own." He said that "the entire stand of the Commission is based upon an inherent fallacy. Ownership of a station by a newspaper does not demonstrate that the newspaper owner will editorialize through the station, any more than ownership of a station by any other person means that it is necessarily a sounding board for the personal views of the owner. Indeed, with respect to newspapers, we are in the fortunate position of being able to say that an investigation by the Commission itself has disclosed that no such editorializing exists."

"The Chairman of the Commission, since the freeze orders with respect to material have gone into effect, has attempted from time to time to indicate that his present discrimination is merely academic. As Mr. Hough has already indicated to you, the reverse is the case. Interests in presently existing broadcasting stations cannot be transferred to newspapers or to newspapermen. This has resulted not only in applications which are kept in the suspense file, and in applications which have been withdrawn by the applicant because their purpose has been frustrated; it has resulted in a failure to make applications since the applicant knows that he could not expect success. The making of an application requires substantial investment in engineering, legal and other fees."

"From the viewpoint of those stations which could be strengthened by the addition of new capital enterprise and ability, from the viewpoint of the newspapers which would like to exercise their right to engage in the broadcasting field, from the viewpoint of the public which could be served, actual harm has been done and is being done daily."

He said further that "a broadcaster who is in the field today, must be free to expand with the technical development of the art. The radio art, as has been stated, now faces a period of rapid expansion. Frequency modulation, television, facsimile, and other inventions, stand at the threshold of the near future. One of these developments, facsimile, is nothing more than the electronic delivery of a printed publication, a type of broadcasting which results in a printed newspaper or other publication issuing from the radio receiver."

"For the newspaperman in the field of radio," he observed, "the present paralysis is as incapacitating and in the end will prove as fatal, as summary execution itself. The very growth and expansion of the radio field adds an additional reason to the innumerable reasons of principle and practice which indicate that discrimination against newspapermen is unwarranted."

"Commissioner Craven, who is qualified in this subject by his experience as an engineer as well as his membership on the Commission, in a public speech made on November 2, 1943, called attention to the fact that in most cities today there are more radio stations than newspapers and that less capital investment is required to establish a radio station than a modern newspaper. Speaking of the development of the future, he said:

> 'The ultra short wave frequency modulation radio developments of the country have

made it possible to expand radio's opportunities to a considerable degree. Thus the day need not be far removed when there will be sufficient opportunity for any number of persons with sound business judgment to establish radio broadcasting enterprise in any community in this country.'

"Thus," continued Mr. Kaye, "not only every consideration of sound adherence to our traditions of free speech, but every practical consideration which is involved in legislating with an eye to the future conflicts with the concept of any discriminatory action against newspapers as a class. FM Broadcasters, Inc., has pointed out how greatly the development of that art is being affected by the denials imposed upon newspapers. At the present time, only a newspaperman, of all of the people in the United States, is prevented from building towards the future development of that field."

"It is obvious that no new development in the art of radio can be self-supporting from its inception. First transmitters must be built. Then programs must be originated. Then public interest must be created. Then that public interest must reach the point at which persons are ready to buy new receiving sets. Then the audience must be built up and listening habits formed. Only then will there be that audience which will permit the economic support of the new field."

"It is for this reason that even excluding all cases of newspaper ownership, the vast majority of ownership of broadcasting stations from the beginning has been in the hands of persons who have outside economic interests. Some members of the Federal Communications Commission have suggested that perhaps broadcasting should be divorced not only from newspaper interests but from all extraneous economic enterprises. If this were the case the only financial support for pioneering in radio could come from those persons of inherited wealth who have never chosen to use any of their capital in any economic enterprise, or worse still, financial support would have to come from the government itself. Nor can we conceive of a field in which persons are permitted to come in and bear the brunt of development, only to be excluded from normal enjoyment of the mature art and from normal expansion as the art and industry develop."

Senator Wheeler challenged this statement and said that "thousands" of radio people had started out on a "shoe string." Mr. Keye replied that he was talking about the pioneering money necessary to the expansion of the industry.

Mr. Kaye said: "In view of the urgency of the situation we believe that the Congress should define the Commission's power now and in terms so precise as to leave no possibility of error. On the necessity of precise language I should like to give an example which also illustrates Mr. Fly's point as to the flexibility of the Commission's counsel in argument."

Mr. Kaye quoted from the Court's opinion in the Stahlman case as follows:

'It does not embrace and should not be extended by implication to embrace a ban on newspapers as such, for in that case it would follow that the power to exclude exists also as to schools and churches; and if to these the interdict might be applied wherever the Commission close to apply it. This we think would be in total contravention of that equality of right and opportunity which Congress has meticulously written into the Act, and likewise in contravention of that vital principle that whatever fetters a free press fetters ourselves.'

Mr. Kaye said that "It is this case that was placed before the Commission by the Commission's general counsel, with an opinion which stated that the case 'indicates that newspaper ownership may be considered by the Commission in passing upon individual applications and indeed even seems to suggest that rules can be made with respect to newspaper ownership as long as they are not hard and fast rules barring newspaper ownership of stations under any circumstances.' We feel that this interpretation leaves the gate wide open for discriminatory rulings against newspapers and emphasizes our request that the legislation which you enact should be clear beyond possibility of misconception."

Mr. Kaye concluded: "The need for Congressional action, however, is not only admitted and clear. It is urgent. The discrimination which exists has already done harm which cannot be admeasured."

The hearings were recessed until Wednesday, November 24, 1943.

The hearings continued November 24, 1943, with Senators Wheeler, Chairman, Moore, McFarland, Clark, Reed present.

The Chairman presented as the first witness, Mr. Arthur Mosby of Missoula, Montana, operator of Radio Station KGVO, affiliated with the Columbia Broadcasting System, and said that he understood that Mr. Mosby had a plan for network option time which he desired to present to the Committee for consideration. Mr. Mosby introduced into the record the so-called Mosby Plan for network option time, whereby the networks would be optioned the first half hour of each hour during the day and the first three quarters of each hour during the night time. Mr. Mosby complained that under the present set up for option time the networks did not all have option time which coincided and as one advantage of his plan he cited the possibility for State hookups in connection with political campaigns, etc.

He said that his plan would permit a local station to set up a schedule which it could depend upon for local sale and would afford each station a portion of the most desirable time. He said that under his plan network shows would compete with network shows, and local shows would compete with other local shows, and that listeners

would be benefited by the regularity of local programs. He said he had distributed his plan widely throughout the industry and had "shown it to Mr. Fly who was quite enthusiastic about it." He read into the record letters commenting favorably upon his proposal from several stations, and said further that his plan should be incorporated in the law. Senator McFarland observed that while he found the plan interesting he felt that it would be very difficult to incorporate this theory into the law.

The Chairman inquired as to the "feasibility of your putting it into the Code of NAB" to which Mr. Mosby replied that he had not put it up to Neville Miller on that basis—and pointed out that neither Mutual nor Blue were members of NAB.

In answer to questions by the Chairman he proposed licensing of networks and stated they should be responsible for programs originated, not the stations. He advocated something other than revocation for penalizing stations' violations of minor technicalities stating that the fines should be "based on ability to pay."

He said he was in favor of granting equal time to answer commentators who malinged individuals. Senator McFarland asked whether he thought this granting of time should be limited to individuals who were attacked, or to answering the subject matter. Mr. Mosby said he believed it should be limited to the individuals malinged. Asked by the Chairman whether some time other than that used by the Commentator would be just as good to answer the Commentator Mr. Mosby replied, "No, because the adjacent time might be sold locally."

He proposed programming of network shows in a manner which would allow broadcasting of the show in the various time zones at the same hour. Asked how this could be accomplished he said it could be done by electrical transcriptions if the rule were removed which required they be announced as "electrical transcriptions." Asked why this could not be done anyway, he said "there was an aversion by the public to electrical transcriptions" that "he didn't know why and could see no reason why the rule should be in effect now because electrical transcriptions are just as good as wire lines."

SEYMOUR TESTIFIES FOR NEWSPAPER COMMITTEE

Mr. Whitney North Seymour, one of the counsel for the Newspaper-Radio Committee, next appeared. He said "I want to discuss the dangers to free speech and freedom involved in the Commission's proposed action. I know, of course, that the members of this Committee are entirely familiar with the ground which I shall cover and are as determined as anyone can be to see that these constitutional rights are preserved. But I hope the Committee will bear with me in covering familiar ground, so that the record may be complete." He further said that he believed that "Congress should make it clear in the statute that the Commission has no such power as it seems prepared to assert."

He said that the apparent theory of this Commission is to provide a media of expression to as many groups or individuals and to perform that duty they ought to limit those who now have one medium for reaching the public from acquiring additional media. He said that such a theory could lead only to the logical conclusion that "It would apply just as much to publishers of books, pamphlets, or magazines, to churches, universities, motion picture companies, public speakers, or any group or interest. Furthermore, the logical consequence of the present limited application of the theory is that one who is given a license for a radio station cannot thereafter acquire some other medium of reaching the public without losing his radio license. And if the theory is accepted, its logic requires that if one who is granted a radio license thereafter acquires a newspaper or magazine, or publishes pamphlets, or is offered a pulpit, or acquires a motion picture theater, or other medium of expression, that person can be deprived of his radio license."

Following a discussion of the background and historical setting of the adoption of the 1st Amendment to the Constitution, he said: "Of course the Amendment does not mean, and we do not contend, that everyone must be given a license for a radio station, but it does mean, and we contend, that the Commission has no power, and cannot be given power, and should now be explicitly denied power, to grant or deny licenses on an arbitrary basis of saying that one competent to have a radio license cannot do so if he has some other way of reaching the public. Nor do we contend that the First Amendment bars the Commission from the full exercise of its proper power to see to it that particular radio stations do not abuse their privileges. . . . It is but a short step from these preliminary experiments to the conclusion that, to perform its full duty of Government under the new theory, the Commission should license, first, the minority groups which have no equally effective way of reaching the public. To do that full duty, the Commission will necessarily favor some class or interest over the classes or interests excluded. The Commission will have to redistribute radio licenses to those so favored. This process will not only give the Commission power to restrict opportunity, the Commission must then choose who shall have the opportunity, so made available. So it would be quite logical for the Commission to say: The Republicans and the Democrats have access to newspapers; they have many speakers, they have wide audiences, so we ought to grant radio licenses to the minority groups, such as Communists and other groups who do not have the same opportunities. Or the Commission might consistently say the Catholics, the Baptists, the Presbyterians, have large followings, so we ought to license, first such groups as Jehovah's Witnesses, who do not have the same opportunities to reach large congregations. And when Government exercises such power in any degree there is

necessarily an abridgment of the liberty guaranteed by the First Amendment. . . . We believe that Congress should stop the departure from historic principle and experience now by an explicit prohibition, before we even find out by bitter experience how far the present or future members of the Commission proposes to press the new theory.

"Where this new theory is applied to newspapers as a class, it has particular dangers. Not only does it result in denial to the press of the same right of access to a new medium of expression enjoyed by others competent to enjoy it, but it strikes directly at freedom of the press. Many newspapers have acquired radio stations in order to gain a wider opportunity to serve the public and to increase and safeguard their economic stability. Such measures are proper steps to promote and retain their economic independence. We all know that economic independence promotes independence of thought and action in any field. To deny to the press as a group the right to expand its sources of revenue through radio, and also to deny it, as an inevitable consequence, new opportunities for expansion, some of which are not even envisaged, strikes directly at the freedom of the press. By thus forcing a choice for those who might otherwise choose to utilize both media of communication, i.e., press and radio, the Government would, in effect, be limiting members of this group in their right to publish newspapers. This latter right is indisputably guaranteed by the First Amendment. Since to have a right means simply that one is privileged to do something without fear of sanction, the only distinction between such a limitation as the Commission proposes and one, let us say, penalizing a certain group for publishing newspapers or for expanding circulation, is in the nature of the sanction. If the Commission has this power, there is no reason why some other agency may not be given authority directly over the press, regulating all of its activities. And such power cannot be limited to the newspaper press, it can reach all publishers. Such an economic sanction as is now contemplated may be a far more serious restraint or penalty than a direct tax or fine. It can strangle the press economically as effectively as more direct burdens. So, while application of the theory to any group or class would be destructive of liberty, the proposed restriction on the press must cause particular alarm."

The hearings adjourned until Monday, November 30, at 10:00 a. m.

National Association of Broadcasters
1760 N STREET, N. W. ★ ★ ★ ★ ★ ★ ★ WASHINGTON 6, D. C.
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Glade Appears in Support of NAB Code

The Senate Hearings on the White-Wheeler Bill resumed on Monday, November 29, with Mr. Earl J. Glade, KSL, Salt Lake, Utah, past Chairman of the NAB Code Committee, as the first witness.

Present: Senators Wheeler, Chairman, White, Moore, Tunnell, McFarland, Stewart, Tobey, Reed, Hawkes.

Mr. Glade described the spirit behind the development of the Code to be a general desire on the part of the Industry to raise the standards of quality of broadcast practices and programs. He said the tentative Code had been adopted in the hope that the majority of the stations would approve its adoption. He pointed to the fact that there was nothing mandatory in the Code, but indicated the effect of the Code by citing the results in the reduction of time alloted to commercial announcements. He said the Code was designed to protect the American System of Broadcasting and that the accomplishments of the Code included: Reduction in volume of advertising copy; removal of unpleasant types of commercials, improvement in the quality of children's programs and the elimination of considerable "demagogy over the air," by the adoption of the Controversial issues and non-sale of broadcast time for such issues, section. He called attention to the fact that we, as listeners, are inclined to criticize the industry on the basis of the poorer types of programs and commercials, to which Senator Wheeler agreed, but observed, "It is these small minorities doing what they shouldn't do which brings down the regulatory control over an entire industry."

Mr. Glade stressed the importance of the 7-10 P. M. time, and said that portion of the broadcast day should not be subject to quick changes.

Senator White asked what was his opinion of the controversial issues section of the proposed bill and Mr. Glade indicated that he would appreciate seeing that done by statute.

Mr. Glade favored a proposal by the Chairman that certain time for controversial issues be set up by the networks on their own option time.

JUDGE SYKES TESTIFIES

Judge Eugene O. Sykes, former Chairman of the Federal Radio Commission and the Federal Communications Commission, appeared, first as an individual. He supported in principle the division of the Commission's functions as proposed in the Bill, stating the different concepts between common carrier regulations and broadcast regulations, called for such a division. He opposed the Chairman's sitting as ex-officio on both divisions, pointing out that such division would result in a four-man body—subject to tie-vote. He said it would be helpful if the Chairmanship of the Commission and each division rotated annually and that he felt such procedure should be set up by Statute. He indicated that he agreed with the duties outlined in the Bill for the Chairman stressing the importance of the functions to be assigned to him.

Turning to the other provisions of the Bill Judge Sykes said he could not see any objection to the words "aggrieved" and "adversely affected" since they had been in the Act since 1927 and had caused no confusion. He said further that the Appeals and Intervention Section of the proposed Bill should be adopted. The Chairman agreed with Judge Sykes that anyone who had the right to appeal should have the right to intervene before the Commission.

Judge Sykes called attention to the trouble caused by Section 312 of the Act in connection with "revocation" and said that the Commission is confronted with the possibility of doing only two things in case of violations—either renew the license or revoke the license. He suggested some middle ground along the lines of "the penalty fitting the crime."

Senator Wheeler asked Judge Sykes what he thought of the Declaratory Judgments proposal and he said that while he had had no personal experience with it others seemed to think it a pretty good thing.

With reference to Section 8, Judge Sykes supported the objectives contained in the proposal and disagreed with Senator Wheeler that if the Section were written into the law, it would preclude the Commission from denying application for a license to one who had abused his privileges with programs "contrary to the public interest."

Judge Sykes next appeared for the Newspaper Committee, stating that there was little he could add to the testimony of the three other witnesses for the Newspaper Committee, but he did want to point out that the proposed wording was for the purpose of meeting an objective of non-discrimination against applicants because of the type of business in which the applicant was engaged, and pointed out that the provision related

only to lawful businesses. He said further that nothing in the proposal would preclude the Commission from considering the moral character of a licensee.

The Hearings were recessed until Tuesday, November 30, at 10:00 a. m.

COMMISSIONER CRAVEN SUPPORTS LEGISLATION

The hearings continued on Tuesday, November 30 with Commander T. A. M. Craven, a member of the Federal Communications Commission, as the only witness.

Committee members present were Senators Wheeler, Chairman, White, Moore, Tobey, McFarland, Truman.

Commander Craven stated that the proposed legislation under consideration is sound but left certain aspects of the Commission's problems unanswered. He pointed to the fact that "no one can predict with accuracy either the technical course of future developments or the economics which will affect their progress" and pointed to the developments and demands for radio services coming out of the war, and said, "The real surge of recent inventive activities has centered around electronic research in the micro waves. This means that the present useful radio spectrum will be extended three hundred fold, thus making space not only for some sorely needed radio channels for domestic communications and broadcasting but also for some new uses of radio. While these will be short range uses, it will be possible to link radio stations to constitute a system. For example, it has been predicated that present-day telegraph trunk lines will be replaced by radio so that in the future we will no longer see telegraph lines strung on poles. The development of new circuits, new electronic tubes and new types of antennas has opened a wide vista for the peacetime application of electronics to all sorts of activities, including communications and broadcasting. To me, the most interesting development is that which includes what I shall term "wide band transmission." This research will facilitate television and electrical methods of transmitting quantities of printed matter. Frequency modulation is another recent development which will improve the quality of reception and extend the range of local radio stations as well as accommodate a larger number of broadcasting stations in the nation."

He said, "While we shall be faced with the same *basic* problems of economics and electrical interference in the future as we are today, it is obvious that we shall have new communication problems for Congress and the Commission. The present day limitations will be obsolete and forgotten. Therefore, it seems essential that we do not base long-term legislation upon what may appear to be an acceptable solution of today's minor radio troubles.

"This does not mean that we should hesitate or falter in enacting today new legislation setting forth *guideposts* for the future. On the contrary, it seems all the more important that there be enacted now new legislation correcting the mistakes of the past. The only precaution required is that the character of the legislation be not such as to regiment or limit the application of achievements of science along narrow or impractical grooves. No one desires an era of abuse of privilege. On the other hand, it is unwise to impede the trend of technological progress.

"It is likewise important that the pioneers of the future be afforded an opportunity to evaluate the risks they will encounter. In this connection, they will be encouraged or discouraged in proportion to the known rights or restrictions imposed by regulatory conditions under which they must operate. If these conditions or rights are vague or subject to change at the whim of an all-powerful regulatory agency, we can expect hesitancy on the part of private enterprise to pioneer in new technological fields.

"It is now obvious to me that the Communications Act of 1934 as interpreted and administered at present, has cast doubt upon the rights of applicants for and licensees of radio stations and also as to what extremes regulatory power may be exercised. The removal of this doubt should be extremely helpful not only to a Communications Commissioner but also to future pioneers in the application of technological progress to the service of the public.

"The future responsibilities of the Commission will be great. With a law such as we now have, I fear that confusion lies ahead in the most critical stage of the history of radio. Without a clear definition of the Commission's responsibilities and limits of power, and without a clear indication of the philosophy of regulation which Congress desires to be applied, the Commission is certain to be confronted in the future as it has been in the past with charges of either failing to do its duty or else exceeding its power. Even both of these charges may be leveled simultaneously.

"Broadness of vision is required when regulating technological progress. Yet, heretofore, the position of Communications Commission has not been considered sufficiently alluring. This is not derogatory to those honorable Commissioners who have given their service to their Government, but it emphasizes the importance of Congressional guideposts outlining in broad terms the character or philosophy of regulation which should be applied in the future. We require legislation containing statements of broad policy, together with such checks and balances as are deemed necessary to insure the development of radio as an American enterprise in which the public has confidence. In my opinion, the Communications Act of 1934, as now interpreted and administered, does not meet this standard.

Senator Wheeler asked, "In what way?"

Commander Craven replied: (1) It does not set forth the rights of licensees. (2) It is vague as the limits of the Commission's powers. (3) Limits of legislative powers by the Commission are not

sufficiently defined. (4) He believed the Commission should be required to come to Congress to set forth changes in policy.

Commander Craven said further, "Likewise, there is a relation between regulatory philosophies and radio frequency allocation. If there be allocated only a few channels it is possible that strict Government regulation of many phases of broadcasting might become necessary. On the other hand, if there are many channels, the entire relationship between Government and private enterprise might be most liberal."

"There is a relationship between freedom of speech and radio frequency allocation. If there are sufficient channels allocated to broadcasting to permit the establishment of as many stations as are feasible economically, radio will become reasonably "free" and the doctrine of unlimited competition can prevail. On the other hand, if radio frequency channels are scarce, we shall continue to have with us all of the problems of a limited medium for the dissemination of facts and opinions."

He recommended that in view of the broad public questions involved in the allocation of Bands of frequency to Government Departments and to private enterprises, the Interdepartment Radio Advisory Committee should be legalized.

Senator Wheeler observed that no matter what kind of a law you would write to legalize the IRAC nothing could compel the President to listen to whomever he pleased on allocation problems.

A FREE RADIO

"It would appear to be good statesmanship to rely upon natural laws to secure progressive improvements in radio as an instrumentality of free speech," said Commander Craven, and when asked by Senator Wheeler what he meant he pointed to the increasing "interest" by the Commission in program content, citing (1) the "Lost Horizon" broadcast case, (2) to foreign broadcasts, (3) the atmosphere of the Blue network hearing, during the course of which he said he "wondered whether I was in America."

Senator Wheeler said that freedom of speech means equal opportunity so both sides can be heard and Commander Craven said, "There is one place where you won't get freedom of speech and that is by resting it in the hands of the Government.

In connection with the proposal by Senator Wheeler that a person slandered be given the legal right to reply with the same facilities Commander Craven said that "the difficulty is that the answer to the slander will also be just as slanderous and will in the long run degrade broadcast services."

He further said: "I prefer to rely more on the potentialities of greater opportunities for competition in the future than upon amendments to the law which in themselves may give rise to other serious problems involving the control of free speech. On the other hand, if this Committee rejects this concept, I hope they will at least limit their amendments to provisions prohibiting broadcasters from imposing harsher conditions upon opponents than upon proponents, or that these amendments go no further than prohibiting the use of a licensed radio broadcasting station for the dissemination of political, social and economic philosophies which reflect solely the views of one person or a single school of thought. Moreover, I must caution that in any legislation dealing with rights of access to the microphone, careful draftsmanship is required to prevent interpretations which would result in making radio available only to those having adequate purse strings."

* * *

"We know there are persons who believe a large portion of the nation is anxious to hear their messages. However these persons sometimes forget that the greatest invention of the age is the radio push-button, and that eight families out of 10 are very likely to "push the button" whenever they hear the beginning of an oration rendered by the average speaker. Of course, many deep thinkers of the country listen to the many speeches which are transmitted over the radio. On the other hand there are many instances in which a radio station loses the audience during the broadcast of speeches, much to the delight and comfort of its competitors who may be broadcasting Charlie McCarthy or some other popular entertainer.

"The foregoing facts may not be pleasant. Nevertheless, I am certain that the statesmen of this Committee will give them consideration when legislating rights of access to the microphone. Also these facts, among others, should be weighed, when legislating "fairness" into radio. Therefore if you decide to legislate "fairness" into radio and desire to specify rights of access to the microphone, would it not be preferable to enact a law which prohibits certain known abuses rather than to draft legislation which prescribes how the objective must be accomplished.

"While most of us wish that minorities with meager pocketbooks could have the opportunity to express their views to the public by radio, it seems obvious that the doctrine "Freedom of Access" is not the solution of the radio problems of today. No one can even guarantee that all minorities can be heard adequately at opportune times even if all broadcast facilities were made available exclusively for speechmaking.

"There are persons who advocate that the broadcast licenseee should have the sole responsibility for curing today's radio evils. While this doctrine has much merit, it is possible that it alone will not solve the problems. Under this doctrine, the licensee would be required to adjudicate whatever rights any person may have to use the microphone. Unfortunately, even if Solomon were a radio licensee today, he would be subjected to severe and perhaps apparently just criticism of the operation of his broadcast station.

"Radio broadcasting is cloaked with a public rather than a private interest, it cannot become a common carrier and still be useful to the public. Also, it is impossible, from a practical standpoint,

to accord everyone a right to use a radio broadcasting facility for the simple reason that there never will be enough time in which such a right could be exercised.

"Certainly under these conditions it must be obvious that the broadcast licensee has a responsibility to see to it that radio shall be utilized in conformity with the desires of the public. This means that he should not violate ethics or otherwise abuse power or privilege. He should attempt to make his facilities available for a fair and impartial dissemination of information and opinion. On the other hand, it must be recognized that the broadcast licensee cannot exercise his responsibility to the full satisfaction of the entire public. It is unreasonable to expect a broadcaster to adjust to the satisfaction of the entire public the desires of good citizens who conform to good ethics and yet who apply for radio time to voice their views before the public. Some minorities are bound to be dissatisfied, in spite of the impossibility of attaining unlimited access to the microphone. Thus, the solution of radio problems does not reside solely in the hands of today's broadcast licensees.

"On the other hand, I realize that the Congress is trying to correct an alleged abuse of privilege on the part of some of the so-called radio commentators. However, confusing this issue is the fact that many persons hesitate to agree that millions of the public will listen to someone from whom they hear a little news, some biased editorials and even perhaps a little gossip. I also realize that there are complaints to the effect that some of the networks appear to have most of their commentators reflect indential philosophies with respect to controversial matters of a political character. There are many allegations to the effect that it does not appear to be mere coincidence that the majority of commentators on a certain network advocate the same philosophies.

"As to the solution of this problem, I suggest the difficulty of effecting a cure by legislation alone. Additional courses of action are necessary. Therefore, policies dealing with the matter, such as those recently announced by the Columbia Broadcasting System and by an independent broadcaster named Ed. Craney, are constructive. They indicate a movement on the part of broadcasters themselves to solve this question of fairness on the radio. However, there may be necessary legislation requiring broadcasters to see to it that the actual sponsors of commentators or other political speakers are made known. Likewise, it may be desirable that the broadcaster himself be not relieved of responsibility for slander where the evidence indicates that the broadcaster did not exercise due diligence in presenting such slander. On the other hand, I do not believe the broadcaster should be held responsible for slander uttered over his station when he can show that he did not know of the intent, and had used reasonable diligence in the premises to prevent slander.

"In the discussion of non-slanderous matters over the radio, we can well afford to take a different view. In this field, it appears entirely logical that the general public should be able to hear the various sides of controversial questions which affect the public interest. It is here likewise that I believe Mr. Craney and the Columbia Broadcasting System have indicated constructive thinking and a desire on the part of the industry to solve this difficult problem. Likewise I believe that the code of the National Association of Broadcasters, while not perfect, is a constructive step in this direction. Moreover, the political candidate section of S. 814 as well as Section 315 of the present Act is sound in principle in so far as it accords equality of treatment to candidates of public office.

"In this hearing there is advocated an extension of the right of political response on the radio. These advocates desire that an equal opportunity be accorded for response to radio addresses of a political, social and economic character. Now there is no great objection to this in principle. The objection is to the method suggested in S. 814 and in the discussions at this hearing as to precisely how broadcasters must accord fair treatment to all sides of controversial questions. In my opinion, the sum total of these legislative suggestions made heretofore will more likely turn radio into Utopia for the "crackpots" of the country than to put fairness into radio. The suggested legislation will merely make radio less valuable for the dissemination of facts and opinions where and when it counts.

"I feel certain that the public would prefer the combination of the radio push button and competition as a control of the composition of radio traffic. The public will resent having a Washington Bureau say who can or who cannot speak over the radio. Unless care is exercised, we will regulate radio so much that we will not have a radio worthy of the name to serve the public interest. And, lastly, if we do not safeguard a constitutional principle, we will be unable to recognize radio as a medium having rights similar to those accorded the press in the first Amendment to our Constitution.

"Now as to those broadcasters who present problems involving the abuse of privilege. They may not be considered good broadcasters. Therefore, there should be a method of penalizing those broadcasters who abuse privileges. In my opinion, however, the method should be somewhat different than it is now. At present I believe too much power rests with seven men in Washington to control the composition of radio traffic. We should not give the Commission such powerful control over every broadcaster merely to punish the few who abuse their privileges.

"I would suggest, therefore, that you could write into the law a prohibition against broadcasting misleading information, against malicious incitement to riot, against malicious stirring of religious passions or racial hatreds, or against any other abuse which you desire to correct. You could provide penalties for violation of these sections of the law. However, those who are charged

with alleged violations of these penal sections of the law should be granted a trial by jury in the Courts of the land. Then, when and if they had been adjudged guilt- in competent courts, you could permit the Federal Communications Commission to take into consideration such evidence of guilt. If this evidence of guilt were for repeated offenses or for a very serious offense, the Commission could be empowered to revoke the radio license of the guilty person.

The hearings adjourned until Wednesday, December 1, at 10:00 a. m.

Senate hearings resumed on Dec. 1, 1943, with Senators Wheeler, Chairman, Tobey, White, Tunnell, Moore, Brooks, McFarland, Hawkes present.

Mr. Lewis G. Hines, Legislative Representative of the American Federation of Labor was the first witness. He introduced into the records the resolution adopted at the Boston Meeting, reading as follows:

> WHEREAS, In its 1942 report the Building and Trades Construction Dept. pointed out in detail the vast potential possibilities of post war building trades employment in the indicated development of the Television, Frequency Modulation and electronic industries, and
>
> WHEREAS, The expansion of radio broadcasting, television Frequency Modulation facsimilie and allied electronic services can best be furthered through the broadest possible application of the traditional American free enterprise principle, and
>
> WHEREAS, The U. S. Supreme Court in its decision of May, 1943, has so interpreted the present Federal Communications Act as to empower the commission to take practically any action it chooses with reference to radio program material and the business relationships of broadcasters with a resulting serious threat of Governmental domination of Broadcasting content.
>
> THEREFORE BE IT RESOLVED, That the American Federation of Labor urge that the Congress of the United States should at the earliest possible date assure the preservation of Freedom of Speech on the airways by enacting changes in the present Communications Act prescribing the limits of Government supervision of the radio and allied industries and definitely safeguarding broadcasting from any actual or implied government censorship authority over program content. By such reconsideration of the Act, we believe a secure foundation would be laid for the post war expansion of the radio, television and other new electronic industries upon a free and constructive competitive basis.

Mr. Hines then introduced Mr. Philip Pearl, Publicity Director for the A F of L who cited his experience during the six years he had served with the A F of L and said that the networks had complied with every reasonable request for time on the air. He said he wanted this system to remain in effect and indicated that the A F of L did not desire the privilege of buying time, but in general they desired to continue to receive the use of free facilities, on the present basis.

Mr. Pearl indicated the position of the A F of L as opposed to the Solicitation of Membership Section of the NAB Code, as in some localities during organization campaigns they felt it was necessary, and desired the right to buy time. He said he was quite pleased with the time which they and the CIO had received from the National Broadcasting Company, which arrangement had been made through the help of NAB and expressed the hope that next year this time might be increased over other networks.

Mr. T. A. M. Craven was called to the stand and continued his testimony, as follows:

CONTROL OF MONOPOLY

"While I would suggest a prohibition against Commission control of the economics of broadcast licensees, I do not believe anyone would condone monopoly in broadcasting. I advocate competition and I believe that all unreasonable restraints upon competition should be prohibited and when persistent, should be punished. There is no right which I believe should never be granted to any broadcaster. That is the right to be free of competition. The mere fact that there exist opportunities for competition is insurance to safeguard the interests of the public and to control abuses. It is only the most narrow-visioned broadcaster who would fail to be influenced by the powerful control which threat of competition impels. In my opinion the withholding of any right to be free from competition is a better guarantee of radio service in the public interest than any regulated monopoly could provide. I recognize, of course, that destructive competition can affect adversely the radio service the public is entitled to receive. In this connection, however, the decision of the Supreme Court in the Sanders case suggests the logical course of action to be pursued. I likewise recognize the persuasiveness of the arguments of those who would make certain that the principles of the anti-trust statutes are applied to broadcasting in all respects. Therefore, it may be desirable to include in the Communications Act some special provisions governing certain business aspects which are peculiar to broadcasting and are not encountered in other business enterprise.

"These suggestions are not inconsistent with my previous testimony on this subject before this Committee. In my last appearance before this Committee, I was opposed merely to the promulgation of chain broadcasting regulations by the Commission. In general, my opposition was based upon the premise that the Communications Act of 1934 did not empower the Commission to regulate the business aspects of broadcast licensees. I believed the Commission had exceeded its power and should have confined its action either to making

recommendations to Congress or reference to the Department of Justice or the Federal Trade Commission. I likewise believed that the rules as then proposed were unsound from the standpoint of good broadcasting service to the public in that they tended to destroy the effectiveness of national networks as a service to the nation as a whole.

"Five of the seven Supreme Court Justices who participated in the decision on the chain broadcasting case did not uphold my viewpoint. A minority of two appear to have supported my premise. In view of the potentialities involved in the majority decision of the Supreme Court and in view of the logical reasons propounded in the minority opinion of that Court, I am more convinced than ever that it is best for this country to limit the Communications Commission to the scope of the Communications Act and to require the Commission to recommend to Congress from time to time what changes in the law are considered necessary. I cannot urge too strongly that Congress clarify the Communications Act of 1934 so that this may be the future procedure.

"Several new factors have entered into the chain broadcasting regulatory situation since my last appearance before this Committee. The Commission has eliminated some of the impractical provisions of the original regulations. Radio has been benefited by an abnormally peculiar situation arising out of the war, and lastly, recent scientific developments of the war appear to offer some alleviation of the inherent limitations caused by the dearth of radio frequency channels allocated to broadcasting.

"In view of all the developments of the recent past, I can now agree that it may be helpful for Congress to enact certain provisions which will serve as guideposts to the industry, but which do not, directly or indirectly, control its economic or program development. Therefore I suggest the enactment of provisions of law which would prohibit the licensee of any broadcast station from entering into any contract or any other arrangement with a network organization containing any or all of the following five restraints upon the ability of a licensee to exercise his responsibility: (1) where the station is prevented from broadcasting public service programs of any other network organization, (a public service program could be defined as any program broadcast under the provisions of Section 315 of the Act by candidates for public office; all programs broadcast by any public officer or on behalf of any government, either local, State or national; and all sustaining programs broadcast upon behalf of any religious, charitable, scientific, literary, educational, patriotic, or fraternal organization); (2) which prevents the station from rejecting or refusing network programs which the station reasonably believes to be unsatisfactory, unsuitable or contrary to the public interest, or from substituting therefor a program of outstanding local or national importance; (3) which prevents another station serving a substantially different area from broadcasting any network program or programs; (4) which provides by original term, provisions for renewal or otherwise that the station will broadcast the programs of the network organization for a period longer than three years; or (5) which gives the network organization an option upon periods of the station's time which are unspecified, or which can be exercised upon notice to the station within less than a reasonable time, such as 28 days.

"With these safeguards imposed by the law itself, I believe that the present good aspects of radio broadcasting service can be maintained or improved, that the bargaining position of both the network and the station will be preserved, that licensees will be free to exercise their responsibilities to the public, that the excellent public service facilities of radio will be improved, and that the overall result will be far superior to the adoption of any plan whereby both networks and licensees are subjected to the ever-changing views and philosophies of an everchanging licensing agency.

"If the Committee rejects this suggestion and in lieu thereof desires to incorporate the substance of the Commission's present rules and regulations, may I again emphasize that in spite of all the contentions to the contrary, the rule on time option will ultimately result in deterioration of the value of radio as a medium for the dissemination of facts and opinions to the nation as a whole. I also fear that in the long run, the effect of this rule will be to limit opportunities to use radio broadcast facilities to those who have adequate purse strings. If the Committee does not agree with my conclusions with respect to time option, I urge most strongly that you apply specific time option limitations only to situations in communities where there are a smaller number of radio stations than national networks. In any event, limit the power of the Commission to regulate the business aspects of broadcasting. The cease and desist method is perhaps preferable to the use of licensing power to enforce rules governing business practices and in this connection, why not let the Federal Trade Commission have jurisdiction. If diversification of radio licenses among many persons is a good principle of radio, it would appear that a diversification among Government agencies of power to control the different aspects of radio is not altogether unsound.

DUE PROCESS

"The proposed bill contains certain provisions modifying existing procedural processes governing the rights of applicants and licensees to a fair hearing. I am not a lawyer. Consequently, I should confine my remarks to generalities. In my opinion, the proposed provisions appear to afford applicants and licensees clearer rights for a fair hearing before the Commission and for appeal therefrom, than is the case today. However, I must confess that I would be for any procedure which could be agreed upon by a majority of unbiased lawyers, provided both a fair hearing and

prompt dispatch of the business of the Commission were guaranteed.

"I do not believe that broadcast licensees should be immune from the application of other laws of the country. Neither do I believe that the Commission should be deprived of power to determine whether licensees are disqualified to operate radio broadcasting stations because of violations of laws not specifically within the jurisdiction of the Commission. However, I do believe that these licensees should be free from the necessity of having the Federal Communications Commission determine, directly or indirectly, whether licensees are guilty of alleged violations of law, other than those specifically placed within the jurisdiction of the Commission. Radio licensees should have the same rights as any other person to the judicial processes guaranteed in the Constitution.

"A procedure could be established whereby the Commission, in determining the qualifications of licensees, could consider violations of law not within its jurisdiction. For example, the legislation could provide that the Commission may consider such violations when there is evidence of guilt adjudicated by courts of competent jurisdiction. This procedure would afford both due process and at the same time protect the public interest. However, the Federal Communications Commission should not be permitted to revoke a license merely because an official of a licensee corporation violated some law and such violation had no relation to the operation of a broadcasting station. The proposals in S. 814 do not incorporate this suggestion and therefore, in my opinion, the proposed legislation does not go far enough in defining the Commission's powers. The same doubt which exists today appears to be carried forward in the new legislation. It seems that the Commission is still empowered, when considering the qualifications of licensees for renewal of licenses, to determine whether such licensees have violated laws other than those specifically under the jurisdiction of the Communications Commission. While it may be true that today the Commission is not empowered to determine directly whether a licensee is guilty of alleged violations of such laws, it is equally true, in my opinion, that the Commission can indirectly make such a determination and that, if the licensee is guilty in the mind of the Commission, the latter has power to refuse to renew the license. Sometimes punishment depriving the licensee of his investment can be more severe than the punishment which would be accorded in the courts after trial by jury. It is my belief that the Commission should not have this indirect power because it does not accord to licensees the due processes of law guaranteed to them in the Bill of Rights and it also amounts to an unfair concentration of judicial power in an administrative agency.

COMMISSION ORGANIZATION

"The bill provides for a reorganization of the Commission. In general, I believe these proposals are an improvement over those provided in the present law and likewise constitute a considerable improvement over the system now being utilized by the Commission. Some criticism has been leveled at the wording of the proposed legislation because it has been interpreted that the Chairman of the Commission is shorn of power. While I think it advisable that the powers of the Chairman be specified, I do not believe he should be deprived of having a voice in the formulation of policies and regulations governing any phase of communications. Consequently, I believe that the Commission as a whole should be empowered to formulate regulations and policies and, that in any hearings involving a change in policy or the establishment of a new policy, the entire Commission should be authorized to sit and decide the issues. While at this moment the relationship between broadcasting and common carriers may not be clear, it is entirely possible that policies affecting common carrier communications will have a direct effect upon broadcasting and vice versa. Therefore, I can visualize the desirability, when broad policies are being considered, of bringing together the two groups of men charged with the regulation of each of these phases of communications. This is particularly true when allocating radio frequencies to the various communication services. The number of channels assigned to broadcasting have a direct bearing upon broadcasting regulatory philosophies. Likewise, the type and character of communications systems in the common carrier field and the policies with respect to competition will affect the number of channels which can be assigned to these services. Thus, the various phases of communications must be considered as a whole when allocating frequencies to services. Therefore, it seems advisable that not only should all of the Commissioners understand the broader aspects of all the problems of communications, but also that the Chairman of the Commission be empowered to cast his influence and his vote as one of the seven members of the Commission on all matters of policy and regulation. While my interpretation of the proposed legislation indicates that the Chairman and the Commission are given such power, I desire to make certain that the claims of those who do not interpret the legislation as I do, are given due weight.

"It may be thought that advocacy of the requirement that all Commissioners understand the broader aspects of all the problems of communications nullifies arguments for the separation of the detailed functions of the Commission. This is not a valid criticism. The fact is that no person can exercise proper judgment in individual cases and at the same time provide the basis of an efficient dispatch of business if he has to act upon every case presented before the Commission. Moreover, if he is to be burdened with the details of all the individual cases, he has no time to consider properly broad matters of policy.

"It makes no difference, from the standpoint of efficiency, whether you have a seven or twenty-five-

man Commission if all the members are required to pass judgment on all cases. Such circumstances are bound to result in ineffectiveness or else in a trend toward the policies of the man having the strongest political support.

On the other hand, if the work of the Commission is to be subdivided among the members, it seems clearly evident that the responsibilities of the Divisions as well as the Commission and its Chairman should be defined.

"Therefore, in my opinion, the organization provisions of S. 814 are sound in principle and should be adopted by the Congress.

JOINT OWNERSHIP OF RADIO AND NEWSPAPERS

"I am informed that the Committee has considered the question of newspaper ownership of radio stations. Again, may I call your attention to the radio developments arising out of the war. It seems to me that an allocation of a larger number of radio frequency channels to broadcasting would go far toward solving any questions arising out of the joint ownership of radio stations and newspapers. It likewise seems to me that legislation which prohibits newspapers from securing radio stations in the future is more likely to retard the application of new radio developments to the service of the public than to correct potential abuses. But beyond this, there are other phases of equal importance that should be considered by the Congress before enacting legislation prohibiting joint ownership of newspaper and radio stations. I know that some of us do not particularly enjoy editorials and commentaries which adversely criticise persons in public office. It seems unfair to use the power of the press to play up one viewpoint and play down others. On the other hand, many of us have benefited by criticism in the press. And we know that our forefathers thought enough of the benefits of criticism of public officials to insist upon the doctrine of a free press and free speech. Therefore, public officials have to proceed with caution when limiting the rights of citizens to engage in an enterprise utilizing a medium of free speech.

"I agree that there are differences between public and private communications and the stations engaged in such communications. I believe that the Congress might be justified in providing special or different qualifications for the licensees of those stations which engaged in public as distinguished from private communications. However, I do not believe that any such classification should be predicated upon the occupation of other business interests of the owner of such station as has been suggested in the newspaper field. I consider such action both unnecessary and dangerous. Moreover it constitutes an undesirable precedent. If similar prohibitions were applied to the acquisition by existing broadcasters of frequency modulation and television stations, it is likely that new radio developments would be so retarded that the public would be denied benefits of new inventions in radio.

I recognize that an important problem of public policy concerns diversification in the operation of the media for the dissemination of facts and opinions. Of course, diversification of control of these media is desirable. On the other hand, whether this objective should be obtained by legislation which discriminates against one class of persons or which prevents any one from owning stock in an organization operating a particular kind of medium for free speech, raises questions in a free democracy almost as serious as monopolistic control of the media for the dissemination of facts and opinions.

"Another problem is an economic one, particularly in small communities where radio competition with the newspapers may spell disaster to the latter. It is difficult to understand why combinations between the two should be prohibited, if such prohibition should result in poorer radio service and perhaps in destruction of either or both the newspaper and the radio service. Under such circumstances absolutely nothing would be accomplished except destruction of service to the people.

"In so far as I can ascertain, there is no evidence that newspaper owned radio stations have been operated as such contrary to public interest. In fact, they seem to operate very much like any other good radio station. However, if the Congress is to redefine and fix the qualifications of the licensee of any radio station which is intended to and does communicate with the public, I would suggest that it do so by providing that on and after a date to be fixed no license shall be granted for such a station except to a corporation whose charter and bylaws shall provide that the business of the corporation is limited to the business of broadcasting or chain broadcasting, together with such other business as may be incidental thereto. My reasons for this suggestion are not those advanced by the ones who advocate separation of the ownership of newspapers and radio stations; in fact, my reasons are not ones of ownership at all, but ones of convenience and the clarification of the status of certain existing licensees.

"Radio broadcasting, unlike most other industries, grew up in a large part as an adjunct of other businesses. Electrical manufacturing companies, newspapers, insurance companies, department stores, and others furnished the pioneer money for the establishment of many of our existing stations. They did so at a time when the ownership and operation of a station involved a considerable capital outlay and no revenue was in sight. As a result, even after broadcasting came to stand upon its own feet, we find it merged and sometimes confused with other businesses. Many organizations when confronted with this situation have formed subsidiary corporations for the conduct of the broadcasting business, while others have not. Under my suggestion all would be required to do so.

"Such action if taken would not deprive the present owners of their property in existing sta-

tions; nor would it prevent them from exercising an adequate and proper measure of control in the operation of such properties. It would, however, segregate the business of broadcasting from other and unrelated businesses, and to this end would facilitate both the work of the Commission and the duties of the licensee in making reports and supplying other information to the Commission. Moreover, it would end all confusion and speculation in any given case as to whether another business was supporting a broadcast station or whether the broadcast station was supporting another business. It would also disclose, through the books and records of the subsidiary company formed to operate the broadcasting business, any use which the other and unrelated business had made of the broadcast station for the purpose of advertising such other business.

"It goes without saying that if such a provision is enacted into law, it should be accompanied by a further provision which would direct the Commission to take such steps as are necessary to expedite the transfer of all outstanding construction permits and licenses for stations of this class to corporations which are qualified to hold the same. These corporations would of course be organized by and subject to the control of the present owners of the station properties. If further limitation of control is desired, the legislation could provide that the charter and bylaws of such radio corporations should prohibit interlocking directorates and duplication of officials in much the same manner as is done in public utility legislation.

CONCLUSION

"In my opinion, the Committee is confronted with the choice of two forms of administrative government. One choice is that where an agency of Congress has limited powers to regulate private enterprise within the scope of a law in which the rights of the regulated are defined and safeguarded.

"The other choice is that where an independent administrative agency has vast legislative and judicial powers to regulate private enterprise because the law does not either specify the limits of power of the agency or define the rights of the regulated.

"In my opinion the Congress should choose the first of these courses by enacting legislation similar to that suggested in S. 814. It is all the more important that Congress take this course when legislating in the field of communications, particularly in that phase which constitutes a medium for the dissemination of facts and opinions to the general public.

"The second course, in my opinion, is Bureaucracy in its extreme form, and constitutes a trend toward a change in the form of our Government, and, of equal significance, it seems to me, this course leads to regimentation of technological progress along the grooves charted by a centralized bureaucracy."

Senator Tobey asked whether Mr. Craven would be available at a later date in case the Committee desired to go further into his testimony. Mr. Craven indicated his willingness and the Chairman said if it appeared desirable later on he would be called back to the stand.

PIERSON OF PRESS WIRELESS SUPPORTS BILL

Mr. Joseph Pierson, President of Press-Wireless, Inc., appeared and after outlining Press-Wireless and its operations he stated that he supported the provisions of Section 5 (which requires the Commission to give notice and opportunity of hearing to persons adversely affected) as follows:

"With this background I proceed to discuss S. 814. Our principal interest centers on Section 5, which requires the Commission to give notice and opportunity of hearing to persons adversely affected, before granting someone else's application. It appears that the present law does not require this. In any event, the Commission seems to be construing it that way. It certainly is doing so in granting radio licenses to companies engaged in handling public correspondence as common carriers.

"I am not competent to speak on the detailed legal provisions of Section 5. I do not know the extent to which the desired result could be accomplished by various methods of intervention or protest or otherwise. The Section seems to have been drawn with an eye almost entirely to the problems of broadcasters, and it may be that it is too cumbersome to be applied literally to radio communications common carriers. I do feel certain that the underlying principle is sound."

* * * *

After outlining that Press Wireless has eight circuits, RCAC has nearly fifty and the Mackay companies about thirty circuits he said that Press-Wireless had applied for outlets, which had been rejected by the Commission, to include in their service Algiers, Oran-Algeria, Tunis, Palermo, Madagascar, Reunion, Tahiti, and that "the rejections had all occurred since last February 19th," and that RCAC or Mackay "is operating circuits to these points under authorization granted to them for the most part during the same period. Nearly all these actions have been taken without notice or hearing to persons adversely affected. They fall within two classes.

"The first class is illustrated by Santiago, Chile. We applied for a circuit with Santiago on June 18, 1943, and were turned down without hearing on July 27, 1943. We understand that the reason for the Commission's action was that there is already sufficient service between the United States and Santiago because of the fact that RCAC and Mackay have circuits to that point. This may be a legitimate principle of public utility regulation, although I would still insist that we are entitled to a hearing to determine whether the existing service is sufficient. I have not understood, how-

ever, that this principle stands in the way of a company that performs special services such as ours, and that introduces improved and more efficient methods of communication.

"The real point, however, is that when it comes to one of the other companies, the Commission goes on the opposite theory. If there are any two points in the world that have plentitude of communications facilities, they are New York and London, with the many cables operated by Western Union and Commercial Cable, the several circuits operated by RCAC, and the circuits operated by Press Wireless. The plentitude was so great that both Western Union and Commercial Cable were in the red before the war, had a tremendous idle plant, and were complaining to the Commission.

"Nevertheless, on February 3, 1942, without notice or hearing, the Commission authorized Mackay also to communicate with London on a temporary basis, to expire December 1, 1942. This emergency authorization was conditioned upon interruption of the North Atlantic submarine cable circuit between England and the United States, and was supposed to be founded on the interest of the United States, and was supposed to be founded on the interest of national defense and security. On April 21, 1942, again without notice or hearing, the Commission acted on the basis of a telegram from Mackay, and modified the special temporary authority so as to eliminate the emergency condition with respect to cable interruption. This modification was for a period of thirty days, but was renewed from time to time until February 25, 1943. Then it was converted into a regular license, again without notice or hearing, and London was thereafter included as a regular point of communication for Mackay. Thus Mackay's original emergency license, supposed to be founded on national security, was converted into a regular commercial license without a formal hearing and, so far as I know, without any information that could be properly characterized as evidence to support such a move.

"Somewhat the same process was followed in another case, with the result that Mackay now has authority to communicate with Moscow, which was already served by RCAC and Press Wireless. This, too, was done without notice or hearing. It may be that the Commission was right in its Santiago decision where we were concerned, but, if so, it was wrong in London and Moscow. If it was right in London and Moscow, it was wrong in Santiago. In all three cases it certainly was wrong in acting without hearing.

"Let me digress at this point to say that this experience serves to justify Section 1 of your bill. The Commission, apparently acting on the strength of a court decision in a broadcasting case, appears to believe that by calling a license something else, such as "emergency authorization" or "special temporary authorization," it can escape the requirements of the statute as to notice, hearing, and appeal. I trust that some way will be found to prevent this in the future, although I recognize there are certain emergency situations where prompt action is necessary, and the Commission should not be hamstrung by red tape.

* * * *

"Now I want to refer to the second class of case of action taken by the Commission without hearing. I am not sure that this is entirely the Commission's fault, but, in part, it must be. It is hard for me to keep straight in my mind just where the Commission ends and the Board of War Communications begins, since they both have the same very energetic chairman. It is also hard for me to know whether a decision of the Board of War Communications on policy really originates with the Army and Navy representatives who sit on that Board, or with this same chairman.

* * * *

"Mackay did not get the same idea for several weeks, but finally filed an application on February 8, 1943. In the meantime, RCAC also filed an application. Suddenly, on February 19, 1943, without notice or hearing, the Commission granted the Mackay application and turned down the Press Wireless and RCAC applications. As a result of insistence by RCAC and ourselves, we had a postmortem hearing early in May. The matter has not yet been decided, but Mackay has the circuit.

"This left to the Commission only to pick out which applicant should have the privilege. I say with confidence that Press Wireless had shown itself the company best qualified to do this job, and that even if you eliminate our company, RCAC was far better qualified than Mackay.

* * * *

"In rapid-fire order our applications for Tunis, Palermo, Brazzaville, Madagascar, Reunion and Tahiti have been turned down. I believe the next will be Naples and Rome, all without hearing. Mackay has been given some of these points; RCAC has been given others.

"In fairness I should add that we have at last had a hearing before a committee of three members of the Commission on November 18-19, 1943, to determine whether we are really an eligible company. No one else had had to go through such a hearing. The only facts brought out were of a simple nature, already available to the Commission and its staff.

* * * *

"We filed a motion with the Commission demanding that the other international carriers be made parties to the proceeding. So far, this motion has not been acted upon, but our hearing has been postponed until sometime in January. It is perfectly obvious that no intelligent appraisal of our rate structure can be made without comparing it with those of the other companies, and particularly in the radio communication field, without determining what principles shall be applied to all of them as against a small company such as ours, with a capital investment of only $532,000.

"I mention this because it leads me to support

what I believe to be the principle involved in Section 16 of the bill. As I read it, it is intended to instruct the Commission not to penalize persons in a manner not authorized by statute. Perhaps I am wrong in my interpretation but I firmly believe that no rate investigation would have been ordered against us if our stockholders had maintained abject silence over the injustice that was done in Algiers.

* * * *

"There is a real gap in the present law. The Federal Communications Commission determines what frequencies are to be allocated to communications companies, broadcasting stations and all other private companies and persons. The President, however, has absolute say as to what frequencies go to the Government departments, including not only the Army and Navy but the OWI, the Department of Agriculture, the Department of Commerce and others. Both the Commission and private industry are helpless if Government Departments make excessive or unjust demands for frequencies and the President upholds them. Private industry is helpless if the Commission through its Chairman, sides with the Government Departments at secret sessions. There is no forum or machinery for presenting the just claims of private industry. The Chairman of the Commission cannot possibly be an adequate spokesman for those claims. There is no one who stands in the position of disinterested arbiter between those claims and the claims of Government. Government departments are like private companies and individuals; all of them are under a temptation to demand more than they really need, having no regard for the needs of others.

"I have no specific amendment to propose to cure this gap. I simply leave it with you as a problem worthy of serious thought. The solution becomes all the more vitally necessary as the end of the war approaches. It is not solely a problem of Press Wireless or of radio-communication common carriers. The future fate of FM broadcasting and television will be settled in the same way, that is whether these new radio services will have adequate bands of frequencies set aside for them and whether the frequencies will be those best suited for the purpose or will simply be those that the Government Department don't want.

"Press Wireless urges legislation in all parliaments and conventions between all nations, which affirm and strengthen the freedom of the press. We mean more than freedom of expression. We mean freedom of movement. In the modern world one is the corollary of the other. Such measures do not create a privileged class. They destroy ignorance and intolerance on which the privileged classes prey and in which wars are born.

"Public information is the life blood of representative government and of world peace. Every effort to protect it from official caprice, as in this bill, should be supported by all the people."

On Thursday, December 2, 1943 the hearings were resumed.

Present: Senators Wheeler, Chairman; White, Tobey, Tunnell, Moore, McFarland.

Mr. Len De Caux, Publicity Director of the CIO was the first witness. Unlike the A. F. of L., which the previous day came out for an unfettered radio, the CIO, through Mr. DeCaux, proposed increased governmental control of programs and program content.

Chairman Wheeler at one point suggested that CIO might not want such broad powers vested in the FCC as Mr. DeCaux proposed. Labor might have a friendly FCC today, the Chairman said, but find itself confronted by an extremely unfriendly Commission some time in the future. Mr. DeCaux agreed that the exact degree of control the FCC should exercise was a problem, but he insisted that Labor should have some agency to which it might carry its complaints when refused time on the air.

The CIO submitted the following proposals, for legislation:

> "(1) That a larger proportion of free time should be made available to labor organizations than has been the case in the past, particularly in the form of regularly recurring sustaining programs.
>
> "(2) That labor organizations should suffer no blanket restriction on their right to purchase radio time.
>
> "(3) That labor organizations should suffer no blanket restrictions on their right to use the radio for the solicitations of membership or in organizing campaigns.
>
> "(4) That serious consideration should be given to the establishment of machinery for the relief of labor and other organizations in cases where there is a discriminatory denial of their right to buy or receive free time on the air."

Mr. A. Earl Cullum, Jr. Consulting Radio Engineer of Dallas, Texas now with Harvard Radio Research Laboratories was the next witness. He said he was appearing to present to the Committee his personal views based on his experience as an engineer practicing before the Federal Communications Commission. He limited his remarks primarily to Standard Broadcasting FM, television and various electronic developments coming out of the war. He stressed the fact that due to gains as a result of the war effort there would be a tremendous increase in frequencies available for use, and a tremendous increase in the number of trained technicians available for making use of these developments.

He said he thought that at the present time manufacturers needed to be planning for these developments so they could be in a position to make the models needed and so that their equipment will not be on a pre-war basis.

He said that the Standard Broadcasting now in use should and will be continued but it should be reorganized so that FM particularly in metro-

politan areas will be immediately available through frequency station bands for use in rural areas.

Senator Wheeler asked Mr. Cullum whether he felt that FM and Standard should be coordinated or whether they should be separate to which Mr. Cullum replied that he felt the present-day broadcasters had the knowledge and experience necessary to a rapid development of FM and that they should not be barred from going into this new field. Mr. Cullum further said that manufacturers needed to know what type of sets to build and every effort should be made to secure a decision at the earliest possible date as to what Bands of frequencies are to be used for FM and television.

Senator Wheeler asked Mr. Cullum if it was feasible from an engineering standpoint to duplicate stations on clear channels assigned to Boston and New York. Mr. Cullum replied that it is feasible but pointed out that a determination of policy would involve as to what channels should be kept clear for greatly increased power and then extend that range to even greater rural areas. A determination should be made as to whether practically unlimited power should be authorized or whether duplication of the same channels should be authorized.

Senator Wheeler observed that from a local standpoint a local station had the most value and from a social standpoint the local station should be protected, and "we should stay away from super-power".

Mr. Cullum explained that with the proper use we will have adequate facilities for development of almost any patterns and urged speed in determining policy and said as a practicing engineer one of the greatest difficulties was the inevitable delay by the Commission, sometimes "months and months in setting an application for hearing and then another delay sometimes months and months after the hearings before a decision is reached."

The Chairman stated that N.B.C. Dr. C. M. Jansky, Com. Ray Whitfield were scheduled to appear and the Committee desired that both Mutual and Blue appear at the hearings.

House Select Committee Hearings

The Select Committee to Investigate the Federal Communications Commission, under the Chairmanship of Clarence F. Lea, of California, held hearings on November 23 and November 24, with Commissioner Craven on the stand.

The Hearings related primarily to the status of the Interdepartment Radio Advisory Committee (IRAC). In connecton with the request by the War Department in June of 1942, for the grant of frequencies for the use of the War Department in morale building in certain points in Alaska, IRAC granted the frequencies and Commander Craven voted in favor of the grant. Subsequently he received a memorandum from the Chairman of the Federal Communications Commission, stating in part:

> "Although it is understood that the Committee is authorized to handle day-by-day normal governmental frequency applications, on an interim basis, pending approval by the Board of War Communications, of the executive orders prepared by the Committee, it seems to me that whenever the Committee is requested to approve a new service, such as these low-power broadcast stations, operated by the War Department, or an appreciable expansion of any governmental communications facilities, it would be advisable for such matters to be brought to the attention of the Board —that is the Board of War Communications —and the Commission, before, rather than after, Committee approval."

In response to questions by Counsel Garey, Commander Craven said that he did not agree with the policy stated in the memorandum—that he felt: "First, that there was no real matter of basic policy involved. Second: I had considered that the only duty of IRAC was, not to question basic policies of other departments. Those would be settled in other ways—but that our job was to approve frequencies from a technical standpoint. Third: I was not aware that as a Committee or sub-Committee of the Board of War Communications we had to refer all those frequency allocations to the Board. I didn't see at that particular time anything wrong in the action of the IRAC. However, in discussing it with the Chairman, prior to the meeting, I was informed that my interpretation of the Executive Order forming the Board of War Communications was wrong "and that this involved a matter of policy and as a Committee of the Board of War Communications we (IRAC) should submit it to the Board for consideration. I didn't agree with that personally, but after consultation with Governor Case we felt that would be the view of the Commission and therefore in my representative capacity, rather than in any capacity as a Commissioner, I felt it my duty to carry forward the wishes and desires of the Chairman."

Commander Craven said that at a later meeting of IRAC in December he had withdrawn the approval which he had theretofore given to the granting of these applications. Reading from the minutes of the IRAC meeting, Mr. Garey quoted Commander Craven as follows: "At this point I feel I have a duty to perform on behalf of the Chairman of the BWC and FCC." Counsel Garey interpolated "I observe, Commissioner, with respect to that statement of yours, that it purports to be made on behalf of the Chairman of the BWC and the FCC, as such and not on behalf of the BWC and the FCC as such. Is that correct?" Commander Craven replied "Yes." Mr. Garey then repeated "That was because the instructions you received were not received from either of those organizations, but were received from a Chairman thereof." Commander Craven replied "That is correct but I felt that they would represent the views of the majority of the BWC and the FCC." Mr. Garey asked "That was based on your personal opinion and judgment?" and Mr. Craven replied "That is correct." Mr. Garey asked "But not on any views of those organizations as expressed by them?" Mr. Craven replied "That is correct."

Mr. Garey then continued reading the remarks of Commander Craven before the IRAC meeting, as follows: "I must confess that heretofore I had thought the status of the IRAC and all its actions were perfectly well understood and accepted by all departments including the Commission and BWC. However, when IRAC "approved certain applications of the War Department to use broadcasting stations, I received the letter which is presented here from the Chairman of the FCC, who is also Chairman of the BWC. As you realize, this particular letter does two things. First, it questions the present status of IRAC and second, I think it goes to the question of relationship between the BWC and the other government departments with respect to the use of frequencies. The last paragraph of the letter states as follows: 'I would appreciate receiving your suggestions as to how this procedural matter might best be accomplished.' I discussed the matter with the Chairman of the Board in great detail and informed him that in my opinion the matters which IRAC took up were primarily from the standpoint of interference; insofar as I was concerned I had hitherto felt that matters of policy were settled prior to presentation here, particularly during the War and such was the responsibility of the department concerned. He informed me that that was an erroneous conception. I suggest that while this might be a matter for the Board itself to determine it is much better first to bring the matter before IRAC so that the latter may have an opportunity to state its views."

Commander Craven presented to the IRAC meeting a memorandum which stated in part: "Support for the conclusion that IRAC no longer performed any function other than that of an

advisory committee in a recent memorandum of the attorney general." The memorandum stated in part as follows: "The powers of the Board of War Communications would therefore appear to be very broad. In authority it has superseded the Interdepartment Radio Advisory Committee which is now made a subordinate committee of the Board of War Communications."

The memorandum continued as follows: "As a procedure for the Board's keeping control over the assignment of frequencies to Government Departments by IRAC, it is suggested that IRAC be required twice each month to report to the Board all assignments it has made. Under this plan the assignment would be effective immediately upon action by IRAC subject to ratification, change or merely comment by the Board." Commander Craven had said at the IRAC meeting "I would like to have this statement placed in the records as representing my own views as the representative of the FCC. I am particularly anxious that there be placed in the record the attitude of the other departments and that decisive action be taken by the Committee on this matter."

"Mr. Garey asked: 'Commissioner, who prepared that memorandum that you read in the IRAC?'

"Mr. Craven: The General Counsel of the Commission.

"Mr. Garey: Do you have anything to do with the preparation of it?

"Mr. Craven: No, I asked the General Counsel to prepare a memorandum.

"Mr. Garey: Was that memorandum approved by the Commission before you presented it to IRAC?

"Mr. Craven: No.

"Mr. Garey: Did it come before the Commission for action?

"Mr. Craven: No.

"Mr. Garey: As far as you know who dictated the policy laid down by the Chairman in his memorandum of November 21, 1942. The Chairman, only?

"Mr. Craven: As far as I know that is correct.

"Mr. Garey: Then the statement you had caused to be placed in the records presented your views as the representative of the FCC. Did you draw any distinction between your vews as the representative of the FCC and your personal views?

"Mr. Craven: Oh, yes.

"Mr. Garey: That memorandum embody your personal views?

"Mr. Craven: It did not.

"Mr. Garey: Were your personal views different from those embodied in that memorandum?

"Mr. Craven: Yes.

"Mr. Garey: And you presented these views at the direction of the Chairman of the Commission.

"Mr. Craven: That is correct.

"Mr. Garey: Now the Chairman of the Commission has no power as such, does he?

"Mr. Craven: No.

"Mr. Garey: He is one of seven Commissioners appointed by the President and his power is no greater as a member of the Commission than any other Commissioner?

"Mr. Craven: That is my interpretation of it.

"Mr. Garey: There is nothing in the 1934 Act or any amendment thereto that gives the Chairman any power separate and apart from the power given him as a member of the Commission.

"Mr. Craven: That is correct.

"Mr. Garey: So that in assuming to act as the Chairman did in this instance he acted without any authority in law?

"Mr. Craven: That is true.

"Mr. Hart (a member of the Select Committee): I think you have already stated that though the matter had not been taken up formally by the Commission it was your own view and judgment that the Chairman was acting in accordance with the view of the majority of the Commission?

"Mr. Craven: That is correct.

"Mr. Garey: Do you mean it that way 'in accordance with the views' or in accordance with the fact that you knew he could get the Commission to back him up. There is a fine distinction there.

"Mr. Craven: I won't go into details. I felt the majority of the Commission would support the Chairman.

"Mr. Garey: Support the Chairman, because it was their policy to support the Chairman irrespective of their own views?

"Mr. Craven: On the matter of policy, yes. But on 'irrespective of their own views' some of them, I think undoubtedly, are of the same school of thought as the Chairman.

"Mr. Garey: And follow the same pattern.

"Mr. Craven: Yes.

"Mr. Garey—after reading further from the minutes of the meeting—asked Commander Craven as follows: 'Commander, prior to the time this question arose in this manner, what was the policy or procedure in IRAC with respect to whether a particular department should or should not engage in radio or have certain further facilities granted to it by IRAC?'

"Mr. Craven replied: 'We took the position that a department making an application for a particular frequency had the right to determine their policy. We didn't question that except where it involved a use of radio which we considered a waste of frequency, and where frequencies were so scarce and those matters we referred to the Board of War Communications during the war.'

"Mr. Garey: You considered the matter of whether a government department should engage in radio service was something for that department to determine on its own responsibility and judgment and that the policy of IRAC should be and was to grant to that department a frequency for that purpose if a frequency was available or could be found?

"Mr. Craven: Yes, as I mentioned we had one hesitancy in that respect. When the application was for a service that paralleled land lines and land lines were available and we couldn't find frequencies for radio services that paralleled land lines.

"Mr. Garey: Is there anything you can tell the Committee briefly about just how you handled those applications for frequencies from Government Departments, on the matter of policy?

"Mr. Craven: Ordinarily when an application is placed before IRAC we only give it consideration from the standpoint of interference with existing service and from the standpoint of good engineering practice. We don't question it except when the application is for a service that parallels land lines, and in those cases, well knowing that frequencies, especially for transoceanic services are scarce, we have referred it to the Board of War Communications for its consideration.

* * * *

"Mr. Magnuson (a member of the Select Committee): Suppose several Government Departments decided among themselves they wanted to make application for a radio station, and it was obvious on the face of the application that they would have very little use for a radio station, would you question their policy?

"Mr. Craven: I certainly would not.

"Mr. Magnuson: Who would pass on whether their basic premise was good or bad?

"Mr. Craven: The President of the United States; and also Congress.

"Mr. Magnuson: And would IRAC have nothing to do with it?

"Mr. Craven: I don't think it should.

"Mr. Garey: I think the Act itself gives to the President the power to allocate frequencies to Government agencies. That power is given directly to the President.

"Mr. Magnuson: I appreciate that.

"Mr. Garey: The President has the power of allocating frequencies to Government Departments.

"Mr. Magnuson: Do you know if the President at any time asked IRAC for advice as to the advisability of making certain allocations.

"Mr. Craven: Not that I know of in the past.

"Mr. Magnuson: Were there any applications submitted to IRAC by Government Departments that on their face indicated the need for radio by those Departments to be remote, at least?

"Mr. Craven: Not that I know of.

"Mr. Magnuson: All of the applications were from Government Departments who could use radio very effectively?

"Mr. Craven: You are not confusing the broader use of radio with broadcasting, are you? Most of these services are services other than broadcasting. The one exception was the application of the War Department for the use of radio for morale purposes.

"Mr. Magnuson: Naturally, any governmental set-up wanting to enhance their power would want a radio frequency, and perhaps on the face of the application the Government Department would not be entitled to it. Who would pass on that? Only the President?

"Mr. Craven: I believe it has been the view of this Administration, and of Administrations in the past, both Democratic and Republican, that Government Departments should not engage in broadcasting services unless absolutely necessary. In the early days the Navy Department had a broadcasting station here in Washington. That was one of the first in the country. Subsequently the Navy ceased operating that station.

"I think it has been the view of the Administration and of Cabinet members, as well as the attitude of the Congress, that the Government should not engage in broadcasting to the general public. However, there have been certain groups in the Government in the past who have advocated that radio broadcasting should not be a private enterprise, but should be a Government service, such as we have in other countries of the world; but I am pretty sure the people in this country don't want that, and I am pretty sure the Administration and the Congress recognize that.

"Mr. Magnuson: Also, we wouldn't want Government Departments to have radio privileges where they were not needed.

"Mr. Craven: That is true, but that arises from the shortage of frequencies. I don't know if you were here the other day. I have given considerable thought to this subject. I suggested that IRAC be legalized in law as a radio frequency coordinating agency having very much the same functions and powers as it has today. The Federal Communications Commission now has jurisdiction, under the law, over the licensing of radio stations to private enterprise. I visualize in the future that there are bound to be certain conflicts between two services of great public interest, private enterprise on the one hand and Government departments on the other. Both are cloaked with public interest, one from the standpoint of communication and broadcasting, and the other from the standpoint of safety and national defense.

"The Commission, in a sense, is required to hold hearings and base its decisions on the evidence submitted by applicants. Therefore, if it does its duty properly, it will have a complex in favor of private enterprise, which I think it should have.

"On the other hand, the Government Departments, through the medium of IRAC are dependent on radio from the standpoint of very substantial factors of national interest, such as national defense.

"Inasmuch as the Interdepartment Radio Advisory Committee and the Federal Communications Commission cannot agree on certain basic questions, I suggested that the President be empowered to appoint a special advisory committee composed of men of very broad calibre, such as Cabinet Members, and such as men from the Interstate and Foreign Commerce Committee of the House and the Interstate Committee of the Senate; that they be as non-partisan as possible; and also that the President be authorized to appoint on this Committee outstanding scientific leaders of the country.

"As I visualize what may occur in the future, the War Department and the Navy Department have expended billions in radio equipment. I sup-

pose we will have to have national defense for years to come after the war. We have in the offing a great development in the form of television. It is possible that both services will need the same part of the radio spectrum for scientific reasons. Suppose both of them can't go forward. Who will make that decision?

"Mr. Magnuson: Suppose the Bureau of Internal Revenue made application to IRAC or any such committee, would you proceed to pass on whether or not they had justification to make that application?

"Mr. Craven: I think we would take that into consideration, yes.

"Mr. Magnuson: That is an extreme case, but if that did occur, would IRAC pass on whether or not the Bureau of Internal Revenue had justification to make such application?

"Mr. Craven: If the Bureau of Internal Revenue had a good sound policy, that would be their business.

"Mr. Magnuson: What would IRAC do?

"Mr. Craven: Pass on the frequency.

"Mr. Magnuson: What men on IRAC are qualified to pass on frequencies except such a man as yourself?

"Mr. Craven: Except for the man from the State Department, every man on IRAC is an engineer, and the State Department representative is there by reason of possible inroads on international treaties. He is a technical man in that respect. So, most of these men are technical men —engineers; they are not policy men.

"Mr. Magnuson: To get in one sentence what we are talking about here, IRAC does nothing but pass on frequencies, and the final decision on whether a Government department shall be granted a frequency is up to the President?

"Mr. Craven: Yes.

"Mr. Magnuson: And under the law, if the President wants to grant a frequency, he can do so?

"Mr. Craven: Yes.

"Mr. Magnuson: And if he wants to deny it, he can?

"Mr. Craven: Yes. All IRAC is is a technical advisory board.

The Select Committee Hearings were resumed on November 24th. It was disclosed that in subsequent IRAC meetings the proposal of the FCC representative on IRAC, that the proposals of allocations be put up to the Board of War Communications was defeated.

Commander Craven then in his capacity as a Commissioner wrote a memorandum to the Chairman of the Commission outlining the action taken, stating that if the Chairman desired to pursue the matter to its conclusion he would recommend that he present it to the Board of War Communications. Later the Board of War Communications adopted a resolution directing IRAC Committee 5 to submit for approval of the Board of War Communications, allocation of frequencies to Government Departments. Subsequently, on May 1, 1943, in a Memorandum to the President, Secretary of War Stimson recommended "that military personnel be authorized to establish and continue to operate low-power radio broadcasting stations wherever required by military necessity outside the Continental limits of the United States."

On June 8, in a letter addressed to the President, Secretary of War Stimson, said: "I am transmitting to you the joint report which I understand from Mr. Fly you have requested on the operation of local radio broadcasting stations in Alaska by military personnel.

The Administrative procedures involved in the planning of these stations have been agreed upon by the War Department and the Federal Communications Commission." The enclosure which was referred to bears the heading "Joint Report to the President on Military Operation of local Radio Broadcast Stations for Army Personnel in Alaska." After outlining the operation of the stations and the difficulties of operation which would result if an attempt were made to operate them by civilian personnel, the joint memorandum concluded: "It is accordingly requested that the approval of the President be given to the continued operation of the low-power limited range broadcasting stations within or near Army installations in Alaska by Army personnel. The memorandum was signed jointly by the Secretary of War and the Chairman of the Federal Communications Commission.

Mr. Garey said later: "Now, Commissioner, there are a few questions I would like to put to you on this subject so that the Committee may see what effect some of the matters that they have been considering have had among the Government Departments.

"Would you say that as a result of the policy of the Federal Communications Commission or its Chairman, as embodied in the minutes which I have been reading to this Committee, or for any other reason, there exists among Government Departments a spirit of antagonism or distrust against the FCC and its Chairman?

"Mr. Craven: I think that is a fact that all Government Departments recognize.

"Mr. Garey: And that is due very largely to the activities of the Commission, is it not?

"Mr. Craven: It is due to an unsatisfactory situation which I mentioned earlier in my testimony, and for which I suggested legislative remedies.

"Mr. Garey: From your long experience in the field of radio and with the Commission, have you been able to discern in the continuing activities of the Commission a trend or an intent for it to reach out and control all forms of communications, both private and governmental?

"Mr. Craven: It has been my opinion that the Commission has always exerted as much power as it thought it could exert under the terms of the Communications Act of 1934. I have appeared before the Interstate and Foreign Commerce Committee of the House in support of a bill designed to limit the Commission's powers. Unfortunately, I have been in the minority on the Commission with

respect to this matter, and have rendered several dissenting opinions. I feel that in my experience, ever since 1930 there has been an increasing trend on the part of the Commission to have a preponderant voice in communications matters, particularly with reference to radio matters.

"The Chairman: I might ask a question there. How long has this particular controversy been continuing?

"Mr. Craven: You mean between the Commission and the Government Departments?

"The Chairman: Yes.

"Mr. Craven: I think ever since 1935 it has been going on.

"The Chairman: And is it settled today?

"Mr. Craven: It is not settled today, and that is why I have advocated before your Committee, Mr. Chairman, the Interstate and Foreign Commerce Committee, that the Congress settle it; and that it why I shall advocate before the Senate Committee that the Congress settle it. I think it is highly desirable that the Congress take charge and settle it by clarifying the law.

"The Chairman: It is the underlying theory that you advance that these Government Departments feel they should have the right to present their views to the President?

"Mr. Craven: I think it is necessary for the Congress to set forth a procedure under the various jurisdictions. I have recommended that you legalize the Interdepartment Radio Advisory Committee and give it a status so that it has some stand in making recommendations to the President. I have also recommended that when there are differences between the FCC and IRAC, both the Chairman of the Committee and the Chairman of the Commission should appear before the President on an equal footing, and that in the event of disagreements which could not be reconciled between the two, that the President to go deeper and call upon men of higher caliber, such as of Cabinet stature and of the stature you find on your Committee, who would be able to advise the President on broad questions of policy.

Some of these things in the future will be extremely difficult to settle because they will affect the status of the public as a whole. I think the best brains in the country should be called upon in order to guide the nation, and I think in that way, and that way only, can we secure an adequate application of radio to the service of the public.

"The Chairman: What is your observation as to the delays that have occurred by reason of these interdepartment controversies?

"Mr. Craven: I think the situation that now exists and has existed has had a very bad effect in the past. I think it is unfortunate that such a condition and such confusion should exist, and I feel that the confusion goes right straight back to the Communications Act of 1934; that is the fount of all the confusion.

"The Chairman: I understand from what you said that the difficulty is not only because of confusion, but because of the uncertainty as to who has authority.

"Mr. Craven: Yes.

"Mr. Magnuson: Would you say that this alleged antagonism that you suggest exists is caused by the personalities involved, by deficiences in the law, or both?

"Mr. Craven: I don't think it is caused by personalities; it is more the law, and the fact that the FCC has taken advantage of the law to exert more and more control.

"Mr. Magnuson: Taken advantage of the fact that portions of the law are not clear enough to clearly define authority?

"Mr. Craven: That is partly true.

"Mr. Magnuson: Along the same lines, you have made suggestions for changes in the law?

Mr. Craven: Yes, sir.

"Mr. Magnuson: And you will make those suggestions to the Senate Committee who are considering possible changes in the law?

"Mr. Craven: Yes.

* * * *

Mr. Magnuson: We set up in Congress regulatory bodies. No Government Departments want to run an airline or a radio station, and you feel, then, that much of this difficulty can be cleared up by proper amendments to the present Act?

"Mr. Craven: Yes, sir. And I am also asking for clarification.

"Mr. Magnuson: Do the rest of the Commissioners feel the way you do?

"Mr. Craven: The majority do not.

"Mr. Magnuson: They want the Act as it is?

"Mr. Craven: I don't know what their position is.

"Mr. Magnuson: And as far as you know they may want some clarification too?

"Mr. Craven: You will have to take the testimony of the Chairman before the House Committee to see what his position is.

"Mr. Magnuson: There are other Commissioners too?

"Mr. Craven: That is true. A recent decision of the Supreme Court in the so-called networks case has interpreted the law in such a way that I think the Commission has almost unlimited power. I felt that the Commission had exerted too much power, but the Supreme Court, in a five-to-two decision—two not participating—has handed down an interpretation of law that has caused confusion greater than before, and I think the time has come for Congress to clarify the matter.

"Mr. Garey: Much of the confusion arises, does it not, Commissioner, by reason of the use of the words, "public convenience, interest or necessity" in granting power to the Commission?

"Mr. Craven: That is right.

"Mr. Garey: That was an unfortunate phrase to use in granting power, was it not?

"Mr. Craven: I don't want to criticize the Congress for its choice of words.

"Mr. Magnuson: That is a phrase that has been

used from time immemorial. That is a common phrase.

"Mr. Craven: Yes, but I think the Commission has gone beyond the Act under those terms "public convenience, interest or necessity". I believe when the Congress enacted the Communications Act of 1934, it didn't dream the Commission would go as far as it has gone.

"Mr. Magnuson: Suppose the Commission, under those broad terms, had failed to go to the extremes you say it has gone, and suppose they had been derelict in their duty, wouldn't the wrath of Congress fall on them just as hard?

"Mr. Craven: Yes, but I have been down there many times trying to get clarification of the Act.

"Mr. Garey: Commissioner, do you know what the phrase "public convenience, interest or necessity" means?

"Mr. Craven: That to my mind is like defining "due process."

"Mr. Magnuson: A lot of lawyers make a living trying to define it.

"Mr. Craven: It is about as broad as it is long, and covers every situation you can imagine.

"Mr. Garey: Do you know what the phrase "public convenience, interest or necessity" means?

"Mr. Craven: Not by itself, no.

"Mr. Garey: So you, therefore, as one of the Federal Communications Commissioners, are operating under a delegation of power you, yourself, don't know the meaning of?

"Mr. Craven: I can't define it.

"Mr. Garey: Have you found that any of the members of the Commission have any accurate knowledge of just what that grant of power to them means?

"Mr. Craven: Not in my opinion. They may think they have.

"Mr. Garey: As a practical proposition, it is used as a tent to authorize the Commission to engage in any field of activity which at the particular moment it wishes to engage in, and for which no other language in the statute creating the Commission can be pointed to for authority. Is that correct?

"Mr. Craven: That is true to a certain extent. I wish you would get the decision of the Supreme Court in the networks case. The Supreme Court, in lay language, says we have vast powers under that term; that we have not niggardly powers, but vast powers. I believe the dissenting opinion of Mr. Justice Murphy in that case expresses my view about as well as any as to what should be done.

"Mr. Miller: Mr. Commissioner, I was going to ask you at the conclusion of this hearing, if you have not already done so, that you reread the decision in the case of the National Broadcasting Co. et al. versus United States et al., because I want to ask you several questions on that.

"Mr. Craven: Yes, sir, I will be very glad to.

"Mr. Miller: Do you have a copy of the decision? If not, I have one and can supply it to you.

"Mr. Craven: I have none with me. I can get it in the office.

"Mr. Miller: Speaking of this nebulous thing known as 'public interest, convenience or necessity,' to me it suggests nothing more than a twilight zone of uncertainty, the length of which cannot be defined. Have you ever heard any definition given by any member of the Commission at any time that would give it definiteness.

"Mr. Craven: No, I have not. I have tried, as a part of my duty as a Commissioner, to get a conception in definite terms of what that phrase meant. I found myself unable to get a precise definition.

"Mr. Miller: Have you ever found an appropriate definition in any decision as to what is meant by 'public interest'?

"Mr. Craven: The nearest thing I have found was what it was not, that it was not public welfare. I know that much.

"Mr. Miller: Do you believe you would be able, with some thought, to come before this Committee and make some positive definition as to the limits of the jurisdiction of the Commission in matters that properly come before it

"Mr. Craven: I think the Congress already has before it, both in the House and in the Senate, a bill that goes very far in the right direction, in my opinion—

"Mr. Miller (interposing): The White-Wheeler bill?

"Mr. Craven: That is one. There is one in the House too. I think I testified before your Committee on Interstate and Foreign Commerce last Spring or winter, did I not, Mr. Chairman?

"The Chairman: Yes.

"Mr. Craven: That was on H.R. 5497, which has some of the provisions of the Holmes Bill or the White-Wheeler Bill. I felt it was a step in the right direction in defining the duties and responsibilities and rights of licensees.

"Mr. Garey: Mr. Commissioner, the real purpose of the Chairman of the FCC in opposing, as these IRAC minutes reflect, the desire of the Army to get frequencies for miniature broadcasting stations in Alaska, was his desire to have that broadcasting done by OWI rather than by the Army, was it not?

"Mr. Craven: I did not know that until yesterday, but I was informed yesterday by a member of the staff of the Commission that that was the purpose.

"Mr. Garey: You are referring now to Mr. Jett, the Chief Engineer of the Federal Communications Commission?

"Mr. Craven: Yes.

"Mr. Garey: Who is also on IRAC?

"Mr. Craven: He was on IRAC. He is not now.

"Mr. Garey: And he stated to you yesterday that the real purpose of the Chairman was to have this broadcasting done by the OWI and not have it done by the Army at all?

"Mr. Craven: That it what I understand.

"Mr. Garey: Are you familiar with the communistic technique known as 'cessation of gradualism'?

"Mr. Craven: I have heard of it.

"Mr. Garey: You have some familiarity with that communistic technique?

"Mr. Craven: Yes.

"Mr. Garey: Have you observed, in connection with your experiences with the Commission, that many of the activities of the Commission bear all the earmarks of that doctrine, which has been described as the cessation of gradualism?

"Mr. Craven: That is a matter of opinion. I have held the opinion that the Commission has erred in not coming to Congress to seek power.

"The Chairman: I didn't understand what you said.

"Mr. Craven: I say I have felt that the Commission has erred in not coming to Congress to seek added powers.

"Mr. Garey: Was that because the Commission feared Congress might deny it the powers it desired to exercise?

"Mr. Craven: I won't go that far. Let me finish my answer to your first question.

"Mr. Garey: All right. I will withdraw that last question, but I will put it to you again.

"Mr. Craven: The Commission, instead of pursuing the course of coming to Congress to see added powers, has, under the broad phrase, 'public interest convenience and necessity,' taken upon itself legislative powers. For instance, I felt that in the chain broadcasting case the Commission should have come to Congress. And in the newspaper ownership of radio stations investigation undertaken by the Commission, I opposed that, not because it should not perhaps have been investigated, but because the Commission seemed to limit itself to promulgating its own regulations, rather than coming to Congress and seeking added authority. I feel that such an attitude on the part of the Commission constitutes in a sense a trend toward the doctrine of cessation of gradualism, which I interpret as follows:

"First, it is a method by which you impose social reforms of your own conception without resort to the representatives of the people. I felt that the Commission, in refusing or in failing to come to the Congress in matters of broad policy, was playing into the field of those who practice cessation of gradualism.

"Mr. Garey: As a matter of fact, the adoption of many of these policies without express congressional authority is cessation of gradualism, is it not?

"Mr. Craven: That is my opinion. In fairness to the Commission, in the chain broadcasting regulations, the majority of the Supreme Court sustained the majority of the Commission.

"The Chairman: May I have a further explanation of that communistic technique?

"Mr. Craven: The modern way followed by communists is to impose social reforms on the people without going to the representatives of the people to get sanction for it.

"Mr. Garey: Putting it another way, it is seizing power and exercising that power without an express grant from the people, through their representatives, of such power?

"Mr. Craven: That is right; imposing social reforms on the public.

"Mr. Garey: Getting at it in another way, there is nothing in the Communications Act of 1934, that gives the Commission power to deny a license to a newspaper owner, or to a man with a newspaper connection?

"Mr. Craven: Nothing in my opinion.

"Mr. Garey: And the grasping of power by the Commission, or the usurping of power by the Commission, in that respect, is in effect adopting the technique of cessation of gradualism?

"Mr. Craven: In my opinion, yes, but the Chairman of the FCC, in testifying at the hearings before the Senate Committee, said he felt the Congress should take cognizance of the matter, and further, upon being questioned as to whether the Commission had the power, he said he thought he could put up a good argument in the courts that it did have the power.

"Mr. Garey: The Commission has been prone to usurp powers on questions of national policy that more properly, under our system of Government, is a function of the Congress rather than of the Commission as a creature of the Congress; is that true?

"Mr. Craven: That is my opinion. I have felt that the Commission, in such broad matters, should come to the Congress, and that in not coming to the Congress, and in usurping power under the phrase 'public interest, convenience or necessity,' it has erred. That is a matter of opinion, but it is my opinion.

"The Supreme Court, in this same network's decision, made a statement to which I think—

"The Chairman (interposing): If there is no objection, that Supreme Court opinion will go in the record.

"Mr. Garey: Very well. Suppose we put it in as an exhibit of this date.

"The Chairman: Very well. (Exhibit No. 62.)

"Mr. Craven: The Supreme Court says in that opinion: 'But the Act does not restrict the Commission merely to supervision of the traffic. It puts upon the Commission the burden of determining the composition of that traffic.'

"Then in another part of the opinion the Court says:

"True enough, the Act does not explicitly say the Commission shall have the power to deal with network practices found inimical to the public interest. But Congress was acting in a field of regulation which was both new and dynamic. 'Congress moved under the spur of a widespread fear that in the absence of governmental control the public interest might be subordinated to monopolistic domination in the broadcasting field.' In the contest of the developing problems to which it was directed, the Act gave the Commission not niggardly but expansive powers. It was given a comprehensive mandate to 'encourage the larger and more effective use of radio in the public interest,' if need be, by making 'special regulations applicable to radio stations engaged in chain broadcasting.' That was part of the opinion of the

majority of the Supreme Court participating in that decision. I want to call your attention at the same time, however, to the dissenting opinion of Mr. Justice Murphy, which opinion was concurred in by Mr. Justice Roberts. In his dissenting opinion, Mr. Justice Murphy points out:

> "But we exceed our competence when we gratuitously bestow upon an agency power which the Congress has not granted. Since that is what the Court in substance does today, I dissent."

"My purpose in reading these short extracts from the opinion at this particular time is to illustrate that there is a difference of opinion with respect to the Commission's powers. While they hold the opinion—and very strongly—that the Commission's practice in the recent past constitutes something in the way of cessation of gradualism, nevertheless, in fairness to the Commission, they have the support of the majority of the Supreme Court.

"Mr. Garey: The demands of the various Government Departments quite often encroach upon the demands of private industry, do they not? I have in mind aviation, ships, amateurs, common carrier operations, and so forth.

"Mr. Craven: Yes.

"Mr. Garey: And quite obviously, everyone can't be satisfied as to their demands?

"Mr. Craven: That is true.

"Mr. Garey: The FCC representative on the Interdepartment Radio Advisory Committee usually approaches the propositions submitted to that body from the regulatory standpoint of private industry, does he not?

"Mr. Craven: The Commission is a regulatory agency charged with the duty of regulating private industry, and it is supposed to be guided by the evidence submitted to it by private industry.

"Later Mr. Garey asked: 'Congressman Miller, did you have any questions you wanted to ask Commissioner Craven about that Supreme Court decision?'

"Mr. Miller: If the Commissioner has had sufficient opportunity to review the opinion I would like to; if not, I will defer this until some later date, dependent entirely upon Commissioner Craven's wishes in the matter.

"Mr. Craven: I have only had an opportunity to refresh my recollection on that part of the decision in which I was particularly interested, from the standpoint of legislation. If you are going to ask me questions on all the aspects of that decision, I am not prepared today.

"Mr. Miller: For the purposes of the record, I believe on April 6, 1939, a Committee of three Commissioners was designated to hold hearings and make recommendations to the full Commission, and that such hearings were held over a period of several months and numerous witnesses were heard, and at the conclusion of those hearings a report was submitted and various recommendations were made.

"Is that correct, in a broad, general way?

"Mr. Craven: That is correct.

"Mr. Miller: Now, then are you familiar with the precise recommendations that were made by that Committee to the Commission.

"Mr. Craven: Not at this moment. I was at one time.

"Mr. Miller: If you are not, I would be glad, if it is agreeable to the Chairman and to counsel, for you to discuss whatever aspects of that opinion appealed to you, or which in any way affects the radio industry.

"Mr. Craven: At this time I would like to call your attention first to a few words in the dissenting opinion of Mr. Justice Murphy of the Supreme Court, concurred in by Mr. Justice Roberts:

> "But we exceed our competence when we gratuitously bestow upon an agency power which the Congress has not granted. Since that is what the Court, in substance does today, I dissent."
>
> "The Communications Act of 1934 does not in terms give the Commission power to regulate the contractual relations between the Stations and the networks, it is only as an incident of the power to grant or withhold licenses to individual stations under Sections 307, 308, 309, 310 that this authority is claimed, except as it may have been provided by subdivisions (g) (i) and (r) of Section 303, and by Sections 311 and 313. But nowhere in these sections, taken singly or collectively, is there to be found by reasonable construction or necessary inference, authority to regulate the Broadcasting industry as such, or to control the complex operations of the national networks."

"Inasmuch as this opinion is going to go into the record, I can take some liberties in not reading all of the context here, in the interest of saving time.

"Mr. Miller: I am going to ask later that the entire opinion, including the dissenting opinion, be made a part of the record in this case.

"The Chairman: Yes, that has been done. The dissenting opinion was not mentioned, but let us assume the dissenting opinion goes in with the main opinion.

"Mr. Craven: It goes on to say:

> "The power to control network contracts and affiliations by means of the Commission's licensing powers cannot be derived from implication out of the standard of 'public convenience, interest or necessity.' "

"Mr. Miller: May I call your attention to another portion of the dissenting opinion, which reads as follows, and ask if you are in agreement with it:

> "It is evident that a correction of these conditions in the manner proposed by the regulations will involve drastic changes in the business of radio broadcasting which the Congress has not clearly and definitely empowered the Commission to undertake."

"Mr. Craven: I agree with that.

"Mr. Garey: I think Commissioner, you had started to read something further?

"Mr. Miller: And may I call your attention to this further observation by Mr. Justice Murphy:

> "Its real objective is to regulate the business practices of the major networks, thus bringing within the range of its regulatory power the chain broadcasting industry as a whole."

"Are you in agreement with that conclusion reached by Mr. Justice Murphy as to the effect of these regulations promulgated by the Commission?

"Mr. Craven: I am.

"Mr. Miller: Go ahead.

"Mr. Craven: Mr. Justice Murphy goes on to say:

> "The criterion of 'public convenience, interest or necessity' is not an indefinite standard, but one to be 'interpreted by its context, by the nature of radio transmission and reception, by the scope, character and quality of services. . . .'

"And he cites Federal Radio Comm'n v. Nelson Bros. Co. (continuing reading)

> "Nothing in the context of which the standard is a part refers to network contracts. It is evident from the record that the Commission is making its determination of whether the public interest would be served by renewal of an existing license or licenses, not upon an examination of written applications presented to it, as required by Sections 308 and 309, but upon an investigation of the broadcasting industry as a whole, and general findings made in pursuance thereof which relate to the business methods of the network companies rather than the characteristics of the individual stations and the peculiar needs of the areas served by them."

"I will skip a little and quote this:

> "By means of these regulations and the enforcement program, the Commission would not only extend its authority over business activities which represent interests and investments of a very substantial character, which have not been put under its jurisdiction by the Act, but would greatly enlarge its control over an institution that has now become a rival of the press and pulpit as a purveyor of news and entertainment and a medium of public discussion."

"That is the end of the part I want to quote here, because I want to contrast that with certain things in the majority opinion.

"Mr. Miller: Do you agree with the observation that this decision goes so far as to impair the obligations and contracts that were honestly and sincerely entered into, and to affect vested interest in the parties to those contracts?

"Mr. Craven: Yes, I believe that is exactly the effect of the chain broadcasting decision. I want to make it clear that I had no objection to some of the objects of the chain broadcasting regulations; some of them I felt were in the public interest if the Congress wanted to give certain powers to do it or if the "Congress wanted to write it in the law. Some of the regulations I felt were impractical. But I do think they affected contractual relationships and the obligations to certain parties to the contracts.

"Mr. Miller: And I take it there would be no way of reimbursing parties to the contracts for losses suffered as a result of these rules and regulations?

"Mr. Craven: It says in the majority opinion—in which opinion Mr. Justice Black and Mr. Justice Rutledge did not participate; Mr. Justice Rutledge had just been nominated and had not been confirmed at that time:

> "But the Act does not restrict the Commission merely to supervision of the traffic. It puts upon the Commission the burden of determining the composition of that traffic. The facilities of radio are not large enough to accommodate all who wish to use them."

It goes further and says:

> "True enough, the Act does not explicitly say that the Commission shall have the power to deal with network practices found inimical to the public interest. But Congress was acting in a field of regulation which was both new and dynamic. 'Congress moved under the spur of a widespread fear that in the absence of governmental control the public interest might he subordinated to monopolistic domination in the broadcasting field.' "

"The case of Federal Communications Commission v. Pottsville Broadcasting Company is there cited, and then the opinion goes on to say:

> "In the context of the developing problems to which it was directed, the Act gave the Commission not niggardly but expansive powers. It was given a comprehensive mandate to 'encourage the larger and more effective use of radio in the public interest', if need be, by making 'special regulations applicable to radio stations engaged in chain broadcasting'. Sec. 303 (g) (i)."

"The majority opinion of the Supreme Court, when it states that the Commission has such broad powers under the 'public convenience, interest or necessity' provision, including the power to regulate the composition of the radio traffic of the licensees, strikes at the very core of a free radio in this country.

"I also feel that the members of the Supreme Court have been influenced by the present-day radio facilities, and I think that this is natural, but, nevertheless, it may be a handicap when thinking of the future.

"May I suggest to the Committee that it weigh the potential effect of the radio progress arising out of the war. It is my firm belief that if the

Government so desires, we can allocate sufficient radio channels to provide broadcasting with such opportunities for competition that the effect of natural laws can be more of a controlling factor in radio in the future than has been possible in the past.

"Therefore, even though the potential expansion of competitive opportunities cannot itself provide free access to the microphone, and in spite of the fact that in some places the demand may exceed the supply, it would appear to me to be good statesmanship to rely upon natural laws to secure progressive improvements in radio as an instrumentality of free speech.

"Some persons do not agree with the philosophy and, because of the inability of broadcast licensees to achieve idealistic perfection, these persons are prone to advocate more stringent regulation of the composition of the traffic of broadcast licensees. They believe that such regulation would eliminate potential abuses and make radio broadcasting an ideal medium for the dissemination of facts and opinions. Proponents of this doctrine advocate that controversies involving access to the microphone as well as other elements involving the composition of radio traffic, be regulated by the Federal Communications Commission.

"And I might add that I think under the interpretation of the Supreme Court, it looks like we have the power to do that.

"This regulatory function would be combined with the duty of licensing radio stations. In my opinion this proposal 'jumps from the frying pan into the fire' and nullifies all freedoms, including whatever rights may be transmitted to radio from the 'freedom of the press.'

"Everyone familiar with the reasons underlying the Bill of Rights knows that freedom of speech and freedom of the press are, in simple terms, merely freedom from fear of Government reprisals for what is said or printed, or for what is not said or printed. In other words, the real freedom of the press guaranteed by the Bill of Rights is freedom in the true sense to criticize Government without fear of reprisal. Thus, if this Bill of Rights is to mean anything for radio, it should mean, first of all freedom from fear of Government reprisals or pressures administered by the radio licensing authority, namely, the Federal Communications Commission.

"Likewise, anyone familiar with the history of the development of a free press knows that the public has always rejected a press which was merely the voice of Government. Therefore, freedom of the press likewise means freedom from the necessity of becoming in any way the Voice of Government. This includes freedom from compulsion, pressure or influence to print what Government officials want printed. If the radio of today is to become as free as the press, a prerequisite condition is that radio should have freedoms such as the press enjoys under the Bill of Rights.

"Therefore, regardless of whether the judgment of the Federal Communications Commission would be correct as to the composition of radio traffic, it must be remembered that if this regulatory power is combined with the radio licensing power, the Communications Commission could exert startling influence upon radio licensees. It is inevitable that radio licensees would recognize this power and consequently interpret mere opinions of members of the Commission as edicts and possibly would curry favor by presenting views which conformed to the desires of Government officials. Such a condition means that radio inevitably would become merely the Voice of Government. This is not a free radio.

"I realize that one of the most controversial radio subjects of today arises because access to the microphone is limited. We hear much about freedom of access to the microphone. In my opinion it is impossible to achieve the ideal of free access to the microphone and still have a medium which is valuable to the public for the dissemination of facts and opinions. I realize, however, that there are logical demands to require licensees to make their facilities available on a fair basis to the varying schools of political, social and economic thoughts, as well as for other controversial questions of a national character. Therefore, a necessary corollary to freedom of speech in radio, it seems to me, is fairness to opposing schools of thought, and refraining on the part of licensees to abuse power by making stations solely the mouthpiece of their own viewpoints.

"Now, I hope that this Committee, if it finds that radio as operated by private enterprise is not conforming to the Congress' concept of what it should be, will place in the law such limitations as it thinks necessary. I am confident the Congress will not place in the law limitations that are in violation of the Constitution. There are too many statesmen in Congress for that. But I ask that you place limitations on some powers of the Commission, one being the power to regulate the composition of radio traffic. I think as the Supreme Court has interpreted the law, the Commission now has that power, and I think it is wrong for us to have it.

"Mr. Garey: Mr. Commissioner, the Commission never took the position, did it, that it had any direct jurisdiction over network?

"Mr. Craven: No, I don't think they did. Their decision was to control the networks through their control of licensees and the contracts of licensees.

"Mr. Garey: The Commission therefore proceeded by indirection to do what it had no direct, statutory power to do?

"Mr. Craven: That is right.

"Mr. Garey: It sought to regulate the networks by regulating the stations that it had licensed?

"Mr. Craven: That is right.

"Mr. Garey: And, in regulating the stations that go to make up the networks it in fact regulated the networks?

"Mr. Craven: That is right.

"Mr. Garey: Has the Committee any further questions to put to the Commissioner?

"Mr. Miller: Yes, in connection with the Com-

mander's recommendation here that the power to regulate the composition of radio traffic be taken from the Commission, I desire to ask him whether, since the rendition of this opinion in National Broadcasting Co. et. al., v. U. S. et. al., and as a result of that decision, the Commission has attempted to regulate the composition of radio traffic; or if it has not, whether in your opinion and in the opinion of the Commission, if it has been discussed, it now has the power to regulate the composition of radio traffic.

"Mr. Craven: In the first instance, that particular subject has not "yet been discussed formally in the Commission. In the second instance, I can only call your attention to certain addresses made by various members of the Commission, which speak for themselves.

"Furthermore, I call your attention to Chairman Fly's testimony, heretofore given before the House Interstate and Foreign Commerce Committee, that there was a Committee formed on the recommendation of Censorship. One member was from the staff of the FCC.

"It was stated as a part of the report of that Committee that the Federal Communications Commission, through its licensing power, could control the dissemination of facts and opinion. I can get the exact words.

"Mr. Garey: It is already in the record. I read that. Do you recall that, Mr. Chairman?

"Mr. Craven: And I believe the Chairman of the Commission, in answer to a question by a member of the Interstate and Foreign Commerce Committee, agreed to that concept. I think that concept in itself is a recognition of the power to regulate the composition of radio traffic.

"I still maintain that the Supreme Court decision in a sense gives us such broad powers as to even outlaw Section 326 of the Act, which forbids the Commission from censoring and interfering with the right of free speech.

"There are other instances I could call to your attention which I believe indicate regulation of the composition of radio traffic. In the recent Blue Network matter, where stock was transferred from Radio Corporation of America to E. J. Noble, I think the record of that hearing indicates clearly the power exercised by the Commission and how it exercises that power. The decision rested—and I participated in the decision and agreed with the decision on the exercise of responsibility on the part of a licensee. We maintained that in a sense the licensee could not delegate his responsibility and adopt blindly a Code such as the National Association of Broadcasters had sponsored.

"That was the decision, but the atmosphere of the hearing was, in my opinion, a good example of regulation of composition of radio traffic.

"There were other instances I can't recall offhand. I can recall one instance in the past history of the Commission where the Commission set for hearing a station's application for renewal. It was charged by the Commission that the station had broadcast profane language, in violation of that section of the Act which forbids the utterance of profane language over radio. After the hearings were over we found the only thing they had done was broadcast a Pulitzer prize play, 'Beyond the Horizon', by Eugene O'Neill, and that it had been used as an education project throughout the country. The license had to be renewed.

"We have a procedure for setting applications for renewals for hearing. All this indicates there have been instances in the past when the Commission has regulated the composition of radio traffic.

"The Shuler case and the Dr. Brinkley case involved, in a sense, regulation of the composition of radio traffic, but the courts sustained the Commission in these cases.

"I think the time has arrived when the Congress should say that the Commission cannot regulate the composition of radio traffic. I think that is the most dangerous power we have today.

"Mr. Garey: Aside from the power to regulate the composition of radio traffic, are there any other powers, which in your opinion, exceed the authority granted in the 1934 Communications Act?

"Mr. Craven: I am in the minority on this network case, in which the Supreme Court sustained the majority of the Commission.

"I feel that in the regulation of the business aspects of broadcasting, with the unlimited power which this Supreme Court decision seems to give to the Commission, we have an indirect control of the composition of the traffic. If you want us in the Commission to regulate certain business aspects, or enforce certain phases of the antitrust law, you should spell it out so that we will know what our duties and powers are, and the licensees will know what their rights are.

"The only thing I can recall at the moment is the Commission's previous attitude on radio-newspaper joint ownership. Recently I had the impression the Commission thought it had the power to say certain classes of people, such as newspaper owners, could not have a radio station. I think it should be made certain that the Commission has no such power of its own to discriminate against any classes of people in the country on account of business connection.

"Mr. Miller: How many stations are now on temporary licenses, if you know?

"Mr. Craven: I know that sometime ago it was more than 100.

"Mr. Miller: I was under the impression there were 400 stations or more operating on a temporary license. Mr. Garey, are you able to supply that information?

"Mr. Garey: I wrote a letter to the Commission requesting information as to the stations that were on temporary license in the two-year period prior to May 1, 1943. They made a reply setting forth the names of the stations that had been on temporary license during that period at any time or from time to time, and they were 457 in number.

"Mr. Miller: How does that compare with the

number of stations actually engaged in broadcasting?

"Mr. Craven: There are 900 stations engaged in broadcasting.

"Mr. Miller: So that about half have been on temporary license within the past two years?

"Mr. Craven: Yes, but not all 400 at one time.

"Mr. Garey: My statement should not be construed or interpreted to mean that 457 stations were on temporary license at any one time. In the two-year period, prior to May 1, 1943, there were from time to time, or at sometime within that period, 457 different stations on temporary license for some period or periods of time within that two year period.

"Mr. Miller: In reference to the subject of the power to regulate composition of radio traffic, what is your view on the placing of radio stations on temporary license? What effect does that have on the control of the composition of radio traffic?

"Mr. Craven: In the past, and particularly from 1935 down through about 1938, the Commission used to place stations on temporary license and set down their applications for renewal for hearing on program complaint. In my opinion that was a direct abuse of power and had a marked effect on the rights of licensees to enjoy any freedom such as given them in the Bill of Rights, and it constituted censorship by surveillance, and in my opinion it was the most direct club that any Government Department could hold over freedom of speech that I have ever heard of in Democratic countries. I feel that the action of the Commission, even at the present time, in certain of its investigations concerning programs, constitutes a club, and while the Commission has not revoked any licenses in recent years by reason of composition of the radio traffic, it is my opinion that the sword utilized in the past is responsible for the fear that the broadcasters hold for the Commission.

"Mr. Miller: Do you know if the radio industry as a whole holds any fear of the Federal Communications Commission at the present time?

"Mr. Graven: I think it is a well known fact that they fear us.

"Mr. Garey: They are terrorized, are they not?

"Mr. Craven: No. I wouldn't say that, they are red-blooded men, but they fear the power of the Commission.

"Mr. Miller: I believe I asked you about an instance where there had been a grant of license and that grant had been taken away?

"Mr. Craven: Yes.

"Mr. Miller: Do you recall any particular case or cases where that happened?

"Mr. Craven: You referred to the Watertown case. That wasn't a revocation of license. That, as I recall it, was rescinding a construction permit which was granted. The Commission acted upon the application of a rival applicant in that instance, and rescinded its action in granting the construction permit to the first applicant.

"Mr. Miller: Is the granting of a construction permit tantamount to the granting of a radio frequency?

"Mr. Craven: Yes, I think when you get a construction permit you have a pretty good ticket and can count on it. The only thing you must do is construct your station according to the terms of the construction permit. If you do that, you then get a license to operate.

"Mr. Miller: Mr. Garey, was it your plan to present the Watertown case at a later time?

"Mr. Garey: Yes.

"In view of the fact you put several questions to Commissioner Craven about the number of temporary licenses, I would like to say this: There is not, so far as I know or am advised, anything in the 1934 Act authorizing the issuance of temporary licenses. I made inquiry of the Commission when I could find no authority in law for such action on the Commission's part, and I was advised that the authority they had arose out of administrative interpretation of the Communications Act of 1934. There is no such grant under the law, and there is no such thing as granting power to an administrative agency through the technique of so-called administrative interpretation. Either the power is to be found in the law, or it isn't.

"Now, it may be there should be conferred upon the Commission, for certain statutory purposes, authority to issue temporary licenses. My point is that the Commission, without authority to do so, has been putting stations on temporary licenses. It has no such power, under the law, as it exists.

"Mr. Craven: I am not a lawyer, but doesn't the law state that licenses shall not be for a term of longer than two years, and under that provision, could not the Commission issue a license for three or six months?

"Mr. Garey: If all licenses were for a period of six months, you would be correct, but under the Act of 1934, the period is fixed as two years, and there is no power in the law to issue a temporary permit or license.

* * * *

"Mr. Chairman: What were the reasons ordinarily assigned for granting licenses for these limited periods?

"Mr. Craven: Generally speaking, it was to give the Commission an opportunity to examine past performance of the station with reference to program complaints or other types of complaints.

* * * *

"The Chairman. You expressed the opinion that the radio industry feared the Commission. What did you mean by that?

"Mr. Craven: To give one concrete example, a complaint was made to me by a radio man who represented a group of radio stations. He said that unless the Commission stopped its interference with the conduct of those radio stations, they could not stay in business. I asked him to make that charge openly, but he was afraid of reprisals.

I know that the one thing paramount in everybody's mind is, 'What will the Commission do in respect to reprisals?' The Commission has not revoked any licenses, other than stated.

"Mr. Garey: You did revoke the licenses of some six or more stations in Texas, and then reconsider?

"Mr. Craven: I feel that the temporary licensing procedure of the Commission is unsound, but I am not saying that we have violated the law in this respect. I asked Mr. Garey the question whether the Commission did not derive some of its powers from the section that provides that licenses shall not be granted for more than two years.

"The Chairman: Offhand, Mr. Garey, I was wondering why, if the Commission is given the right to grant licenses for less than two years, it could not grant them for any period less than two years.

"Mr. Garey: I think, first, the power Congress gave the FCC was to be uniformly exercised. It meant a standard license, and once having fixed the period, that is the only license that the Commission would have power to issue. That is what is known as a permanent license. These permanent licenses are for two years. The statute does not authorize the issuance of temporary licenses.

"The Chairman: Is there any provision in the law that requires the action to be uniform?

* * * *

"Mr. Craven: Any temporary license impairs the ability of the licensee to conduct his business. His competitors take advantage of that situation, and it is used in trying to get business away from him, on the ground he may not be able to carry forward a contract if it is made. I know that the temporary licensing procedure is unsound for the broadcasting industry.

"I made some recommendations to Mr. Lea's Interstate and Foreign Commerce Committee before on this subject, and I suggested that any type of authorization that the Commission issues should be specified by the Congress, rather than the Commission finding all sorts of ways and means of doing things the Congress did not originally intend. I don't say that temporary licensing by the Commission is a violation of the law. I don't think it is.

* * * *

"Mr. Miller: From the commercial standpoint, wouldn't it have the same effect as if the Federal Government had control over the Steel Corporation and placed it on a temporary 90-day arrangement, and continued its competitor on a permanent basis?

"Mr. Craven: It has some of those aspects.

"Mr. Miller: Wouldn't the effect be as disastrous in one case as in the other?

"Mr. Craven: No, because the licensees have been issued these short-term licenses. I think it would be a constructive thing if licenses were extended to five or ten years, in order to get stability, particularly in the future, and I think you should prohibit the Commission from issuing temporary licenses because they discourage private enterprise from entering into the business of radio. I know that a temporary license impairs the ability of a licensee, for example, to get funds when he needs it. It would impair his right to go to the bank and get some credit. If we are going to be broad-minded in this country we ought to encourage private enterprise.

"Mr. Miller: You believe the abolition of all temporary licenses would be conducive to the growth of the radio industry?

"Mr. Craven: Yes, I want to give encouragement to new industry for a better radio service to the public.

"Mr. Miller: In short, you believe in taking off the wraps?

"Mr. Craven: I do not believe in going to the opposite extreme, but I would remove arbitrary restraints.

(The hearings adjourned to Tuesday)

The Select Committee reconvened on Tuesday, November 30, 1943 with Commander Craven continuing his testimony:

"Mr. Garey: Commissioner, in reading over a transcript of your testimony on the subject of this Executive Order proposed by IRAC, I am of opinion that you have not been quite frank with respect to all of the reasons that caused you to change your mind about the advisability of having the Executive Order, as desired by IRAC, executed by the President.

"You will recall that you advised the Committee, during the course of your testimony that in the first instance you supported the views of Chairman Fly respecting the inadvisability of the procedure outlined in the proposed Executive Order being adopted, and that subsequently you changed your position and favored the course desired by IRAC. Do you recall that testimony?

"Mr. Craven: Yes, sir.

"Mr. Miller: I would like to ask you why it was, Commissioner, that you happened to change your mind.

"Mr. Craven: Mr. Congressman, I felt, as a result of experience and after securing further information, that in the interest of public interest, both from the standpoint of Government use of radio and from the standpoint of private enterprises, and in the interest of fairness, that the Government Departments' views had merit.

"Mr. Miller: Let me ask you also, in that same connection, as to whether or not you are protecting the identity of any person or persons?

"Mr. Craven: Of course part of my information comes from persons in Government Departments in whom I have every confidence and I would hesitate to disclose their names in this public hearing.

"Mr. Miller: Will you state whether you fear the disclosure of the names of such person or persons might subject them to the visitation of re-

prisals by the Chairman of the Federal Communications Commission?

"Mr. Craven: That is what I fear.

* * * *

"Mr. Miller: Notwithstanding the fact that you entertain the opinion that reprisals may be visited upon the two or more gentlemen in question, do you feel disposed to disclose their names today?

"Mr. Craven: No, sir, I would rather not disclose their names if I may be excused from doing so.

"Mr. Miller: I won't press the question if you fear reprisals may be visited upon the men involved.

"Mr. Garey: Has the Chairman of the Federal Communications Commission ever visited reprisals on members of the armed forces who opposed his will?

"Mr. Craven: I think he has had influence in cases where reprisals were visited.

"Mr. Garey: Reprisals have been visited upon certain members of the armed forces who has opposed the Chairman of the Commission's policies; isn't that true?

"Mr. Craven: That is a well known fact among the armed services.

"Mr. Garey: Let me refresh your recollection just a little on the subject I had started to direct your attention to when Congressman Miller put certain questions to you.

"Isn't it true that two members of the armed forces, one from the Army, and one from the Navy, went to see Chairman Fly and urged him to take the Executive Order that was being proposed by IRAC to the President and lay the matter before him with their views, and suggested to him that if he had, as he did have, views in opposition to theirs, that he could present them at that time.

"Mr. Craven: I am so informed.

"Mr. Garey: And aren't you also informed that the Chairman of the Commission said to these two members of the armed forces: 'Do you think I am sufficiently naive to take this over there and let this get out of my hands and into your hands?'

"Mr. Craven: Not in those exact words.

"Mr. Garey: In substance?

"Mr. Craven: In substance, yes.

"Mr. Hart: What is the source of that information?

"Mr. Craven: The gentleman who visited Chairman Fly with that request.

"Mr. Magnuson: I didn't hear that.

"Mr. Craven: The members of the armed services who visited Chairman Fly with that request.

"Mr. Magnuson: Were they members of IRAC?

"Mr. Craven: I think they were; they were representatives of IRAC.

"Mr. Magnuson: They are under the control of the War and Navy Departments, aren't they?

"Mr. Craven: That is right.

"Mr. Magnuson: What does Mr. Fly have to do with the personnel problems of the War and Navy Departments?

"Mr. Craven: I don't see any reason he should have anything to do with them, but he did.

"Mr. Magnuson: How do you know he did?

"Mr. Magnuson: What happened?

"Mr. Craven: One of the leading men in radio in the Navy was practically cashiered and placed on the retired list.

"Mr. Magnuson: That would be the action of the Secretary of the Navy.

"Mr. Craven: Yes, but at the instigation and insistence of the Chairman of the Federal Communications Commission.

"Mr. Magnuson: How do you know that?

"Mr. Craven: I know what has been told me.

"Mr. Magnuson: It would be hearsay.

"Mr. Craven: It would be hearsay, but the man involved told me.

"Mr. Garey: I think it would be fair to advise the Congressman that we have testimony that we are not permitted to use that confirms what the Commissioner has testified to, given by one of the men involved.

"Mr. Magnuson: What do you mean, you are not permitted to use it? Who said you couldn't use it?

"Mr. Garey: The testimony was taken under a certain understanding had with the head of one of the Departments involved, and considerations of good faith, and subsequent denial to the staff of leave to use such testimony, have prevented our using it in public hearings. Such testimony is of course available to members of the Committee and their staff, but I think the considerations of good faith prohibit its use in public hearings.

"Mr. Magnuson: What testimony do we have of any connection between an individual, Mr. A and an alleged reprisal that might be visited upon a man under the control of Mr. B?

"Mr. Garey: We have such testimony from a man involved himself, and I will be glad to make that testimony available to you and the other members of the Committee.

"Mr. Magnuson: That may be his opinion.

"Mr. Garey: I can go further and say I have had talks with parties involved.

"Mr. Magnuson: Did anybody talk with the Secretary of the Navy?

"Mr. Garey: I did.

"Mr. Magnuson: And he said he visited reprisals on a man?

"Mr. Garey: Yes.

"Mr. Magnuson: We should have him testify.

"Mr. Garey: I think it is advisable that this matter be taken up by the Committee in executive session, I don't think it is particularly appropriate for all the details to be made public.

"Mr. Magnuson: I don't see why. I have great admiration for the Secretary of the Navy, and I have some duties to perform under him.

"Mr. Garey: I think we all share that respect. I share it to such an extent that I don't want to be a party to breaking faith with him.

"Mr. Magnuson: I don't want it to go out to the public that he would visit reprisals on anybody without having the basic facts.

"Mr. Garey: The facts are available to the Committee in executive session.

"Mr. Magnuson: Well, what happened? Can you tell that?

"Mr. Garey: Yes, I can tell it. I just don't think it advisable to do so. I know the whole story.

"Mr. Magnuson: If that is the case, why did we bring up the innuendo here?

"Mr. Garey: We bring it up in order to show that the Commissioner's reluctance to give the names of these men was well justified in view of other circumstances or events.

"Mr. Magnuson: I think it is obviously unfair to the Secretary of the Navy and to the Chairman of the Commission for us as a Committee to bring to light certain innuendoes that there is something sinister about reprisals, unless we can bring out the facts.

"Mr. Garey: I think the Congressman has in mind we have been prohibited by Executive Order from bringing these men here and having them testify.

"Mr. Magnuson: Then I think the hinting should not be brought up at this time.

"Mr. Garey: I don't think we hinted at anything. We tried to make it as definite as we could under all the circumstances.

"Mr. Magnuson: It is hearsay testimony and innuendoes that something happened that could not be divulged.

"Mr. Garey: I will be glad to discuss it with the Committee in executive session, and the Committee can take as it deems advisable.

* * * *

(At this point an executive session was held, following which proceedings were had:)

"Mr. Miller: I would like to suggest at this time that the record show that Commander Craven was examined further and that his testimony was given in executive session, and no record has been made of the testimony given, except perhaps some notes by members of the Committee.

"The Chairman: That accords with the facts. I think it might be added that the Committee possibly will further confer on the matter in executive session.

Select Committee Hearings resumed on December 1, and resolved primarily around the activities of the Radio Intelligence Division and the Foreign Broadcast Information Service of the F.C.C. and was more or less of an attempt to show that the R I D had been cloaked with a defense aspect in order to secure funds during the war.

The high point of the hearing, however, was a disclosure of the fact that the Commission has allowed Drs. Goodman Watson and William Dodds to remain at their desks for a week after November 15 (when they were required by law either to be dropped from the payroll by the Commission or their names submitted by the President to the Senate for confirmation) without salary, in order to establish their right to a suit against the Government for that week's pay. It was disclosed that the General Counsel had at the request of the Commission written an opinion to the effect that such practice would not violate the law against the Government's acceptance of "gratuitous" services.

Congressman Hart ask Mr. Denny whether he was familiar with the theory "of the presumption of the law" (that is to say that a law passed by Congress is considered constitutional until declared by the Supreme Court to be unconstitutional) and Mr. Denny replied that he was.

Mr. Hart asked whether the Commission recognized "presumption of the law" and Mr. Denny replied that the Commission did make such recognition but that the method employed had been for the purpose of determining constitutionality and it was his opinion the procedure outlined did not violate the law against gratuitous services.

The hearings adjourned until Thursday, Dec. 2.

National Association of Broadcasters
1760 N STREET, N. W. ★ ★ ★ ★ ★ ★ ★ WASHINGTON 6, D. C.
December 10, 1943 SPECIAL LEGISLATIVE BULLETIN No. 26

Jansky, Wakefield, Armstrong, Trammell, Weber, Hogan Testify

The hearings continued on December 3, with Dr. C. M. Jansky, Jr., as the first witness. Present were Senators Wheeler, Chairman; White, McFarland, Clark, Moore, Hawkes, Brooks and Tunnell. Dr. Jansky's testimony related primarily to development of FM. He pointed out the advantages from an engineering standpoint to licensing problems and economic situations in which the limitation of the number of stations would be an economic one instead of an engineering limitation. He drew comparisons between the possibilities of duplication of FM stations on the same channels in FM Band and duplication of AM stations on channels in the Standard Band, pointing out the possibility of thousands of stations from an engineering standpoint.

He outlined the practicability of network hookups without the use of wire lines and stated that he felt that wire lines in connection with FM stations would be the most feasible method in certain cases. He said the fact that FM stations could be hooked up without wire lines was simply to show the possibilities.

He recommended the extension of the present FM Band in order to accommodate the licensing of a greater number of stations in densely populated areas. Asked by the Chairman whether he felt this should be by statute he said that FM could not be retarded and that, based on historical experience he believed it would not be necessary for the provision that additional channels be assigned by statute.

Commissioner Ray C. Wakefield was the next witness, and he spoke first in connection with Section 3 of the Bill (which section has to do with the setting up of Divisions of the Commission) and said that he favored the smaller divisions for the consideration of certain problems, and that during the past two years the Commission had been moving in that direction, citing as an example the three member committee that has considered such matters as the Merger question, and certain discussions in connection with the 'phone rate reductions, and said he was in accord with the development and trend.

He pointed out that the present Act now allows such division, and was opposed to its being set by law. He said the Commission needed flexibility in the handling of various problems, but if division is to be required by statute he was opposed to the provision making the Chairman spokesman for the division as he felt that all members of the division should be in a position where they could be contacted by the interests involved.

With reference to chain regulations, he said it was not his contention that they are "letter perfect" but that they enhanced rather than endangered free speech. He said that in spite of Mr. Paley's statement that the network regulations are bad and unsound, CBS was still making money, and said that in a Brochure to advertisers they maintained to the advertisers that the network rules would not adversely affect them. He placed in the record the CBS Brochure.

Mr. Wakefield said he could not understand the consistency of Mr. Paley's position in being opposed to the rules—and then to say if they were to be adhered to they should be put in the law—to which the Chairman observed "They are afraid of what you'll do with them." Senator Hawkes asked Commissioner Wakefield whether he did not feel that these were poor times to be comparing revenues, since these are "abnormal times and many companies are now making larger profits than ever before." Commissioner Wakefield agreed that these are "abnormal times" but the fact is that CBS is still making a profit.

Commissioner Wakefield indicated in his testimony that an effort was being made to reach a decision in the newspaper cases while the Bill is still under consideration and he was supporting an immediate decision.

Senator Brooks went into the Press Wireless case and Commissioner Wakefield pointed out that a fundamental determination of policy was involved as to whether additional commercial carriers should be allowed to enter the field at this time in view of the impending decisions regarding the international communications merger.

He did not complete his testimony, and the hearings were adjourned until Saturday, December 4.

* * * *

Commissioner Ray C. Wakefield resumed the stand on Saturday, December 4, 1943, with Senators Wheeler, Chairman; Tunnell, McFarland, Hawkes, and Moore present. Mr. Wakefield continued the discussion of the Press Wireless denials

for circuits and stated that the recommendation that only one company be authorized to operate from a point came from the joint Chiefs of Staff and that the Commission was not aware that Press Wireless had a working arrangement with the French company at the time they granted the Mackay license. Asked by the Chairman why the Commission did not find out about it, Mr. Wakefield replied that it was a matter that had to be acted on fairly expeditiously. Senator Hawkes observed that he understood from Mr. Wakefield's previous testimony that the application had been pending from December 18 to February 8.

Mr. Wakefield read from his prepared statement as follows: "So far as I know, no one at the FCC, and certainly no member of the Commission itself, wants, or thinks the Commission should have, the power to censor radio programs. In fact, more than one member of the Commission, including myself, has expressed considerable concern that there is any censoring by anyone at all. . . . It would be unwise to give a government department power to decide what the people should or should not hear. It would be just as unwise to permit a business to have that power without any restrictions. It occurs to me that the happy solution is to permit the government agency to lay down general rules which permit and require the widest possible freedom of speech and freedom of access in distributing that speech, and then permit the licensee freedom of operation within the confines of those rules. It is my belief that this is what we are doing.

"The Chairman: I think the industry would feel much better about the situation if we wrote it into the law.

"Mr. Wakefield: Well, I agree that if there is any confusion as to what the Commission is doing, or should do, it should be written into the law. . . .

"The Chairman: Well it is probably a fact that not one of these commissions wants to have its powers limited in any way. While it is a difficult thing to always put in a law specific details of what is desired, yet I think as far as we can, Congress should write into the law pretty definitely what is intended and not leave it up to the whims of the Commission, that be the Communications Commission or any other commission—I mean, not leave up to a commission the broadest kind of leeway for interpretation. There has been entirely too much of it, and the reason there is so much concern at the present time is because some of these commissions have gone far beyond the powers granted to them by the Congress of the United States." . . .

Mr. Wakefield said that the contentions of the proponents of the bill is "really nothing more or less than a smoke screen raised to confuse the issue and to conceal their really significant activities—activities designed to secure the repeal of the regulations if possible, and, if that is not possible, to get them diluted . . . I discussed somewhat yesterday, in answer to questions, the fear of the Commission which exists among broadcasters. I stated then, and I repeat that I think this thing is a real thing and something greatly to be regretted. I am not sure to what extent it has been exaggerated, but to the extent that it exists at all, it is unfortunate for the Commission and for the industry. I don't want to pass this subject without commenting on the fact, however, that a great part of this fear is manufactured and possibly manufactured for a purpose." . . . Mr. Wakefield attributed this fear to the distance between Washington and other parts of the country—the lack of acquaintance between the Commission and the licensee and the fact that hearings were not "held in the field" due to limited appropriations. He said that the distrust between the Commission and the industry should be eliminated through the "public utility" parallel and cited the independent telephone industry's previous distrust of the Commission which "today have come to realize that the Commission can be, and in some instances is, one of its best friends. Many of the people in this industry are coming to the Commission voluntarily with their problems. This is as it should be. Such mutual confidence will be in the interest of the Broadcasting industry." He defined Freedom of speech as having three important aspects: "Freedom on the part of the speaker to express his views, freedom of access to the vehicles that will carry those views to an audience, and freedom on the part of the audience to listen to all of those who desire to express themselves."

He said the network regulations "particularly enhanced and broadened" freedom of access, and that they had encouraged the wider distribution of both chain and local programs by making it possible for people in a one station area to hear programs emanating from more than one network.

He said the rules did not completely satisfy him; with particular reference to the option rule he thought it inadequate but thought that it may need revision as time goes on and that he was not completely satisfied that the application of the rule to regional networks did not require further consideration. In view of this fluidity he said it would be a mistake to attempt to write the regulations into the statute itself. He said, "I deplore the rule that no time shall be sold for the discussion of controversial questions. Every question worth discussing is controversial."

Chairman Wheeler then said, "Let me ask you this: I have given quite a lot of thought to this matter of the sale of time for the discussion of controversial questions. If you have the sale of time for controversial issues, aren't you then going to limit free speech? Supposing some big corporation or some big labor union goes on and buys up a lot of time for controversial issues. Then the man with the biggest purse string is able to get on the air where the fellow with the little purse string who cannot afford to buy the time cannot get on.

"Mr. Wakefield: I think not. I think the time sold will be sold to such persons as you indicate but if a station is going to operate in the public interest it will see that the other side of the question has a chance to be heard. It still has the ob-

ligation to operate in the public interest and give balanced programs.

"The Chairman: Well, if you sell the time for controversial issues everybody who wants to get on the air with some controversial issue with government money to pay for it can get on.

"Mr. Wakefield: I think not. I discuss that in some detail here.

"The Chairman: All right.

"Senator McFarland: Don't you think the increase in the number of stations will help solve that problem? If you are able to have several more stations in every community, a station may become unpopular if it allows one side to monopolize all the time. People will tune in on other stations, and public opinion will help regulate it.

"Mr. Wakefield: I think it will be some help in answering the problem. On the other hand an unlimited number of stations is not going to help any if they all say, 'We are not going to let anything controversial be discussed on the program.' Ideas are a valuable thing to me, and I just cannot understand not allowing one of the best mediums that has been devised by man or nature to be used for that purpose.

"Senator McFarland: I do not understand that the chairman was directing his question as to not allowing controversial issues to go on. What I understood he was speaking about was allowing them to charge for that. I think everyone wants to go on, but they want both sides represented.

"Mr. Wakefield: Well, I fully agree that both sides should be represented. . . . I would like to see people on the air continuously discussing issues and ideas. Some of them may be highly controversial, some of them less so. I think the ideal program from this standpoint, the one that would have great public interest and great audience appeal, would be to get two men whom you would hear year in and year out who would be on opposite sides of questions and put them on every night or three nights a week and let them debate those issues for a half hour. . . .

"The Chairman: You mean you would pick out two men of opposite views and have them discuss them?

"Mr. Wakefield: I think so. Take Fulton Lewis, Jr., and Leon Henderson, for example.

"The Chairman: I think the people would get awfully sick of them in a very short time.

"Mr. Wakefield: I think it would have audience appeal.

"The Chairman: I don't think it would have much audience appeal for a very long time."

Mr. Wakefield continued and then said, "Many people have in the same breath praised the Columbia Broadcasting System's announced policy and that which Mr. Ed. Craney of Station KGIR advanced without apparently realizing there is a fundamental difference in their solutions. Columbia would bar all discussion of controversial subjects except on occasional sustaining programs. Mr. Craney on the other hand would have an editorial 'box' on his programs where he could bring together a variety of commentators to discuss all sides of public question. They apparently agree in that they would separate what is offered as straight news broadcasting from comment, and I can agree with both of them on that, but Mr. Craney's solution of wide and free discussion seems to me widely different from and vastly preferable to Columbia's policy of very limited discussion.

"There are two other points I wish to cover and then I am finished unless there are further questions.

"The Chairman: I don't understand the Columbia Broadcasting Company's policy is that they want to cut out discussion. What I understand, if I understand it correctly, is that they want to confine their news commentators to news rather than to have the commentators, under the heading of news, inject into the news the opinions and interpretations of what that news means.

"Mr. Wakefield: I think it goes somewhat further, Senator. I think they will not sell time for the discussion of controversial subjects.

"The Chairman: I think all the radio companies have done that, that is, they won't sell time for controversial subjects.

"Mr. Wakefield: I think not all radio. There are large segments—

"The Chairman: Well, I mean all the chains. As I understand it—I may be wrong about it—Mutual, Columbia, Blue and the Red networks, none of them sell time for controversial subjects.

"Mr. Wakefield: I think Blue is departing from that. That is my understanding.

"The Chairman: I see. Well, if they have, in my judgment they are wrong."

In connection with the KOA case Mr. Wakefield said, "While the Commission intends to abide by the letter and the spirit of the decision, I for one would hate to see any extension of this doctrine which will give parties with no substantial interest a legal right to intervene in Commission cases. . . ." He said that "radio is now in its adolescent years, but it will soon reach its majority and I am satisfied its leaders will then recognize the value of constructive regulations and there will be no longer this state of unrest and uncertainty. . . ."

Senator McFarland asked, "Why do you think these notices of appearance will make for undue delay?

"Mr. Wakefield: I think that section could be interpreted to mean that anybody with a competitive interest is entitled to a hearing.

"Senator McFarland: Well why wouldn't they be?

"Mr. Wakefield: Possibly so. But if you have a station in a town and someone comes in and wants another station in that town and the frequency is available and everything set up for it and it seems important that there should be another station, I don't feel that the man with the existing station should hold up the granting of that for an indefinite time, just to give him an opportunity to say, 'My business will suffer if you grant another license in this town.'

"Senator McFarland: Let us assume a situation like this: We have a town of 5,000 people. They have a little radio station now. Two radio stations probably would not be able to exist in that kind of a town. A man comes along or maybe an industry comes along and says: Well we want that station. They go and try to buy it and they cannot buy it so they come in and ask permission to put up another one. Why shouldn't that other station have the right to come in and say there is only room for one station.

"Mr. Wakefield: I would rather leave it Senator just as you do with the newspapers in that regard, that anybody that can get the money to do it can go ahead, that is, where there is a frequency available and the man has reasonable qualifications, that he should have an opportunity to start out and let them see which one survives.

"Senator Moore: Isn't the public interest liable to suffer in that connection if you make it economically unsound for a station to exist. Doesn't that affect the public's rights in not having a properly conducted and economically sound existing station?

"Mr. Wakefield: I think there are considerations of public interest on both sides. The public interest may suffer if there is a newspaper in town and another newspaper comes in and creates a competitive situation, but on the whole I think the public interest is served better by having two newspapers in a town instead of one.

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"The Chairman: In considering applications for radio stations, to what extent does the Commission go into the program service the applicants intends to render?

"Mr. Wakefield: In a general way, Senator, in the application form there is a question as to—I cannot give it to you verbatim—as to what is your proposed program structure. That is broken down into how much time for music, how much time for news, how much for discussion of public matters. It is not broken down into what kind of news are you going to put out, what kind of music are you going to offer, or what public men are you going to allow on the air. It is just the general categories of program content—structure, rather than content—that are inquired about?

"The Chairman: In considering applicants for renewal of license, does the Commission consider the program service the applicant has rendered?

"Mr. Wakefield: In renewal proceedings?

"The Chairman: Yes.

"Mr. Wakefield: In a very general way.

"Senator Moore: That gives the Commission almost supreme power over the character of programs to impress their notions of the character of programs by either granting or withholding the license."

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"Senator McFarland: If you are going to have a hearing why shouldn't it be a complete hearing?

"Mr. Wakefield: It should be a complete hearing.

"Senator Hawkes: You spoke a moment ago about the thing being open, just the same as it is open for a newspaper to come in there there is another newspaper in a town. A newspaper doesn't have to go to a government agency to ask for the privilege of coming into that community. As I understand it, they can go in there and start another newspaper any time they want to and it is just competitive free enterprise. But here you have got something that is entirely different. You have got something which is under government control, because you say it is a quasi-public affair and it is in the public interest to control it and the Government is granting this channel and so forth. It is conceivable to me that you don't give this man who is in that community a chance to be heard from you are considering the granting of an application for a new station. That man might be in disrepute with the Commission. He might have done something you did not like or that your Commission did not like. You are human just like all the rest of us. Your action in granting a new station the right to go in there and compete with him might be governed by something that he should have a right to defend himself on. That is a point I had in mind.

"Mr. Wakefield: I think the basis on which grants are made of new stations is whether or not the frequency is available, whether or not the man is properly qualified and financed, and other considerations, rather than the competitive situation. I think this is free enterprise.

"The Chairman: No you are mistaken about that. You don't put another station in a community just because there is a frequency available.

"Mr. Wakefield: We do not initiate the proceedings.

"The Chairman: No, but I mean you don't permit it to go in under certain circumstances.

"Mr. Wakefield: If there is a frequency available and there is no other request for the frequency and the man is qualified—

"The Chairman: Don't you take into consideration—I am sure in fact you have taken into consideration whether or not in a certain community the other station could live, from an economic standpoint, if you put them in there.

"Mr. Wakefield: We have not. That is exactly the holding in the Sanders case. The material from the Sanders case has been used here and is incorporated to a certain extent in the proposed bill—the dictum in that case.

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"Senator McFarland: Don't you take into consideration the future need for channels and determine whether in a community there is any need for that station, and determine whether there might be a future need for that particular channel from any other community close by?

"Mr. Wakefield: Not to a great extent. Those questions, of course, are posed if there are two applications, one for Community A and the other for Community B. Then certainly we would say, A has enough service already and B has not, so

we will give it to B or vice-versa. But we are not trying to look forward and say we will hold this for a long time because somebody may come along later and ask for a license there. There are qualifications to that, of course. I would not say that as a categorical fact, but by and large applications are granted on the basis of present conditions."

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In connection with the question raised by Senator Wheeler as to whether, when a person is slandered he shall have the right to reply to the slander on the same program, Senator Moore said: "well if there is a slander of someone, or an alleged slander, that is this radio station who is responsible for his program going to be permitted to put on the air another alleged slander of somebody else?

"The Chairman: No, in the first place I don't think these radio stations should have permitted it in the first place. But if they do permit it, certainly they ought to permit the person attacked to go on."

* * * *

"Mr. Wakefield: I wish the problem could be approached from the source, instead of making necessary an opportunity to answer. I think that opportunity should exist, but I think better care should be taken in the selection of broadcasters and then let them go on and say what they please, instead of some office using a blue pencil and saying you cannot say this and you cannot say that.

"The Chairman: Well, I certainly think a station ought to have the opportunity to use a blue pencil if these men are going to make slanderous statements because they are responsible.

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"Mr. Wakefield: Much of that can be cured by the type of commentator and broadcaster they select.

"Senator Hawkes: Mr. Chairman, you have in mind, I take it, that the radio stations ought to have the same right to blue pencil and cut out things that commentators are saying that they exercise with you and me.

"The Chairman: Why, of course.

"Senator Hawkes: They certainly exercise it with me every time and whenever I have seen anybody else that was going to make a speech over the radio they have to have a manuscript and they have to send it out to the station 24 hours beforehand, and the radio stations have said "this has got to come out and that has got to come out."

* * * *

"Senator Hawkes: You don't believe the competitive situation should be given any consideration at all by the Commission in the building up of an industry which is being pioneered.

"Mr. Wakefield: I am not sure radio is being pioneered. It is pretty well established.

"Senator Hawkes: You have mentioned a lot of things that are going to be pioneered in radio when the war is over.

"Mr. Wakefield: That is right, but I would rather keep the avenue of approach free for the granting of as many licenses as possible, just as I would like to see as many newspapers as possible.

"Senator Moore: They are entirely different situations, newspapers and radio stations.

"Mr. Wakefield: I think in this regard there is a similarity. I wouldn't want the authority to say that in this community there are enough stations and in that one there are not. I would rather leave it to competitive operation and let the public decide between the two stations if there is not room for both.

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"The Chairman: What has the Commission done to see that on network broadcasts when public questions are discussed, both sides are heard over identical networks?

"Mr. Wakefield: We have taken no decisive or definitive action in that matter. I think it is a matter that should have wide public discussion. I am hopeful it is something that the industry can work out. I think it does get into that question of too much government operation in the field of controlling programs and that we should not have to do. I think there are brains enough in the radio industry to settle that problem itself if it will do it and I hope it will.

"The Chairman: Do you believe networks can be made responsible for fair division of their time on public questions without licensing the networks.

"Mr. Wakefield: I think so. I am hopeful of it and I am willing to take a chance on that if they will assume the responsibility.

"The Chairman: Would it simplify FCC procedure for the networks to be licensed?

"Mr. Wakefield: I have no strong feeling on the question of licensing networks, if the only thing to be done is to say that the Commission can license networks but after it has licensed them it cannot do anything about it. Certainly we are no better off than we are now. But if we are going into the supervision of their programs, then we are getting into a field that the Commission should stay out of as much as it can. If the Commission can duck that problem, as I am hopeful it will, I prefer it be left there. Licensing networks would naturally give the Commission some supervision over them and if Congress wants us to, I think we should try to exercise it fairly.

"Senator Hawkes: If you are going to license networks then you are getting into the field of licensing of business, because networks are nothing more than a business. If they own a particular station or stations, they have had to take their license for those stations. The business of the networks does not come in the field of licensing of their stations, and I think when you step into the field of licensing networks I personally would be strongly opposed to it, unless we are going to license everyone in business in the United States. I am opposed to that."

"The Chairman: What is the situation with respect to ownership of radio stations by attorneys or engineers practicing before the FCC?

"Mr. Wakefield: I don't believe I can answer that in detail or very intelligently. I know of instances. I could not make an intelligent guess as to how many instances of that kind exist but they do exist.

"The Chairman: Would you furnish the committee with the stations that are owned by engineers practicing before the Commission and by attorneys practicing before the Commission?

"Mr. Wakefield: I shall be glad to.

"The Chairman: Now since we have been holding these hearings, the FCC promulgated an order limiting ownership to but a single station in a city. What is your thought in this matter? Do you believe any greater monopoly of thought is expressed in the ownership of two radio stations in an area than by the ownership of a radio station and a newspaper in the same area?

"Mr. Wakefield: I don't know. I think you have an analogy there. I do think that in the case of two radio stations you do have something where the grant in both cases is from the Government—the right to do business in both cases is being given by the Government. I think you might make the distinction there that the Government would not give one person the right to have two radio stations so the Government is only concerned with one operation, even through the other man owns a newspaper.

"The Chairman: In other words, where there is multiple ownership there might be a question because of your limited number of wave lengths which could be furnished to the city that you feel that it would not be fair for them to monopolize the air? If they could own more than one they could own three or four, unless there was some limitation; is that your idea?

"Mr. Wakefield: That is right, yes, sir.

"The Chairman: What proportion of the Commission's time and personnel is devoted to station broadcast regulations—that is the regulations of broadcasting—what portion of the Commission's time is taken up with that?

"Mr. Wakefield: I think probably before the war something more than 50 per cent. . . ."

The hearings were adjourned until Monday, Dec. 6.

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The hearings continued on Monday, December 6, 1943, with Major Edwin H. Armstrong, inventor of FM, as the witness for the day. Senators Wheeler, Chairman, White, Moore, McFarland, and Hawkes were present.

After going into the historical background of FM and the RCA tests, Major Armstrong was asked by Senator Wheeler why it was that FM was not adopted at the time of the tests, to which Major Armstrong replied that he believed there were two reasons—first—the advantages of FM were underestimated—and second there might have been the thought that there would be too many news stations or new networks, "but as to which factor was controlling I do not know at the present time."

With reference to the June 1936 (the Crossroads) Hearings, Major Armstrong said they resulted in an allocation being made on a sound basis, but it had an unfortunate effect as it led the industry to believe there was no room left for FM on a national basis. Since then an effort had been made to establish a great number of television receivers in the hands of the public which could be tuned in on the first Television Band. The hearings of January 1940 were called for the purpose of establishing television channels, and he said if these hearings had resulted in the establishment of number one channel on a permanent basis FM would have been effectively stopped.

He pointed out that a hearing by the Commission was set for March 1940 to consider the possibilities of FM.

He said he had heard that the Commission was holding up FM but that he wanted to say that Chairman Fly had given FM its greatest impetus at that time, but since that time through failure to make available FM relay channels development of FM had been retarded.

He said in a new invention the only man who is right is the inventor himself—everybody else is wrong. Senator Hawkes asked whether that wasn't true of all types of inventions and Major Armstrong agreed but pointed out that radio is an instance where, if the Commission makes a mistake in granting authority for experimental purposes development might be forever stopped.

He gave as his opinion that due to expansion and prospects for expansion of FM too few channels are at present available and recommended that Television No. 1 be allocated to FM. He said such reallocation would not adversely affect television since in order for television to be available on a national basis it should operate on higher frequencies in order to accommodate sufficient licensees.

In answer to a question he said he thought that FM would be the major development in radio after the war.

In recessing the hearings until Tuesday, December 7, Chairman Wheeler said we will have Mr. Trammell on for "cross-examination."

* * * *

December 7, 1943

Present: Senators Wheeler, Chairman; White, Gurney, Tunnell, Tobey, Moore, Smith, Hawkes, Clark, McFarland, Bone, Shipstead, Truman, Austin.

Niles Trammell, President of the National Broadcasting Company, was the only witness. He endorsed generally the objectives of the Wheeler-White Bill and urged Congessional consideration of the need for new radio legislation.

He said there were two primary legislative objectives, namely:

"First, to guarantee broadcasting in all its forms as a free and unfettered medium of mass communications, secure from government censorship and bureaucratic domination.

"Second, to guarantee a sound economic system of broadcasting so that private enterprise may give to the American public, television, frequency modulation, facsimile, and all the other developments which science and the war research have made available, and thus continue to provide the radio audience with the world's finest radio service.

He said, "I shall support any change in the present Radio Act which accomplishes these objectives. I urge, however, that you guard against writing into the law restrictions which may seem expedient at the moment but which may prove to be a strait-jacket for this fast developing industry. . . . Only free private enterprise can obtain from these achievements the largest dividend in public service. . . . I consider it of prime importance that your Committee and the Congress write a clear and definite declaration that the Commission has no such power to control the 'composition of the traffic' directly or indirectly, either by the regulation of program policies or business practices. If American radio is to remain the greatest radio service in the world, it must be given a new freedom from fear, the fear of the blight of government control. . . . In radio the need for government regulation resulted from the physical characteristics of the transmission and reception of radio energy."

There was considerable discussion as to fundamentals of radio legislation, as follows:

Mr. Trammell: No, sir; go ahead, Senator Wheeler.

The Chairman: You have just stated that "the need for government regulation resulted from the physical characteristics of the transmission and reception of radio energy." Do you think that was the only reason why Congress enacted legislation?

Mr. Trammell: Yes, sir.

The Chairman: Why did we write into the law "public interest, convenience or necessity"? Why did we provide that radio should be regulated in the public interest?

Mr. Trammell: Because in order to get a wave length a man has to assure the Commission he is going to operate his station in the public interest.

The Chairman: Exactly.

Mr. Trammell: In other words, he must be qualified to operate his station in the public interest. His character must be such as to give assurance he will not misuse that facility. He must have financial stability. He must have a proper technical setup, a proper organization to run the station. In my opinion that was the primary reason for that provision of the law.

If you will recall, back in 1926—

The Chairman: So that it was not just simply for technical reasons, as you mentioned a moment ago.

Mr. Trammell: Yes, sir; that was the thing that prompted the original legislation, in 1926.

The Chairman: That was one of the reasons, yes; and I was on this committee at the time when that legislation was considered and recommended. I think I know some of the reasons that actuated the committee in recommending legislation, and I know some of the reasons given in the discussion in the Senate when the committee made its recommendation. It was not simply to cover the technical situation. That was one of the controlling reasons, yes, but that was not the only reason. We wrote into the law the public interest provision, and while that, among other things, would cover the prevention of interference of one station with another, or one wave length with another, that "in the public interest" covers a number of things. We also wrote into the law a provision —and this comes down to a later time and is in the present law—that the Commission shall not have anything to say with reference to program content. That is in the law now.

Mr. Trammell: That is quite true, Mr. Chairman, but the decision of the Supreme Court—

The Chairman: The Supreme Court's decision could not possibly be interpreted as writing out of the statute that provision.

Mr. Trammell: Well, Senator Wheeler, what is composition of traffic, if it is not your program?

The Chairman: I do not know what the Supreme Court meant by that reference, to be perfectly frank with you.

Mr. Trammell: Neither do we, and that is the reason we think we have to have it clarified.

The Chairman: It could not be within the province of the United States Supreme Court to say that the Commission had the right to regulate program content when there was a specific provision in the law saying the Commission could not do that.

Mr. Trammell: The point I am making here is that composition of traffic to broadcasters, at least to us, means regulation of programs.

Now, I think that is one of the prime reasons why we are having these hearings. I think the members of your committee are very much concerned as to what the term "composition of traffic" means. I do not believe it is your intention that the Commission shall have a censorship over programs, but I do think in view of the Supreme Court's decision it has got to be clarified.

The Chairman: I think it is quite clear that so far as program content is concerned, the Commission has no right to regulate that.

Mr. Trammell: I was not here last Saturday, but as I read the statement of Commissioner Wakefield, and I admit that I read it rather hurriedly, that statement it seemed to me indicates his belief that the Commission does have cer-

tain controls over program schedules of stations. In other words, that they have authority to say you cannot have all commentators on your station, or you cannot have all speakers on your station, or cannot have all symphony music, or all jazz music.

As I say, I was not here on last Saturday and did not listen to Commissioner Wakefield's statement, but from reading his statement I think he indicated the Commission did have a certain amount of control over broadcasting so far as program scheduling is concerned.

The Chairman: Well, he advocated several things with which I do not agree myself. I was not very much impressed with some of the suggestions he made. But let me ask you this question: Let us say that here is a station and it goes on the air and simply puts on very bad programs; or they simply put out their own advertising; or put on the air their own ideas to the exclusion of everybody else, would that be in the public interest?

Mr. Trammell: I think it depends largely upon the number of wave lengths in that particular community. If you have an ample supply of wave lengths in that particular community and, let us say, the Methodists want to have a radio station, and the Catholics want to have a radio station, and agriculture wants to have a radio station, and labor wants to have a radio station, just as there are class publications or newspapers, it is perfectly all right to have such radio stations, and they can go on the air and express their views.

But under our present setup, and as the head of the National Broadcasting Company, I will say that is not our idea of operating according to public convenience, interest or necessity, so far as general over-all service is concerned.

The Chairman: When you come to the question of a local station, that is one thing.

Mr. Trammell: Yes, sir.

The Chairman: And then, when you come to a network, that is quite a different thing.

Mr. Trammell: That is true.

The Chairman: Because after all, networks are limited.

Mr. Trammell: They are at the present time.

The Chairman: They are limited because there is a limitation on the number of stations.

Mr. Trammell: That is right.

The Chairman: And there is a limitation in the matter of wave lengths.

Mr. Trammell: That is right.

The Chairman: Let us say that a network—and I know the networks are not doing it, but let us say here is a network operating throughout the country, and it just puts on the ideas—oh, well, it doesn't make any difference, but as an illustration we will say, the ideas of the Radio Corporation of America, which owns the National Broadcasting Company; or that they just want to put on their own philosophy of government, or their own theories on economics, or their own theories with reference to taxation. Now, let us suppose that that is done, to the exclusion of everybody else, would that be operating in the public interest?

Mr. Trammell: Senator Wheeler, I cover that a little bit further along in my statement, but since we have started on it we might as well discuss it now, if you so desire.

The Chairman: All right.

Mr. Trammell: Under the present setup, with the limitation of networks, that would not be in the public interest. That is quite true, but—

The Chairman: When the Commission comes to pass upon the question of renewal of license—and I am not talking now about whether they should have any authority over each individual program, but in considering the over-all picture, shouldn't the Commission say whether or not it is in the public interest for a network to just put on their own theories and philosophies?

Mr. Trammell: I think as I develop this statement of mine you will see that you might have ten or twelve networks in this country, or there might be an ample number of networks—

The Chairman: Let us say there are eight or ten networks. And then let us suppose that all networks were to be left free as you suggest, with no one to determine what was in the public interest; everything left free to advocate their particular theories. Let us say that the Radio Corporation of America were left free to advocate its theories; or that the Blue Network owned by Mr. Noble, or the Mutual Network owned by certain large interests, or that Columbia owned by certain large financial interests, all went on the air and voiced the political theories of government, economics, and taxation that they favored. That would not be in the public interest, would it?

Mr. Trammell: No, sir. But there are two things that would preclude that from happening. First, you would lose your audience; and, secondly, you would lose your advertisers, which are the life blood of the broadcasting networks. In other words, you would not have any circulation if you advocated only one theory.

The Chairman: Let us see whether or not that is true. We know that in certain communities in this country there are newspapers owned by corporations, and that those newspapers express only the views or political philosophy of the owners.

Mr. Trammell: In their editorial columns, yes. But in the news columns they give a complete coverage of news.

The Chairman: Yes, they give a complete coverage of the news.

Mr. Trammell: Yes, sir.

The Chairman: But let us suppose that a radio station goes on the air, and even though it does give a complete coverage of the news, yet it puts on a commentator or commentators—and a commentator, after all, is merely an editor, expressing editorial views, not only upon the news but giving voice to his own particular views—let us say that they all went on and did

that identical thing. You realize that a network is far different from a local newspaper because it reaches into the homes throughout the country, whereas the newspaper is confined to a certain locality. If one wants to hear radio programs then he has to listen to some of the stations.

Mr. Trammell: I do not want to——

The Chairman: Suppose they all went on the air and expressed identical views, political, economic, social, and moral, and everything else, that would not be in the public interest, would it?

Mr. Trammell: No, sir. But please do not misunderstand me. I am not arguing that we should not operate according to public convenience, interest or necessity. We have always so operated, and I think we should. The point I think you want me to bring out is whether the Commission should have jurisdiction over determining whether we are operating according to the public interest, convenience or necessity; is that right?

The Chairman: Yes, sir.

Mr. Trammell: Of course, someone must determine that. I bring out later in my statement that the Commission has the right under certain procedure to bring about revocation proceedings, revocation of license, and I cover that later in my statement. But if you want me to go into it now I will do so.

The Chairman: I do not care about going into it now, but do want your views. I do not disagree with you in some ways, but do say that you cannot leave it up to an industry which has such tremendous power over public opinion; you cannot let them say that they will give expression to the views of only one side of a question. If that happened in this country we might very easily have what they have in Germany, because that is what Germany does, and that is what Russia does, and that is what Italy does.

Mr. Trammell: That is true; but let me say to you——

The Chairman: Or let us say a station, or a group of stations, are owned by an individual or a group of individuals, and they go on the air and say constantly what their theories are, or the theories set out by the President of the United States, or by a Republican Administration, or by a Democratic Administration, that would be a very bad thing because democracy is based upon discussion.

Mr. Trammell: Yes, sir. But I was going on to say——

The Chairman: And you cannot have in the true sense a democracy without giving opportunity for both sides to express their views.

Mr. Trammell: That is true.

Senator Smith: But who is to be the judge of public convenience, interest or necessity?

The Chairman: As I say, they are the representatives of the public, the Congress. But after all, they have to delegate that duty to some commission, and it is an arm of the legislative branch of the Government.

Mr. Trammell: That is true.

The Chairman: I am trying to bring out the situation as I see it.

Senator Moore: Mr. Chairman, isn't the question here largely governed by this, that in so far as the radio industry needs to be regulated, the question is as to what extent there shall be a delegation by Congress of its power to regulate, or what guarantees should be set up by the Congress against arbitrary regulation by a commission?

The Chairman: I think that is exactly correct.

Senator Hawkes: Isn't Mr. Trammell presenting a very important fact in connection with the public, which is the most rigid censor after all?

Mr. Trammell: That is right.

Senator Hawkes: In other words, if you run your radio broadcasting so that the American public—who I believe still are in favor of free enterprise, in favor of freedom of thought and of speech—I say, if you run your broadcasting so that the American public do not like it, all they have to do is to turn a button and you are through, and then you have lost your position with your advertisers, and that is the whole business.

Mr. Trammell: That is quite true.

Senator Hawkes: Isn't that the point you really have in mind?

Mr. Trammell: That is quite true.

The Chairman: But I do not think that answers the question I have in mind. You have a different factor when you consider radio, and it is my contention that the public is entitled to have an opportunity to hear both sides of every question.

Mr. Trammell: That is our policy.

The Chairman: And I am not suggesting that that is not your policy. But I say there is a difference between saying a man who is not interested or who is disgusted or whatnot, may turn off his radio, and giving the public both sides of questions. The theory is not that a man can give whatever program he wants to give. A radio broadcaster must give the public an opportunity to hear both sides, and that is a vastly different question from giving the radio listener an opportunity to turn off his radio.

Senator Hawkes: But that opportunity on the part of the listener certainly does have a tremendous effect upon radio.

Mr. Trammell: That is true. Of course, it all comes back to one thing, and that is: What do you mean by public interest, convenience or necessity? Just think of the interpretation that can be placed upon that very broad general term and you will see where it affects——

The Chairman: You might say that with reference to a railroad.

Mr. Trammell: Mr. Chairman, might I finish this thought?

The Chairman: Certainly.

Mr. Trammell: We have 900 radio stations in this country, and we have 4 networks, and we are all operating in the public interest, convenience or necessity. Now, the checks and balances and competition between those four networks and the 900 radio stations for the listening audience, which is indirectly reflected in the advertising dollar; and I go back again and say that the checks and balances of these various things, one against another, is much safer than to leave control in determining public interest, convenience or necessity in the hands of a bureau of the Government. I mean, that has the final say-so. I think they have to be the real check, and you certainly have to have appeals to the courts before you have revocation of license.

The Chairman: I agree with you entirely that you have to have appeals to the courts, and that pending any such appeal you ought to have a stay of proceedings so the court can review the matter. I am inclined to believe that we ought to write into the law and not leave up to the whims of a bureau, certain directions as nearly as we can. I do not agree with Commissioner Wakefield, who said the other day he thought we ought to leave it entirely up to the Commission, and let them decide anything they want to decide. I think we have to lay down certain definite authority, the same as in the case of the Interstate Commerce Commission, but we do have to leave a certain leeway to the Commission.

Mr. Trammell: As I said a few moments ago, the one thing I hope this committee and the Congress will do is to relieve the broadcaster of the fear he is now subjected to—revocation of license. And, perhaps, because of some minor infraction of the rules and regulations.

The Chairman: I am thoroughly in favor of that position.

Senator Smith: Just leave it up to the United States Supreme Court and they will fix it. They have fixed the other law, and doubtless they will fix this one.

Senator White: Mr. Chairman, might I say a word about the situation?

The Chairman: Certainly.

Senator White: I am not so much in doubt about what we had in mind when we enacted the 1927 Act as I am as to what we should do now. I agree with the witness that the basic thought, both when the 1912 Act was passed and when the 1927 Act was passed, was that we were trying to regulate the transmission service so that interference would be reduced to a very minimum. The 1927 Act superseded the 1912 Act, and of course in 1912 broadcasting was in its swaddling clothes even if it had been born, and I take it then it only extended as far as communication to ships was concerned. If you will look at section 4 of 1912 Act this is what you will find:

> "That for the purpose of preventing or minimizing interference with communication between stations in which such apparatus is operated, to facilitate radio communication, and to further the prompt receipt of distress signals, said private and commercial stations shall be subject to the regulations of this section."

There the regulations were limited to specific purposes, and were authorized for the specific purpose of reducing to a minimum interferences.

Now, when you come to the 1927 Act, as you will doubtless recall the passage of that Act was preceded by what we know as the breakdown of 1926.

Mr. Trammell: Yes, sir; when we had interference all over the country.

Senator White: It was asserted that anyone was entitled to a license who wanted one, in which the courts seemed to agree, and there was no effective control whatsoever of the physical aspects of radio communication, no effective control over transmissions, nor elimination or minimizing of interferences.

When we came to the 1927 Act we wrote section 303, which provides:

> "Except as otherwise provided in this Act, the Commission from time to time, as public convenience, interest, or necessity requires, shall—"

And then it goes on to enumerate a number of powers, all of which have reference to physical things, a wave length a station may have, the power upon which it may operate, the time during which it may operate, the location of the station, and a number of other proscriptions, which make perfectly clear to me that at that time this reference to public convenience, interest, or necessity, first appearing in section 303, we were thinking again in terms of freeing the ether, of freeing communications from all unnecessary and avoidable interferences.

And so it is that I feel perfectly satisfied in my own mind that in 1927 as in 1912 we were undertaking to provide authority with respect to physical things in connection with communications. We are referred to public convenience, interest, or necessity in that connection. It unquestionably being the thought that as you reduced interference, as you minimized interference, you were making a contribution to public interest, convenience, or necessity.

It does not mean from what I have just said that expression "public convenience, interest, or necessity" should not have a larger meaning and a larger significance than that in which it was originally used. I am in pretty close accord with you, Mr. Chairman, on that. But I do not see how one can read the legislation of the past and be familiar with the circumstances existing 1926, without agreeing with the witness that we were primarily endeavoring to work out a system by which interferences should be kept at a minimum. And I repeat again, Mr. Chairman, that that does not mean that that definition

or that thought is a static one. We may have to move on.

The Chairman: There isn't any question but what that was one of the prime considerations. But as a member of this committee I know we discussed, both in the committee and during the hearings, various other subjects with reference to public interest, convenience, or necessity. I do not know what was in the mind of the Senator from Maine with reference to it, but certainly the Committee on Interstate Commerce of the Senate, while it had that thought in mind, and that was one thing that prompted it to take up the subject, yet it was done because the industry was here crying for it.

Senator Wheeler then expressed his opinion regarding controversial issues, licensing of networks, and so on, and on the hypothetical question as to monopoly of control of expression over the air by small groups of people, drew from Mr. Trammell the statement that "the checks and balances between four networks and 900 stations is safer in the hands of the public who have the alternative of listening to control the circulation and thereby the advertising dollar than it would be in the hands of a politically appointed bureau."

Mr. Trammell pointed to the fact that the entire broadcasting industry of the United States "has been built on the use of less than 100 roads or wave-lengths. We know now that we have available for future use many thousands and possibly millions of new roadways through the ether."

He said "Traffic regulations must always control the use of these radio roadways but the argument of limitation of radio wave lengths makes government control of the business or program aspects of broadcasting necessary is no longer true. Even in the present state of the art, there is no more reason for such controls than there is for similar control and regulation of the press.

"Contrary to general opinion, more radio stations are now licensed to operate in the leading cities of the country than there are daily newspapers in those cities. * * * In cities where there are NBC outlets there are 386 radio stations compared with 280 newspapers or 106 more radio stations than newspapers.

"In New York City, for instance, there are 17 stations compared with a total of 11 Metropolitan newspapers. In Chicago there are 14 stations and 5 newspapers. In Denver 6 stations and 2 newspapers. In Washington 6 radio stations and 4 newspapers; in Cleveland, 4 radio stations and 3 newspapers; in San Francisco 8 stations and 4 newspapers.

"It is easier to acquire an existing radio station or to establish a new one in any city of the country than it is to acquire or establish a daily newspaper there."

"As to the future there should be no concern about the possible monopoly by the single ownership of a newspaper and a radio station in any community. Wave lengths are now available for the establishment of additional radio stations in any city, town or country village. Economic conditions and government restrictions may prevent their establishment, but not the scientist."

He said that electronics is shaping a new world in the air—referring to television, facsimile, and so forth.

He said "The burden of transforming present day sound broadcasting into a national service of television, will fall in the first instance on the present day network companies, with newcomers adding to the competition for public favor and approval. Ownership and operation of key stations by networks will be as important in this new service as they are now in standard broadcasting. These key stations will be needed to create the network program service and to provide the economic basis to meet the tremendous development costs. It is clear that such an enterprise can not be self-sustaining until millions of television receivers have been sold.

"The questions that arise in these respects bear upon the fundamental philosophy of radio legislation in determining whether radio will be made to creep or will be allowed to walk in postwar development. For example present FCC regulations have already imposed a strait-jacket on the creation of television networks by prohibiting the ownership of more than three television stations by any one company."

He said "the entire broadcasting plant of this country will need to be remodeled—hundreds of new stations erected—new studio facilities constructed, new networks established and thousands of miles of new telephone lines and coaxial cables provided. All this means more jobs. * * * Broadcasting began at the end of the first world war and in the intervening years a great industry has been established, as I have said before, on the use of less than one hundred wave lengths. I firmly believe that at the close of this war our potentialities are perhaps a hundred-fold-greater. It is our American system of network broadcasting that has attracted strong financial support, so that without subsidy by government, or tax on receiving sets—the only alternatives—American business and American business methods have provided the broadcasting service now a vital part of our national economy and culture."

Pointing to the need for financial support he cited the fact that "in the NBC network system the ownership of the affiliated stations, in addition to the six NBC itself owns and operates is as follows: other broadcasting concerns own 46, newspapers, 49, manufacturers 11, insurance firms 7, automotive dealers, 6, department stores and retailers 5, hotels and theaters, 4, and miscellaneous, 3."

He said that "if private enterprise is to develop the new services now potentially available, it must be given the opportunity to do so free from fear either of confiscation of investment or bureaucratic control of operations. Either would result in discouraging the risk, the initiative and the necessary enterprise."

With reference to the social and program aspects of broadcasting, he said "In the beginning,

and it will always prevail, the radio audience must first be induced to purchase receiving equipment and then to use the receiving set. With all the radio facilities in the world at our command we still cannot gather together a radio audience except on their own volition and because they desire to listen to what we broadcast."

The hearings recessed until Wednesday, with Mr. Trammell to resume the stand.

* * * *

December 8, 1943

Present: Senators Tunnell, Acting Chairman, White, Tobey, Moore, McFarland, Hawkes, Clark, Gurney, and Reed.

Niles Trammell continued his testimony. The full text of this testimony will be reproduced below. During the course of the hearing Senator Reed asked Mr. Trammell whether NAB was a "stooge" of the large networks. Mr. Trammell said that he thought Mr. Fly had been facetious in that remark but that certainly with the Board of Directors set up such as it is, with only two network members on it the NAB is not a "stooge" and the statement "just isn't true."

Mr. Trammell referred to the "dead mackerel in the moonlight" mentioned by Mr. Fly at the St. Louis Convention and said that whenever Mr. Fly gets in the spotlight he drags in one of these "red herrings."

Senator Clark, before leaving to attend another Committee assignment asked Mr. Trammell about the Petrillo situation in view of the fact that he and another member of that Sub-Committee were present. Mr. Trammell explained the situation and said that the funds requested by Mr. Petrillo would be uncontrolled and that it had been their policy not to go into any such arrangement. Senator Moore observed that it looked to him like it was "more or less of a legalized blackmail." Senator Clark asked whether the fact that Decca had signed had put the other record and transcription companies at a competitive disadvantage. Mr. Trammell agreed that this was so—extremely so. Senator Clark said that the Committee had racked its brains for a legislative solution but that they had been advised by the Department of Justice that they couldn't do anything about it under the Constitution and asked what consideration or what solution Mr. Trammell had to suggest. Mr. Trammell replied that while he did not advocate it as a policy that there might be a possible solution through amendment of the copyright law to provide for royalty payments.

During the course of the hearings in connection with free speech and government control, Senator Hawkes observed: "When you get to the place where the government tells the people and the people can't tell the government then we are through."

Mr. Trammell's statement is as follows:

"With the advent of war, the entire program structure of broadcasting was turned to aid the war effort. In the case of the National Broadcasting Company alone, we now average three hours a day of broadcasts to promote the cause of victory. Of these programs 44% are in sponsored time and 56% in sustaining time. It is significant that the most effective war effort has been carried on the commercial programs, which have by far the largest audiences. For example, "Information Please" was used by its sponsors to sell $678,000,000 worth of war bonds. The "Truth or Consequences" program has sold $198,000,000 worth. All together the NBC has accounted for nearly a billion dollars worth of war bond sales.

"According to the OWI Domestic Radio Bureau, the broadcasting industry is contributing free of charge to the government approximately $103,000,000 worth of time and talents a year.

"The National Broadcasting Company and the broadcasting industry acknowledge their social obligations. That does not mean that the broadcaster wants these social obligations imposed upon him as a matter of licensed authority. He wants them as a free citizen in a democracy, and I submit that there is a vast distinction between the two. The entire concept of broadcasting since the beginning has been one of public service. It is at once a policy of high standards and high ideals, and a policy of enlightened business methods. As the broadcaster satisfies his audience so he obtains and satisfies his clients, the advertisers.

"Broadcast advertisers, too, acknowledge the same social responsibilities and provide, day in and day out, the finest program service in the world.

"Last week, in celebrating fifteen years of fine musical programs on NBC, Harvey S. Firestone told the radio audience:

> 'The Voice of Firestone has endured the test of time in depression and war; because it is founded on the fundamental principle that whatever the sorrows or joys of life may be, the influence of good music is always inspiring and helpful. This is particularly true in these critical times when the pressure of work and the sorrow of war weigh so heavily upon us.'

"The National Broadcasting Company's concept of broadcasting from the start has been one of maintaining the highest possible standards in all fields of program service.

"It was the National Broadcasting Company that broadcast the first radio performances of the Metropolitan Opera Company and of the Chicago Civic Opera. At first, operatic broadcasts attracted but a handful of listeners; today they command the weekly attention of millions. It was the National Broadcasting Company that organized the first symphony orchestra exclusively for radio; today it is one of the finest symphony orchestras in this country, again, with an audience of millions. It was the National Broadcasting Company that organized the first national service in the interests of agriculture; the first music appreciation hour for the nation's schools; the first presentation of the masterpieces of dramatic literature; and the first forum for public discussion.

"By throwing a switch and turning a dial, there

are available to the American home commercial or sustaining programs to meet the interests of all. Every night $75,000 worth of talent performs on the American network radio stage. Every day an additional $25,000 worth of talent works to attract and interest the daytime listeners. A total of $100,000 daily for talent alone!

"In order to maintain the soundest concept of public service, the National Broadcasting Company at its inception announced a code of principles and practices which it has developed and expanded through the years, as a guide to its daily operations.

"We adopted principles to insure the reverent treatment of religious subjects, and a respectful presentation of creed and sacrament; we adopted principles to deal wholesomely with subjects of marriage and the home, of sex and crime. We have strict standards against morbidity and against dramatizations that would encourage insobriety and narcotic addiction. We broadcast no lotteries or gambling ads.

"We recognize that radio is a universal medium, that it appeals to men, women and children. Programs for children receive the closest scrutiny to encourage respect for law and order, parental authority, good morals and to avoid suggestions of horror and other undesirable features.

"Equally strict are the advertising policies governing the sale of broadcast time that have been adopted by the Company. We do not accept advertising of products which contain dangerous or habit-forming drugs. The Company will not accept for commercial sponsorship speculative enterprises, alleged cures, fortune telling services, racing organizations or of professions or services whose advertising is generally regarded as unethical.

"These are some of the principles and practices that we have established under our own Code of self-regulation of program content. As we gain in experience, we revise or add new rules to guide us in our daily operations. Broadcasting should not be bound by inflexible restrictions.

NEWS POLICIES

"Freedom of the air is a freedom which must be preserved for the American public. Those who exercise a stewardship over the broadcast facilities of this nation have the duty to bring to radio listeners a full and impartial presentation of news and public affairs and of men and events which affect the American way of life. The fundamental purpose of news dissemination in a democracy is to enable people to know what is happening and to understand the events so that they may form their own conclusions. That purpose can be accomplished only if radio is kept free from government and bureaucratic control.

"In the field of news broadcasting, now such an important part of our program structure, we have developed principles and practices in the public interest governing all of our news broadcasts both sponsored and sustaining.

"The company broadcasts no editorial opinion on its own account and will not allow newscaster or commentator to reflect an opinion on the company's behalf.

"The editorial responsibility of the National Broadcasting Company in its service of news, commentary and public discussion is to maintain freedom of expression, but to guard against inaccuracy, unfairness and partiality; to see that all phases of opinion are reflected in its broadcasting services; to cooperate in every way with public authority and government in the interests of national defense and civilian morale; and finally, to eliminate from the current flow of day-by-day news and commentary, the trivial, the harmful, the slanderous or the malicious.

"The National Broadcasting Company, in addition, labels and identifies "opinion" or "editorial" broadcasts by commentators and other speakers as distinguished from news reports.

"We apply common sense based on experienced judgment to the consideration of every program of news, commentary, and public discussion. We cannot avoid occasional mistakes and we cannot avoid occasional criticism. We employ the best qualified people we can engage, and day in and day out there is a continuous check on what goes out over the air.

"I would like to introduce for the record as an Exhibit C the names and the qualifications of the 36 members of our reporting staff who produce our news broadcasts.

PUBLIC SERVICE

"I believe I have indicated sufficiently that as one of the four national network services of the country, the National Broadcasting Company is alive to the problems of public service discussed at these hearings. No medium is more directly in contact with the public which it serves. None is more immediately aware of public acceptance or public rejection. The broadcaster knows by telephone, by letters and by frequent measurement of listening what the public thinks of his service.

"In the educational activities of National Broadcasting Company headed by Dr. James Rowland Angell, the distinguished President Emeritus of Yale University, the company has a solid record of achievement. Each year the National Broadcasting Company has been awarded honors for outstanding service by the various educational groups of the country. At this point I would like to introduce for the record as our Exhibit D, a report of our Public Service Department for the first eleven months of this year.

"In the field of religious education, in which National Broadcasting programs have been outstanding, I quote Monsignor Fulton J. Sheen, representing the Catholic Church, who said "There is no corporation in the entire United States which has made such a contribution to religion as the National Broadcasting Co."

"For the Protestant Church the Rev. Harry Emerson Fosdick said "No religious opportunity comparable with that furnished by the National Broadcasting Company to reach every conceivable

kind of human being in the country ever existed before."

"For the Jewish faith, Rabbi Jonah B. Wise stated, and again I quote: "It is difficult to put a value on the kind of service rendered by this means—we find that this communication means a spiritual rebirth and a spiritual companionship."

DAYTIME SERIALS

"Referring to daytime serials for a moment I should like to say first that the criticism of these programs, referred to as "soap operas" by those who wish to disparage them, is almost entirely without foundation. They are a form of Americana, listened to by millions, who find in them both relaxation and inspiration. Today these daytime serials are also making a substantial contribution to the war effort, many of them with war and patriotic themes, and all of them carrying the various message of information helpful to the American public and the armed services.

"We have excellent daytime serials, some better than others. Those that do not attract audiences are always displaced. There is continuous improvement in this field as in every other field of radio programs.

"Some months ago the National Broadcasting Company asked a committee to conduct a preliminary study of the daytime serial. The committee consisted of Dr. Henry R. Viets, noted Boston neurologist and lecturer on neurology at the Harvard Medical School, Dr. Winifred Overholser, widely known psychiatrist and professor of psychiatry at George Washington University School of Medicine, and Dr. Morris Fishbein, Editor of the Journal of the American Medical Association. Let me quote some findings from their report:

" 'The psychological problems which are featured in the daytime serial dramas studied are essentially the problems of daily life: love, marriage, divorce, ambition, adoption, illness, parent-child adjustments, occasionally greed, envy, deceit, misappropriation of money, but altogether in no undue proportions. The listeners identify themselves and their own major and minor crises with the characters of these dramas. Since, however, the tendency of all the dramas is toward the solutions that are generally accepted as ethical in our 'social existence, the effects of the dramas tend towards helpfulness rather than harm.'

"The report points out that 'The radio serial drama is the principal attraction of the daytime program schedule. They seem to fill a real demand for a public of considerable size and their shortcomings are heavily overweighed by their virtues.'

"If daytime serials presents a 'problem,' government regulation is certainly not the answer.

"I have here a quotation from the "New York Times" of November 28, which indicates that our contemporaries, the British Broadcasting Corporation of England, have their program troubles too. I quote:

'BBC ITEMIZES SUBJECTS ON WHICH JESTS ARE TABOO

'London, Nov. 28—A stringent code of taboos adopted by the British Broadcasting Corporation, according to a report in the Sunday Chronicle today, forbids jokes about the Home Guard, black market, police, American soldiers, any of the feminine branches of the armed services, Army officers (although not enlisted men) intoxicating drinks or the bombing of Germany. The Chronicle's list also included in the ban the American Southern accent, except in minstrel show programs; the impersonation of persons on the "Brain Trust" program—the British version of "Information Please"—the jazzing of classical music and the singing of nostalgic tunes, lest the latter make soldiers homesick.'

"In summing up this entire program matter, and the social aspects of broadcasting, it is my belief that self-regulation and not bureaucratic edict should control the 'composition of the traffic.' Public pressure exerted by the listener and the economic self-interest of the broadcaster argue that the responsibility for program service in the public interest belongs to the licensee.

"Let me remind you that the technical developments in broadcasting, whereby we will be transmitting news as it occurs, with sight as well as sound, printed news; newsreels; and motion pictures; will bring new problems multiplying the responsibilities of the broadcasters, yet making it impossible to formulate new laws or regulations to control public discussion, balanced discussion opinions, news or other type of information. Obviously any such controls must apply automatically to newspapers, magazines, books, pictures, newsreels and motion pictures. Personally, I do not think it can be done and at the same time preserve the American doctrine of free speech or free press.

REGULATION OF BROADCASTING

"This brings me to the subject of regulation. I have tried to indicate some of the technical aspects of broadcasting, some of the economic aspects and some of the social and program aspects. All of these present serious problems for your consideration in the drafting of new radio legislation.

"Government control of radio has only recently become a serious threat. Though the present Communications Act has many defects the industry grew and flourished under it for years. What has happened to us lately is the result of excessive zeal on the part of bureaucracy to apply new social concepts to American industry. It hit radio a little late but when it did, broadcasting got into trouble.

"The more successful broadcasting became, the more it attracted the attention of the bureaucrats, and the more opportunities it presented for exploitation by those in government who saw in broadcasting a powerful instrument to be used in remaking America. The infiltration of government control in broadcasting has been devious

and gradual. Every pretext and excuse for extending these controls has been utilized.

"The argument is now advanced that business control of broadcasting operations has nothing to do with program control. This is to forget that "he who controls the pocketbook controls the man." Business control means complete control and there is no use arguing to the contrary. I believe that neither the nation nor the broadcasting industry can exist, as was said many years ago "half slave and half free."

"Nor do I believe that you can have a government controlled radio in this country and preserve democracy. You cannot have government controlled radio and maintain either free speech or free press. We have too many an example of what has happened in other lands. I call your attention to the fact that in every land where democracy is dead there is government control of radio, the press and the church.

"One other difficulty in respect to the new concept of radio regulation is the tendency to consider broadcasting as a sort of public utility, despite the fact that the present Act itself specifically declares that broadcasting shall not be considered a common carrier.

"To illustrate: the present Federal Communications Commission has four members who have been engaged in public utility operation or regulation. While the Commission does regulate common carrier in the radio field, these same four members, constituting a majority of the Commission, also regulate broadcasting. Nearly every regulation enacted by the Commission in recent years with the force of the law has been of a kind and character that has come to be associated with public utility regulation.

"Broadcasting wants no immunity from laws that apply to all industry. It asks no favoritism from government. It requires no subsidy. It does not ask to be exempt from the operations of the Sherman Anti-Trust law or the Clayton Act. But I submit that restriction which would goosestep an industry, penalize leadership, discriminate against station owners, delay the introduction of new services and make it impossible for initiative and enterprise to undertake the post-war task of upbuilding and rebuilding which will face the American broadcasting industry, is to destroy the business, shackle the freedom and arrest the progress of the broadcasting art.

"With radio in the United States under bureaucratic control of research, of enterprise, of business and of program policies, I say broadcasting can become a federal monopoly without Government owning a single share of stock in a radio station or having a single representative in corporate management. Such power is a gun aimed at the heart of all our democratic freedom. If the people's stake in radio is to be protected, it is for Congress to say, in the language of that popular ditty: 'Lay that pistol down, Babe.'"

Following this appearance of Mr. Trammell, Mr. Fred Weber of Station WDSU, New Orleans, testified and stated that his appearance was due to a request by the Clerk of the Committee. He read a brief statement in which he said that in a definition of "public interest, convenience and necessity" there were three elements. One: physical powers—Two: economic powers and three: program powers. He said that the Commission must have complete control in physical powers and sufficient control in economic powers to insure competition and that it should have absolutely no program powers. He said that if the Supreme Court decision meant by "composition of the traffic" interference in programs that a statute should be written clearly to negate any such power.

He said if the decision meant that the Commission had broad power over all business practices then that power should be limited by statute. He said that the Commission should not have any authority to make any determination regarding the quality of the program, the nature of legitimate business, the kind of businesses to be advertised or the kind of equipment to be used, nor of the specific type nor proportion of type of program to be broadcast.

He said so long as there is legitimate competition, free speech will take care of itself. If competition is not free then the government needs to control. He recommended also that for violation of statute that the violation should be tried in court and not before the Commission.

In answer to a question by Senator Tunnell he said that he believed in equal opportunity for all sides of controversial subjects but that you should try to express it by statute because it might lead to an intolerable situation.

The hearings were adjourned until December 9, 1943.

* * * *

Senate Hearings—December 9, 1943

The hearings opened on December 9 with Mr. Bernard Smith of New York, as the first witness. Present were Senators Tunnell, Acting Chairman, White, Tobey, Moore, McFarland, Hawkes and Bone. Mr. Smith advocated that more sustaining "public interest" programs be broadcast in choice evening hours. Briefly his recommendation was that half-hour sustaining "public interest" programs be required, but he was not clear as to whether this should be done by Statute or the Commission.

Mr. John V. L. Hogan, Consulting Engineer, and part owner of Station WQXR, New York, appeared responsive to the Committee's request, and in answer to questions said that FM stands at present as a proven practical operation, and that while Television is practical from an engineering standpoint he was not qualified to answer regarding the economic feasibility. Responsive to a question from Senator Bone he said that electrical transcribed programs are better than live programs produced over long distance wire lines which are presently in use. He pointed out however that wire line quality can be and has on short hauls been increased to 16000 cycles—the question is one of economic feasibility.

With reference to the effect of the allocation of FM on the Standard Broadcasting, he pointed out that high power clear channels are at present located near talent centers and render during the day good primary service to areas surrounding talent centers and in the night the secondary services render tremendous rural coverage. He said in the case of his own station WQXR 25% of his night time audience was in secondary areas.

He said that the next step, after the FM industry has built an audience, it seems reasonable to expect, that all regional and local stations will be converted to FM and then as a result it is reasonable to expect that clear channel service will continue for rural areas, allowing more clear channels and thus relieving congestion.

He said it might be practical to separate the clear channels in the United States by 20 kilocycles instead of 10, and the intervening channels be assigned to Canada, Mexico, etc., thereby rendering a solution of the whole international problem of broadcasting.

He pointed to the progress that has been made in facsimile and objected to the Commission's restrictions against designating facsimile alone—the requirement that an FM channel would not be assigned exclusively for facsimile but must be assigned in conjunction with an FM Broadcasting station.

In response to questions by Senator Bone and Senator Tunnell, he said, "I may be radical with respect to the view I have that decent people do a decent job. I think our broadcasting industry has done a really excellent job. It started with no regulation whatever and it has been doing a good job since then. The only time it went haywire was—(during the breakdown of the law when the government was precluded from withholding licenses, assigning frequencies, designating time of operating power of stations). At that time some men ran amuck—no doubt about it—proving the necessity of type of regulation we are talking about, but I have not seen any improvement in the effectiveness of broadcasting as a public service that is consequent upon any attempt to regulate programs externally by the Commission or by law, or any attempt to regulate the business by the Commission or by law. I have never seen a useful result come out of that. . . . I trust you will include a really strong injunction that all proper consideration be given to the development of new service in radio service—the maximum encouragement you can for these things because without these things there is no progress."

Hearings recessed until Friday, December 10.

National Association of Broadcasters
1760 N STREET, N. W. ★ ★ ★ ★ ★ ★ ★ WASHINGTON 6, D. C.
December 17, 1943 SPECIAL LEGISLATIVE BULLETIN No. 27

White-Wheeler Bill Hearings End

House Committee Shelves Newspaper Subsidy Bill

The House Committee on Ways & Means last week voted, 11 to 10, to table the newspaper subsidy bill introduced in the House of Representatives by Mr. Cannon of Missouri. This was the companion Bill to that introduced in the Senate by Senator Bankhead of Alabama, which passed the Senate last month.

Lt. E. K. Jett, Chief Engineer of the Federal Communications Commission, was the first witness before the committee on Friday, December 10, 1943. Present were Senators Tunnell, Acting Chairman, White, Moore and McFarland. Mr. Jett summarized the breadth of the problem of allocation involved and pointed out that there are at least 50 distinct branches of communications. He discussed the interrelationship between national regulation and international assignment of bands to the various services, stressing the fact that as frequencies have been developed for further exploration and use so had need for frequencies expanded and pointed to the terrific demand for frequencies which would be occasioned by the expansion of the aviation industry; he brought out the importance of extending regulation to devices, citing the effect of devices used primarily in other fields, such as medicine and manufacture, in order to eliminate in so far as possible interference from these devices to communications. He said that there would be many problems facing the Communications Commission which would perhaps require fundamental determination of policy by Congress as a result of development in relaying by high frequency transmitters and such matters as whether the transmitter system should be competitive or monopolistic, and whether it should be done by the telephone company, the telegraph company, or by some new organization.

He said he believed it would be fair for the industry to request double the present FM assignment and also pointed to the definite limit on the number of television services which could operate on the presently available 18 channels.

He said that the Commission is faced with many unsolved problems: "For example, we are not sure that the frequencies now assigned to FM, facsimile and television broadcasting will prove to be entirely satisfactory. Preliminary observations made at the Commission's monitoring stations in the present FM and television bands indicate that 'bursts' of relatively strong signals from distant stations may prove to be a source of strong interference. The duration of each 'burst' is usually only a fraction of a second but at times the signal strength is sufficiently strong to obliterate the desired signal. It is generally agreed that these 'bursts' are skywave reflections from the troposphere and inosphere. There is also an entirely different interference problem to deal with in primary service areas where the transmitted signal is reflected from high buildings, hills, etc. These so-called multi-path signals when observed on a television screen appear as 'ghosts' and the multiple pattern created thereby destroys the quality of the picture." He pointed out that the interference results in only the fringe of an area where a momentary signal from a distant station will take control of the receiver. He said the problem was being worked on and he anticipated a solution in time for application immediately after the war.

Mr. O. B. Hanson, vice-president and chief engineer of the National Broadcasting Company, testified and made the following recommendations:

"That the powers of the Federal Communications Commission be confined to:

"1. Granting of licenses. The principles upon which these grants of license must be made should be defined clearly in the basic law passed by Congress.

"2. Establishment of technical standard of transmission in cooperation with the practical engineers of the radio industry.

"3. Policing of the external, technical effects of radio emanations."

"If the committee accepted these three principles as basic, the drafting of a new radio law would be greatly simplified, Mr. Hanson said.

There follows, in full, the NBC press release on Mr. Hanson's testimony.

"At least 1,000 television stations and 25,000,000 receivers can be placed in operation within

the next ten years if present wavelength allocations are left undisturbed by the Federal Communications Commission, O. B. Hanson, National Broadcasting Co. vice-president and chief engineer, told the Senate Interstate Commerce Committee today. The committee is conducting hearings on a proposed new radio law.

"Mr. Hanson declared that it is 'probable' that within two years after the cessation of hostilities a television network will be in operation between Washington and Boston. Similar regional networks will probably develop around other metropolitan centers such as Chicago, Los Angeles and San Francisco, Mr. Hanson continued, predicting that within a decade, a coast-to-coast television network should be in operation.

"Mr. Hanson warned against waiting for full development of color television before proceeding with the already perfected black and white medium. He pointed out that sound was not added to the silent motion picture until 1927 and asked whether the public should have been deprived of the enjoyment of movies for 27 years while engineers perfected sound movies. Although color television by a mechanical method of transmission has been demonstrated, all-electronic color television, Mr. Hanson estimated, will not be out of the laboratory until the latter part of the next decade.

"I urge that you gentlemen," he told the committee, "in contemplating radio legislation, write it to provide encouragement and cooperation by the regulatory body so that these things may quickly become a reality through sound technical standards and economics."

"Although he foresaw huge employment possibilities in the television industry immediately after the war, Mr. Hanson pointed out that James Lawrence Fly, FCC chairman, has indicated that frequencies now assigned to television may be changed. Mr. Hanson explained that it would be wasteful for manufacturers to design actual pre-production models for television or any of the other newer radio services such as frequency modulation (FM) or facsimile because such models would be made virtually useless by subsequent changes in wavelength assignments.

"Mr. Hanson hailed FM as a technical improvement which permits 'the reception of sound programs in the home with greater fidelity and with considerably less interfering noises.' Eventually, he said, 'the majority of listeners will be equipped with FM receivers' and later it will be possible to discontinue most transmission by the present standard broadcast methods. Television, however, will be the 'dominant service', he said, because 'the public is not going to be satisfied just to listen when there is available to them a service which permits them to see also.'

"With most sound stations going over to FM, the present standard wavelengths will be available for superpower stations which will serve rural areas that cannot be reached by FM, Mr. Hanson declared. He called for clear channel stations of 1,000,000 watts to serve rural areas instead of stations limited to the present maximum of 50 kilowatts.

"Considering facsimile broadcasting, the NBC chief engineer termed it a 'likely service in the post-war period.' He defined facsimile as 'a method of transmitting the printed page, with pictures and diagrams, reproducing them by radio in the home.'

"If all these services are realized within the next decade, the home receiver will be a combination providing reception from standard band, FM broadcasting, television broadcasting and facsimile broadcasting. It will be the instrument around which will revolve the social and cultural life of the American family.

"Television, Mr. Hanson pointed out, has been in practical operation in New York City for four years. During 1942 and 1943 NBC has trained 146,000 air raid wardens by television. Receivers were placed in all police precincts and approximately 30 students simultaneously observed the demonstrations over each receiver, he related. At present in New York, there are about 5,000 receivers in operation in homes and public places with an audience of about 50,000.

"Pointing out that the vast expanse of television programs makes networks essential, Mr. Hanson said there were two methods of linking stations. Existing telephone lines are not adequate, he said, but co-axial cables can be built which will carry both the image and the sound, and such an experimental cable is in existence between Philadelphia and New York, and has been used by NBC for the transmission of television. The second method, he said, requires the use of radio relay stations. Unattended receiving and retransmitting stations can be erected which will carry the programs from station to station, he added."

SENATE HEARINGS
WHITE-WHEELER BILL

Tuesday, December 14, 1943

Present: Senators Tunnell, Acting Chairman, White, Brooks, Moore, Clark and Gurney.

Mr. Luigi Antonini, President of the Italian American Labor Council and General Secretary of the Italian Dressmakers Union, Local #89 ILGWU, was the first witness. He told of the difficulties he was having in maintaining a "network program" in the Italian language and said he "had been much disturbed by the trend to suppress such Americanization programs (as his) in the Italian language." He said the same condition existed throughout the country—everywhere local stations are dropping their foreign language programs—not only Italian, but also Polish, Yiddish, Spanish, etc.

He pointed to the importance of maintaining

foreign language programs to lessen the desire of those who spoke only foreign languages to tune in on foreign stations. He did not make any specific proposals for change in legislation but indicated that he wanted some type of anti-discriminatory clause written into the law.

Edgar G. Brown, Director of the National Negro Council and President of the United Government Employees appeared requesting that they "would like to have that language (referring to the broadcasting of obscenity, indecent language, etc.) specifically indicate that terms of opprobrium and epithets such as are often used in referring to foreign and other racial groups, such as the negro, specifically prohibited in the new law. We have had a great many complaints on that score." He also requested that the proposed controversial section be extended by adding "racial or political question whether local, state or national in its scope and application."

Wednesday, December 15, 1943

Present: Senators Wheeler, Chairman, White, Tunnell, Moore, Brooks, McFarland and Reed.

Mr. James Lawrence Fly appeared and gave rebuttal testimony to that presented by Mr. Pierson of Press Wireless in a prepared statement covering the high points of the international carrier situation—again calling on Congress to pass legislation granting the Commission additional authority covering the merger of international carriers stating that this is "the only country in the world which will tolerate this intolerable situation" of a jumbled international set up.

He outlined the policy which the Commission has followed, stating:

"Prior to 1937 any qualified American radio company was granted authorization to communicate with any point without taking into consideration whether the point was already adequately served by other American companies. Beginning in 1937 the Commission announced as its policy that it would not authorize the establishment of new facilities to serve points already adequately served by other facilities. This policy was followed until 1940 when because of service delays and interruptions on existing routes the Commission modified its policy and authorized service to several points which were already served by other American carrier. For example, Mackay Radio was authorized to communicate with Rome and Moscow and Press Wireless to communicate with Berne and Shanghai, although all these points were already served by one or more American carriers. In January 1942 the Board of War Communications advised the Commission that the policy of permitting the establishment of duplicate facilities was desirable for security purposes and recommended that parallel circuits should be extended between the United States and all parts of the world. This policy remained in effect until January 1943."

Senator Brooks asked Mr. Fly who the Board of War Communications was composed of and Mr. Fly replied that it was composed of the Chairman of the Federal Communications Commission as Chairman, and as members the Chief Signal Officer of the Army, the Director of Naval Communications and the Assistant Secretary of State and the Assistant Secretary of the Treasury.

"During the period from 1940 to 1943 the Commission granted many applications to points already served by existing United States Companies. For example, RCA was granted authority to communicate with 39 additional points of which 18 are active; Mackay was granted authority for 56 additional points of which 15 points were active; and Press Wireless was granted authority for 20 additional points of which 6 were active.

"In January 1943, the Board of War Communications reversed its policy and requested the Commission not to authorize any new commercial, international radio circuits without the express approval of the Board. Pursuant to this request, it has been the policy of the Commission before acting on any applications for new international circuits, to refer the matter to the Board for its recommendations."

Senator White asked whether the reversal of policy on single circuits was a reaffirmation of the "Oslo case" and Mr. Fly replied that the reversal was due somewhat to equipment shortage and the feasibility of single carrier operating in any given area and that it was a recommendation of the joint chiefs of staff. He said that Press Wireless had not heretofore equipped itself for public communications and that he had suggested to Press Wireless representatives that they "come down for a little hearing and make a showing that they were equipped for handling public communications as well as press service" and said that "so far as I know they haven't availed themselves of the opportunity." (He was advised by Lt. Jett, however, that a hearing had been held and report is pending.)

In answer to a question from Senator Brooks Mr. Fly said that he could see no reason why the current Commission could not come to a prompt decision on the matter.

Senator Wheeler inquired regarding the position of the Commission in taking away frequencies from the carriers and not guaranteeing the return of same after the war and asked Mr. Fly whether "the Army and Navy will want to keep the frequencies after the war." Mr. Fly replied that it certainly is a problem to get anything away once it is granted and he was "fearful there would be serious need on the part of the Departments for facilities after the war." Senator wheeler said that his personal view was that "granting frequencies to Government Departments should be under the Commission; they should have to come to it for a hearing before the grant."

Senator White observed that this was an extremely controversial problem and it was thoroughly considered during the 1927 Act and the only compromise that was acceptable was that

of giving the President power to assign frequencies. Mr. Fly replied that actually the President never assigned a single frequency—that the I R A C assigned frequencies.

Senator Brooks inquired regarding post-war operation by the Army and Navy and inquired what plans had been made and Mr. Fly replied that no formal plans had as yet been presented—that he had done all he could to press for a unified carrier system.

Senator Wheeler said that after the present hearings are over "We want to get down to the study of this international situation." Mr. Fly said:

"At the outset, I want to address myself to five words which have been ripped from their context and adopted as the battle cry of the two big networks and the NAB in their war on the Commission's anti-monopoly regulations. These five words (you have heard them repeated again and again at these hearings) are "the composition of that traffic." Before I finish I am going to tell you what they mean—and there is no doubt about their meaning when they are read in context. However, I am first going to review what the networks have tried to make you think these words mean.

"When, on May 10 of this year, the Supreme Court upheld the Commission's chain broadcasting regulations, the big networks were much concerned. This was not surprising because on that date the monopolistic shackles which RCA and CBS had imposed upon the radio broadcast industry were finally broken. Now that the highest Court had spoke there was no way that they could hope to recapture the monopoly which they had previously enjoyed—unless they could prevail upon Congress to amend the law. It must have been obvious to them that if they were to succeed an extensive legislative campaign would be necessary. And this campaign had to be pitched on a high plane. It would not do to come before this Committee crying "We want our monopoly back."

"To plan this campaign Neville Miller called the NAB Board of Directors to a special meeting June 3, 1943. Broadcasting Magazine reported that the 26 members of the Board made a "paragrap by paragraph analysis of the Supreme Court opinion." (June 7, 1943, p. 54) Finally, the slogan for the campaign was chosen. A resolution was adopted and a "Special Legislative Bulletin" was issued containing the following:

> "The Supreme Court decision says 'It (the law) puts upon the Commission the burden of determining the composition of that traffic.' Thus the determination of the character and content of the programs is transferred to a single federal appointed agency, remote from the people."

"These words, yanked from their context, made a fine battle cry. It was much better to talk in terms of abridgment of free speech than in terms of restoration of monopoly. Here also was a cause which the press could logically be expected to champion.

"The new slogan worked fine. Almost immediately there was a flood of editorials, all making reference to "the composition of that traffic."

"I have here a dozen samples of these editorials, all published within 20 days of the meeting of the NAB Board and all proclaiming that "the composition of that traffic" means that "the Commission has power to control completely everything that goes out over the air."

"The NAB made certain that these editorials did not go to waste. They reprinted them and distributed them widely. I have here copies of some of the reprints. Neville Miller even went to the length of writing to Mary Haworth, the bleeding hearts editor for the Washington Post:

> "Recently you have published letters from your readers which criticize the content and character of daytime radio programs. . . .
>
> "I am wondering . . . if your readers realize the effect of the Supreme Court decision of May 10 which places in the hands of the Federal Communications Commission, a body of seven men located in Washington, D. C. supreme authority to determine, whenever they wish, what shall and shall not be broadcast to the American people. They may say, at their discretion, what the people shall hear over the radio, whether it be news, drama, music comedy or politics.
>
> "Under the law, as now interpreted by the Court your effort to carry to radio management the genuine criticisms of American citizens through the columns of your newspaper is in a fair way to become an empty gesture, a relic of bygone days. . . ."

"In other words Neville Miller is blaming the soap operas on the Commission. If he can put that one over he is a better man than P. T. Barnum.

"Now before I go further, let me stop for a moment and ask two questions. First, isn't it extraordinary that in a case where a question was not presented for decision, the Supreme Court should have strayed off the reservation and gone out of its way to pass on the Commission's powers with respect to programs. It is well known that it has been the settled practice of the Court to confine its decisions to the questions before it. It is hard to believe that the Chief Justice Stone, Mr. Justice Reed, Mr. Justice Frankfurter, Mr. Justice Douglas and Mr. Justice Jackson would have deviated from that policy or that those jurists would have endeavored to exact a new provision of law of such significant character running counter to the whole tenor of the Communications Act. This brings me to my second question which is this.

"Isn't it extraordinary that it is contended that the Court reached and went out of its way to declare the conclusion that the Commission has the power to control "what shall and shall not be broadcast to the American people "in the face of