

# Broadcasting and the Bill of Rights

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Statements presented by representatives  
of the broadcasting industry  
during hearings on the WHITE BILL (S.1333)  
to amend the Communications Act of 1934.  
Before a sub-committee of the Senate Committee  
on Interstate and Foreign Commerce.

*Washington, D. C.  
June 17-27, 1947*

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# Foreword

**A** BILL to amend the Communications Act of 1934 was introduced in the United States Senate by Senator Wallace H. White, Jr. of Maine on May 23, 1947, and referred to the Committee on Interstate and Foreign Commerce. Public hearings on the bill (S.1333) were held from June 17 to 27, 1947, in Washington, by a sub-committee composed of the following senators:

WALLACE H. WHITE, JR., *of Maine—Chairman*

HOMER E. CAPEHART, *of Indiana*

ERNEST W. MCFARLAND, *of Arizona*

EDWIN C. JOHNSON, *of Colorado*

E. H. MOORE, *of Oklahoma*

WARREN C. MAGNUSON, *of Washington*

CHARLES W. TOBEY, *of New Hampshire*

The broadcasting industry was represented at the hearings by spokesmen for the National Association of Broadcasters, various stations and the four national networks. They not only presented specific criticisms and suggestions regarding the provisions of the White Bill but also expressed convictions relating to the whole subject of Federal law and regulation in the field of radio broadcasting.

As a representative cross-section of industry opinion, based on a quarter-century of broadcasting experience under progressively increasing Federal regulation, their testimony transcends in importance the consideration of the White Bill alone. It is of general interest to broadcasters, lawmakers and the public. It should serve as a source-book in any study of the statutes and regulations affecting broadcasting, and a guide in the formulation of future legislation in this field. For these reasons the National Association of Broadcasters has compiled in this book the formal statements which the White Bill elicited from the broadcasting industry.



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# Justin Miller

President, National Association of Broadcasters

**B**ECAUSE of the importance of the bill and the many problems of broadcasting which are involved in its provisions, I am bringing to you several members of the staff of the National Association of Broadcasters. Each of these men is an expert in one or more branches of broadcasting. While it might have been possible for each of them to have briefed me sufficiently to testify upon all points, I am satisfied that the Committee will be better served and the subject will be more adequately analyzed by their appearance. In this connection, I wish to assure the Committee that all these officers of the National Association of Broadcasters, including myself, will be available for consultation or other assistance in any future work which may be done in the drafting of legislation concerning broadcasting. In my opinion, this legislation — although it has been under consideration for a long time — requires much further study and it needs friendly, intelligent, and understanding cooperation between the members of Congress, the members of the Commission and the representatives of broadcasters. Only in this way is it possible for us to come together in agreement upon language which can properly express the legislative requirements.

My testimony will be directed, particularly, to consideration of several sections of the bill which affect freedom of speech, to wit, Sections 9, 16, 17, 18 and 20. In the hearings on the White-Wheeler bill, committee members expressed concern as to the possibility of encroachment on freedom of speech by the Federal Communications Commission in its administra-



tion of the Act. Events which have occurred since then have justified that concern.

My reading of the transcripts of previous hearings convinces me that the subject of free speech, as contemplated by the First Amendment of the Federal Constitution, was not analyzed with sufficient care by the witnesses who then testified. As it is the subject of paramount importance in any legislation upon the subject of radio broadcasting, I shall analyze the pertinent sections of the pending bill with that in mind.

Let me say, preliminarily, that we who represent broadcasters agree with much of the language of the bill; but, unfortunately, in such conferences as we have been able to hold since the bill was introduced, we have discovered disagreement with some language in practically every section of the bill. In some instances objection is more serious than in others, but in each case it is sufficient, in our opinion, to call it to the attention of the Committee.

Because my comments will be, in part, critical of FCC practices, I wish to make perfectly plain that I have no animosity toward any member of the Commission. On the other hand, I regard it as vital to an intelligent consideration of issues which arise in connection with this bill, that no valid criticism or comment be withheld, out of regard for possible sensitiveness of any member of the FCC. As the Supreme Court has said,<sup>1</sup> "...the law of contempt is not made for the protection of judges who may be sensitive to the winds of public opinion. Judges are supposed to be men of fortitude, able to thrive in a hardy climate." So it is with administrative officers. I am sure that no member of the Commission, or of this Committee, will misconstrue my purpose. This statement is rather for the benefit of others who are unfamiliar with governmental processes.

## The Commerce Clause

In order to lay a proper foundation for my argument, I wish, first, to establish six premises of constitutional law:

1. The power of Congress, which is reflected in this bill and the Communications Act which it proposes to amend, is the power to regulate commerce with foreign nations and among the several States.<sup>2</sup>

## The First Amendment

2. The power of Congress under the Commerce Clause is limited by the First Amendment, which forbids Congress to make any law which pro-

1. *Craig v. Harney*, 331 U.S. 367.

2. *Fisher's Blend Station v. State Tax Commission*, 297 U.S. 650, 655, 8 L. Ed. 956, 960; *Federal Radio Commission v. Nelson Bros.*, 289 U.S. 266, 279.

hibits the free exercise of religion, abridges the freedom of speech or of the press, or abridges the right of the people peaceably to assemble and petition the government for a redress of grievances.<sup>3</sup>

## The FCC is a Creature of Limited Delegated Powers

3. No creature of Congress, such as the Federal Communications Commission, can do any of the things which the Constitution forbids Congress to do. Specifically, in the present situation, it can do nothing which abridges freedom of speech or press, within the limitations of the First Amendment.<sup>4</sup> Another fundamental proposition of constitutional law, a corollary of the proposition just stated, is that an administrative body having power to grant or withhold a privilege may not, by imposing a condition upon such grant, exercise an authority which it cannot exercise directly.<sup>5</sup>
4. Freedom of speech as guaranteed by the First Amendment includes, not only speech broadcast directly by the vocal organs and the mouth, but also speech amplified by a megaphone, a telephone, a public address system, or by a radio transmitter. The same reasoning which makes radio broadcasting subject to control under the Commerce Clause, makes it subject, also, to the protection of the First Amendment. The fact that it may not have been in the actual contemplation of the Constitution-makers does not prevent the language of the First Amendment from extending to cover anything which comes legitimately within the meaning of the constitutional language. In the same manner that the word "press" has been expanded from the original concept of a primitive form of hand set type to the great modern mechanisms of today, so it is equally true of the development of speech transmission from the earliest primitive form of the use of the mouth and the vocal organs to the use of modern methods of amplification.<sup>6</sup> "The essential purpose and indispensable effect of all broadcasting is the transmission of intelligence from the broadcasting station to distant listeners."<sup>7</sup>

3. *Bridges v. California*, 314 U.S. 252, 263: "For the First Amendment does not speak equivocally. It prohibits any law 'abridging the freedom of speech or of the press.' It must be taken as a command of the broadest scope that explicit language, read in the context of a liberty-loving society, will allow." See also, *Adair v. United States*, 208 U.S. 161, 180; *Railroad Retirement Board v. Alton R.R.*, 295 U.S., 330, 347; *United States v. Chicago, M. St. P. & P. R.R.*, 282 U.S. 311, 327.

4. *Stark v. Wickard*, 321 U.S. 288, 309; *Panama Refining Co. v. Ryan*, 293 U.S. 388, 428-429. See also, Justice Brandeis dissenting in *Olmstead v. United States*, 277 U.S. 438, 479; *WOKO, Inc. v. F.C.C.*, 153 F. 2d 623, 628: " \* \* \* The broad scope of authority, or standard of action, established by the Communications Act is that public interest, convenience and necessity must be served. Within that framework the administrative agent is free to exercise its expert judgment; it cannot act unconstitutionally, for neither could its principal, the Congress, and the stream cannot rise higher than the source; it must proceed within the scope of the authority granted to it, that is to say, it must observe the standard established; and it cannot act arbitrarily or capriciously. \* \* \*" (Emphasis supplied)

5. *Terral v. Barke Construction Company*, 257 U.S. 529, 66 L. Ed. 352; *Frost v. Railroad Commission*, 271 U.S. 583, 70 L. Ed. 1101.

6. *Milk Wagon Drivers Union v. Meadowmoor Dairies, Inc.*, 312 U.S. 287, 293; *Thornhill v. Alabama*, 310 U.S. 88, 97.

7. Chief Justice Stone in *Fisher's Blend v. State Tax Commission*, 297 U.S. 650, 655.

5. All the freedoms guaranteed by the First Amendment are subject to certain limitations which do not constitute abridgment within the meaning of the First Amendment. Consequently, while the freedoms of the First Amendment cannot be abridged, they must be defined properly — and thus limited in scope — in order to determine what is and what is not abridgment. The result may be confusing to people who are unaccustomed to the careful use of words and may seem to them to break down the whole constitutional provision that there shall be no abridgment.
6. The final constitutional premise which I wish to establish is that the tests, which have been established by judicial decision of what constitutes abridgment of the several freedoms guaranteed by the First Amendment, are the same for all of them; specifically, in the present case, radio broadcasting, which is a form of speech within the meaning of the First Amendment, is subject to control through the licensing process as a proper method of regulation of interstate commerce. However, the limitations upon the power of Congress, or the FCC, acting under the Commerce Clause, are limited by precisely the same tests as have been applied with respect to the other freedoms of the First Amendment.

## Abridgment

The word “abridgment” which the Constitution-makers used in guaranteeing the right of free speech and press, means a diminution, lessening, or reduction. In other words, in the regulation of broadcasting in interstate commerce, Congress, and consequently, its creature, the FCC, are forbidden to diminish, lessen or reduce the *right* of free communication. What then are the constituent elements of the right of free speech and press which are thus safeguarded from abridgment; what general tests have the courts established of the limits which may be imposed upon speech, press, religion, assembly and petitioning for redress of grievances; in what specific types of cases have these limitations of definition been imposed?

Generally speaking, all the freedoms guaranteed by the First Amendment are subject to the police power of the States and to equivalent powers of the Federal government. Such regulations, therefore, as relate to health, public order, preservation of the peace, et cetera, limit all the several freedoms described in the First Amendment and it does not constitute abridgment of them when they are subjected to such limitations.

Specifically, it has been held that freedom of religion does not give the right to practice polygamy, on the theory that the commission of a crime

constitutes an overt act against peace and good order.<sup>8</sup> It is not an infringement of the constitutional provision as to religious freedom to pretend to believe in supernatural powers for the purpose of procuring money and to use the mails in pursuance of such a purpose.<sup>9</sup>

With respect to freedom of the press, several cases have arisen in connection with the granting or refusing to grant the privilege of the second-class mail privilege. In such cases, a permit is issued, which, for all practical purposes, is a license in the same sense that a radio broadcaster is licensed to operate. The Supreme Court has held that it is not obnoxious to the First Amendment to deny to the press the right to circulate matter which it regards as injurious to the people, as an advertisement of a lottery.<sup>10</sup> Neither did freedom of the press protect a newspaper which denounced certain wartime laws as arbitrary and oppressive and whose contents were designed to create hostility to and to encourage violation of such laws.<sup>11</sup> The Supreme Court has held that the National Labor Relations Act is a proper exercise of power to regulate commerce and that an order of the National Labor Relations Board, forbidding the Associated Press to discharge an employee because of union activity and his agitation for collective bargaining, did not interfere with freedom of speech. The Court explained that the Act itself and the order of the Board "does not require that the petitioner retain in its employ an incompetent editor or one who fails faithfully to edit the news to reflect the facts without bias or prejudice. The Act permits a discharge for any reason other than union activity or agitation for collective bargaining with employees." The Court goes on to say: ". . . The business of the Associated Press is not immune from regulation because it is an agency of the press. The publisher of a newspaper has no special immunity from the application of general laws. He has no special privilege to invade the rights and liberties of others. He must answer for libel. He may be punished for contempt of court. He is subject to the anti-trust laws. Like others he must pay equitable and non-discriminatory taxes on his business. The regulation here in question has no relation whatever to the impartial distribution of news. The order of the Board in no wise circumscribes the full freedom and liberty of the petitioner. . . ."<sup>12</sup>

The Supreme Court has held that the guarantees of the First Amendment do not extend to an alien; hence, that the Immigration Law which provides for the exclusion of anarchists was not unconstitutional as being in contravention of the First Amendment. The Court said: "It is, of course, true that if an alien is not permitted to enter this country, or having entered

8. *Reynolds v. United States*, 98 U.S. 145, 163.

9. *New v. United States*, 245 Fed. 710, cert. denied 246 U.S. 665.

10. *In re Rapier*, 143 U.S. 110, 134; *Horne v. United States*, 143 U.S. 207, 213.

11. *United States v. Burleson*, 255 U.S. 407.

12. *Associated Press v. National Labor Relations Board*, 301 U.S. 103, 132-133.

contrary to law, is expelled, he is in fact cut off from worshipping or speaking or publishing or petitioning in the country but that is merely because of his exclusion therefrom. He does not become one of the people to whom these things are secured by our Constitution by an attempt to enter forbidden by law.”<sup>13</sup>

The Supreme Court has also decided that liberty of the press and of speech is safeguarded, not only by the First Amendment, but by the due process clause of the Fourteenth Amendment which, by incorporation of the protection of the First Amendment, prevents invasion by State action.<sup>14</sup> In so holding, the Court recognized the same power in the States as that which exists in the Federal Government — to “enact laws to promote the health, safety, morals and general welfare of its people” as a limitation upon the rights and freedoms guaranteed by the First Amendment and, hence, that there is no abridgment of these rights to the extent that an exercise of such claimed right violates such laws concerning health, safety, morals and general welfare.<sup>15</sup>

Chief Justice Groner had the same point in mind when, in the *Trinity Methodist Church* case, he said: “. . . the regulatory provisions of the Radio Act are a reasonable exercise by Congress of its powers, the exercise of these powers is no more restricted by the First Amendment than are the police powers of the States under the Fourteenth Amendment. . . . In either case the answer depends upon whether the statute is a reasonable exercise of governmental control for the public good.”<sup>16</sup>

These statements do not mean — either in the case of the press or of radio broadcasting — that the States and the Federal Government are freed from the limitations imposed by the First Amendment. The point is that action under such statutes of a police nature or “in the reasonable exercise of governmental control for the public good” does not constitute abridgment of the rights specified in the First Amendment because those rights do not extend so far as to justify violation of such statutes, either of the Federal government or of the States.

## Taxation

The Supreme Court has held that the imposition of a tax may constitute an abridgment of the freedom of the press. In the case of *Grosjean v. American Press Company*,<sup>17</sup> the State Legislature of Louisiana imposed a license tax for the privilege of engaging in the business of publishing a newspaper

13. *United States v. Williams*, 194 U.S. 279, 292.

14. *Near v. Minnesota*, 283 U.S. 697, 707 and cases there cited.

15. *Near v. Minnesota*, 283 U.S. 697, 707.

16. *Trinity Methodist Church, South v. Federal Radio Commission*, 61 App. D.C. 311, 313, 62 F. 2d 850, 852, cert. denied, 288 U.S. 599.

17. *Grosjean v. American Press Co.*, 297 U.S. 233, 244-245.

which had a circulation of more than 20,000 copies a week and which made a charge for advertisements. The Court held that this was a violation of freedom of the press, for two reasons: First, it is a restraint because its effect is to curtail the amount of revenue realized from advertising; and second, because its direct tendency is to restrict circulation.

Generally speaking, the following language of Chief Justice Hughes, in the *Near* case,<sup>18</sup> sums up pretty well the basis upon which the freedoms of the First Amendment may be so defined as to avoid abridgment while, at the same time, limiting them in the reasonable exercise of governmental control for the public good: "As has been noted, the statute in question does not deal with punishments; it provides for no punishment, except in case of contempt for violation of the court's order, but for suppression and injunction, that is, for restraint upon publication. \* \* \* The objection has also been made that the principle as to immunity from previous restraint is stated too broadly, if every such restraint is deemed to be prohibited. That is undoubtedly true; the protection even as to previous restraint is not absolutely unlimited. *But the limitation has been recognized only in exceptional cases. 'When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no court could regard them as protected by any constitutional right.'* Schenck v. United States, 249 U.S. 47, 52, 63 L. ed. 470, 473, 39 S. Ct. 247. No one would question but that a government might prevent *actual obstruction to its recruiting service* or the publication of the sailing dates of transports or the number and location of troops. On similar grounds, *the primary requirements of decency may be enforced against obscene publications. The security of the community life may be protected against incitements to acts of violence and the overthrow by force of orderly government.* The constitutional guaranty of free speech does not 'protect a man from an injunction against uttering words that may have all the effect of force. *Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418, 439, 55 L. ed. 797, 805, 34 L.R.A. (N.S.) 874, 31 S. Ct. 492.'"

## Tests of Definition of Rights and Abridgments Thereof, Applicable to All of Them

Against this background of constitutional law, it would not be seriously contended that the tests mentioned above were not equally applicable to all the rights and freedoms mentioned in the First Amendment. As was well said, recently, by the Supreme Court: "The case confronts us again

18. *Near v. Minnesota*, 283 U.S. 696, 715-716.

with the duty our system places on this Court to say where the individual's freedom ends and the State's power begins. Choice on that border, now as always delicate, is perhaps more so where the usual presumption, supporting legislation, is balanced by the preferred place given in our scheme to the great, the indispensable democratic freedoms secured by the First Amendment. That priority gives these liberties a sanctity and a sanction not permitting dubious intrusions. And it is the character of the *right*, not of the *limitation*, which determines what standard governs the choice. For these reasons any attempt to restrict those liberties must be justified by *clear public interest*, threatened not doubtfully or remotely, *but by clear and present danger*. The rational connection between the remedy provided and the evil to be curbed, which in other contexts might support legislation against attack on due process grounds, will not suffice. These rights rest on firmer foundation. Accordingly, whatever occasion would restrain orderly discussion and persuasion, at appropriate time and place, must have clear support in public danger, actual or impending. *Only the gravest abuses, endangering paramount interests*, give occasion for permissible limitation. It is therefore in our tradition to allow the *widest room for discussion, the narrowest range for its restriction*, particularly when this right is exercised in conjunction with peaceable assembly. It was not by accident or coincidence that the rights to freedom in speech and press were coupled in a single guaranty with the rights of the people peaceably to assemble and to petition for redress of grievances. *All these, though not identical, are inseparable*. They are cognate rights."<sup>19</sup> (Emphasis supplied)

## Proposed Amendments of Section 326 of the Communications Act

Against this background of constitutional law, let us now consider Section 16 of the bill, which proposes to amend Section 326 of the Communications Act. For convenience, I have prepared a draft of the section as follows:

Communications Act, Section 326

White Bill, Section 16

- Legend: 1. [Language of Act eliminated by bill]  
2. (Language added by bill)  
3. Language in italics suggested to be added  
4. Language lined out in black suggested to be eliminated

19. *Thomas v. Collins*, 323 U.S. 516, 529-530. Cf. *Schneider v. Irvington*, 308 U.S. 147; *Cantwell v. Connecticut*, 310 U.S. 296; *Prince v. Massachusetts*, 321 U.S. 158; *United States v. Carolene Products Co.*, 304 U.S. 144, 152, 153; *De Jonge v. Oregon*, 299 U.S. 353, 364; Cf. 1 *Annals of Congress* 759, 760.



1 326(a) Nothing in this Act shall be understood or construed to give the  
2 Commission the power [of censorship over the radio communications or signals  
3 transmitted by any radio station] *or any supervisory power* (to regulate the  
4 business of the licensee of any radio broadcast station, ~~unless otherwise~~  
5 ~~specifically authorized in this Act.~~)  
6 326(b) (The Commission shall have no power to censor, alter, or in any  
7 manner affect or control ~~the substance of~~ any material to be broadcast)  
8 by any radio (broadcast) station, (licensed pursuant to this Act) and  
9 no regulation, or condition, *order, opinion or report* shall be promulgated  
10 or [fixed] (imposed) *or issued and no action shall be taken by the* Commission  
11 which shall interfere *directly or indirectly* with the right [of free speech  
12 by means of radio communication] *as guaranteed by the Constitution of the*  
13 *United States* ~~(and duty of the licensee of any such station to determine,~~  
14 ~~subject to the limitations of this Act, the character and the source of~~  
15 ~~the material to be broadcast. Provided, That nothing herein contained~~  
16 ~~shall be construed to limit the authority of the Commission in its~~  
17 ~~consideration of applications for renewal of licenses to determine whether~~  
18 ~~or not the licensee has operated in the public interest. )~~ [No person  
19 within the jurisdiction of the United States shall utter any obscene,  
20 indecent, or profane language by means of radio communication.]

In my estimation, this Section of the bill seriously endangers the right of free speech by radio in the following respects:

(a) It eliminates (See lines 11 and 12) language now in the Act which expressly prohibits interference with the right of free speech by means of radio communication. As the Communications Act now stands, the inclusion of these words — Lines 11 and 12 — clearly indicates legislative intent that the provisions of the First Amendment shall apply to radio broadcasting and shall limit the power of the FCC in its administration of the Act. Elimination of the words will suggest to the FCC that it should no longer consider itself restricted by the Constitutional Amendment. It will suggest to the Courts — if the Courts ever get an opportunity to examine the point — that Congress has changed its mind concerning the applicability of the First Amendment to radio broadcasting. As it now stands, the First Amendment applies to radio broadcasting, and the Act, itself, makes freedom of speech as guaranteed in the First Amendment applicable to radio broadcasting. I am satisfied that if and when the question reaches the Courts, the Courts will decide that radio broadcasting does come within the guaranty of free speech as set out in the First Amendment. However, no Court can help being concerned by the apparent change in intent upon the part of Congress in this respect. If the words "*of free speech by means of radio communi-*



cation" had not been included in the Communications Act originally, there would be less danger from its elimination.

The particular danger from the elimination of the language comes from the probable interpretation of the elimination by the Federal Communications Commission. In some of its briefs, attorneys for the Commission have contended that the First Amendment does not limit the FCC with respect to radio broadcasting; several decisions of the FCC reflect the same point of view; the Blue Book, recently issued by the FCC, reflects the opinion that the First Amendment does not control the FCC; the elimination of the language from the Act, as proposed by Section 16 of the bill, will give even greater courage to the FCC to expand its administrative interpretation, and further to encroach upon the rights of the broadcaster in the field of free speech by means of radio communication; (b) The second respect in which Section 16 of the bill endangers the right of free speech by means of radio is that it adds four new phrases which will become the subject of administrative interpretation and further expansion of power by the FCC as follows:

1. Lines 4 and 5, the words lined out, "unless otherwise specifically authorized in this Act." This will become a subject of interpretation by the FCC. It will make it possible for the Commission's lawyers to search through the Act to find special authorization for the exercise of power by the Commission in the regulation of the business of station licensees. As will be pointed out by witnesses who will follow me, there are Provisions in other Sections of the bill which do, specifically, authorize the FCC to expand its regulation of the business of the licensee beyond powers now given by the Act. That this will encourage indirect infringement upon freedom of speech by means of radio is already indicated by material contained in the Blue Book recently issued by the FCC, which undertakes to require broadcasters to change their program content on the theory that they are making too much money and should spend a larger proportion of it for radio programming. Whatever the merits of such a contention may be, it is obviously not a subject for government control, but for determination by the broadcasting licensees themselves.

As Judge William Denman has well said: "When the Constitution speaks of the freedom of the press, it refers to the freedom of *private and non-governmental persons or bodies*, engaged in news gathering and dissemination, from interference by governmental agencies. That is to say, that the public function in the gathering and dissemination of news is presumed by the Constitution to be in private hands. \* \* \* *The radio*

*performs a function in the publication of news similar to that of the press. . . .*"<sup>20</sup>

2. Line 7, the words "the substance of." This is a very ambiguous language which will at once be subjected to the process of administrative interpretation by the FCC. Prohibiting the Commission from censoring, altering, affecting, or controlling "the substance of" any material to be broadcast, assumes that it shall have power to censor, alter, affect or control other than the substance of the material. Censoring, altering, affecting and controlling must operate on something; if not on the substance of the material, then what is it to operate upon? If it is intended that there shall be no censoring, altering, affecting or controlling of material to be broadcast, why put in the words "the substance of" at all? Needless to say, the Commission will assume that it is supposed to have some power to censor, alter, affect and control; so it will begin to look around to see what it can find to operate upon; and judging by its previous performance, we may assume that it will not take long to find something, and the broadcasters will, thereupon, be subjected to further control of FCC not now permitted by the Act.
3. The third new clause proposed to be inserted in Section 326 is that which appears on Lines 13, 14 and 15 of Section 16 of the bill. The specifically dangerous words in this clause are those which are found at the beginning of Line 14, "subject to the limitations of this Act." Keeping these words in mind, it will be noted that Section 16 proposes that there shall be no interference with the duty of the licensee in this respect except "subject to the limitations of this Act." In its capacity for interpretation and expansion of power, we may be sure that the FCC will soon find limitations of the Act which will make it possible for it to require the licensee to perform a duty — which duty is thus imposed — concerning the character and the source of material to be broadcast. Here, again, there will be a wide expansion of power upon the part of the Commission.
4. A fourth new clause in Section 16 of the bill is added as indicated in Lines 15, 16, 17 and 18, the proviso. The effect of the proviso is to give the FCC unlimited and uncontrolled authority to determine whether or not the licensee has operated in the public interest when he files an application for renewal. In other words, not only is the express prohibition of interference with free speech by means of radio communication to be eliminated from Section 326 of the Act, but it is further provided that there shall be no freedom of speech limitation imposed upon the Commission at the time of application for renewal of licenses.

20. *Associated Press v. KVOS*, 80 F. 2d 575, 581.

The effect of this provision will be to break down completely all safeguards of the First Amendment against administrative encroachment upon freedom of speech by radio.

## Censorship Contrasted with Abridgment of Free Speech

This brings us to the consideration of a fundamental reason for confusion in determining the proper powers of the FCC and in insuring to the broadcaster the guaranties which the First Amendment assure to him. When the Constitution-makers drafted the First Amendment, they did not use the word "censorship"; they used the word "abridgment" instead. Censorship, as distinguished from abridgment, connotes the suppressing of a particular communication or deleting a part of its contents. It would have no meaning if applied to a fundamental right, except as to a particular, specific publication or communication and only in that limited sense does it constitute abridgment. Its main difference from abridgment lies in the fact that it can operate only in advance of communication and would apply only to the particular communication or publication under consideration. Abridgment — on the other hand, as has already been indicated — may result from a variety of interferences, direct and indirect, *before* and *after* publication.

## Three Different Concepts of Freedom of Speech

This brings us to one of the greatest sources of confusion in thinking about the subject of freedom of speech; namely the fact that the concept of freedom of speech which is written into the First Amendment of the Constitution is entirely different from that which prevails in some of the Continental and other countries of the world, and from the concept which prevails in England, as follows.

## The Continental Concept

The first concept of freedom of speech to which I shall refer is one completely foreign and alien to the political philosophies upon which this Nation was established. This concept is that the people are not competent to determine what ideas are best for their consumption; in other words, that government direction and guidance is necessary — that the people and those who broadcast to them must be "nursed" by the government. This concept is being, more and more, urged upon the FCC.<sup>21</sup>

21. For example, in a brief recently filed with the F.C.C., such statements as the following appear: "Gresham's law, according to which 'Bad currency drives out good', applies to the market of ideas as well, where bad ideas drive out good. Even when they are presented with equal frequency and force.

## The English Common Law Concept

The second concept is that of the English common law, namely that previous censorship should not be exercised over speech or press, but that it is proper to control these media by taxation, by punishing after publication or speech has taken place, and otherwise indirectly, to control speech and press by methods of administrative supervision.<sup>22</sup> Moreover, as England has no written Constitution, an Act of Parliament can change a fundamental law, which, if in our country, being a part of the Constitution, cannot be changed except by the elaborate procedure of amendment.

## The American Concept of Free Speech and Press

The American concept as written into the First Amendment is a much broader one than that of the English common law.<sup>23</sup> Briefly stated, it includes

fulness, suggestions of suspicion and bias are much more effective than invitations to fairness and good will." (memorandum of American Jewish Congress in re Application of News Syndicate Co., Inc., for Construction Permit for an FM Broadcast Station, filed Nov. 12, 1946, p. 27) The idea is expressed, also, in a statement by Lenin, made in a speech in Moscow, in 1920: "Why should freedom of speech and freedom of the press be allowed? Why should a government which is doing what it believes to be right allow itself to be criticized? It would not allow opposition by lethal weapons. Ideas are much more fatal things than guns. Why should any man be allowed to buy a printing press and disseminate pernicious opinions calculated to embarrass the government?" To one who believes in this concept of freedom of speech, even present-day regulation of radio broadcasting is regarded as a bold and questionable experiment. Thus, in the same brief in the New York News case, we find the following statement: "The United States has adopted a unique system of radio regulations unparalleled in other countries. It is a most daring experiment, substantially based on the belief that a properly selected set of private licensees prompted by the profit motive is capable of performing a delicate public duty and serving public interest, convenience and necessity in an area as vital for the political and cultural life of a country as that of formation of public opinion and public taste through the medium of mass communications." (Memorandum, p. 8) In the same brief, we find the following commentary concerning the operation of radio broadcasting in the United States: "Unfortunately, instruction and information are not always entertaining, and entertainment is not always instructive or informative. It is also obvious that people, by and large, prefer to be entertained than to be instructed or informed and that there is much more money in entertainment than there is in instruction or information. This is, in short, the whole difficulty of a public service which relies for its operation on a profit making industry. \* \* \* The licensee who puts 'entertainment' far above 'betterment' will use the sustaining time for the same purposes for which the advertiser uses the time he buys; to build up following, to increase the station's popularity and to build an invaluable 'stay-tuned-to' habit." (Memorandum, pp. 95-96) Again, the same brief suggests that the F.C.C. should require radio to 'give the people adequate knowledge of public issues \* \* \* elevate their cultural, aesthetic, and moral level; \* \* \* serve the First Amendment's basic aims of information, discussion and enlightenment \* \* \* performances particularly in the areas of public information, education of public taste and enlightenment of public opinion \* \* \* serve the public need for genuine and unbiased information and debate \* \* \* higher standards of accuracy, veracity and objectivity." (Memorandum, pp. 6, 7, 8, 9, 16)

22. The history of the long struggle for free speech and press in England is outlined in a decision of the Supreme Court (*Grosjean v. American Press Company*, 297 U.S. 233). The following quotations will give the picture. (p. 245) "For more than a century prior to the adoption of the (First) Amendment — and, indeed, for many years thereafter — history discloses a persistent effort on the part of the British government to prevent or abridge the free expression of any opinion which seemed to criticize or exhibit in an unfavorable light, however truly, the agencies and operations of the government." (p. 245) "As early as 1644, John Milton, in an 'Appeal for the Liberty of Unlicensed Printing,' assailed an act of Parliament which had just been passed providing for censorship of the press previous to publication." (p. 246) "The act expired by its own terms in 1695. It was never renewed; and the liberty of the press thus became . . . merely 'a right or liberty to publish without a license what formerly could be published only with one.'" (p. 246) "In 1712, in response to a message from Queen Anne . . . Parliament imposed a tax upon all newspapers and upon advertisements. . . . That the main purpose of these taxes was to suppress the publication of comments and criticism objectionable to the Crown does not admit of doubt." (p. 246) "There followed more than a century of resistance to, and evasion of, the taxes, and of agitation for their repeal."

23. *Bridges v. California*, 314 U.S. 252: ". . . to assume that English common law in this field became ours is to deny the generally accepted historical belief that 'one of the objects of the Revolution was to get rid of the English common law on liberty of speech and of the press.'" (p. 264) "More specifically, it is to forget the environment in which the First Amendment was ratified." (p. 264) "James

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the following: (1) No previous restraint by censorship or otherwise except in extraordinary emergency such as war; (2) Otherwise *no* previous restraint and, in addition, freedom to utter and publish whatever a citizen may please with immunity from legal censure and punishment; subject only to the limitations of criminal law and regulations enacted in the legitimate exercise of the police power, previously listed.

## The Philosophy of the Present Bill is the Philosophy of the English Concept of Freedom of Speech

The significance of the analysis of the three concepts of freedom of speech which I have set out hereinbefore now becomes apparent. We find a government agency, the FCC, being pressed by advocates of the first concept, that of the continental countries; and we find expressed in the bill, in the proposed amendment as it appears in Section 16 of the bill, amending Section 326 of the Act, an adoption of the philosophy of the English concept. As I already pointed out, this is directly in conflict with the concept adopted by the Constitution-makers and written into our Constitution.

Specifically stated, the effect of the language of Section 326 is to establish as the standard of free speech, to be applied to radio broadcasting, solely that of previous censorship. The use of the word "censorship" indicates the adoption of the philosophy; the elimination of the requirement

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Madison, the leader in the preparation of the First Amendment said that: "... the freedom of the press and rights of conscience, those choicest privileges of the people are unguarded in the British Constitution." (p. 264) "And Madison elsewhere wrote that 'the state of the press . . . under the common law, cannot . . . be the standard of its freedom in the United States.' VI Writings of James Madison, 1790-1802, page 387." (Emphasis supplied) (p. 264) "No purpose in ratifying the Bill of Rights was clearer than that of securing for the people of the United States much greater freedom of religion, expression, assembly and petition than the people of Great Britain had ever enjoyed." (Emphasis supplied) (p. 265) "Ratified as it was, while the memory of many oppressive English restrictions on the enumerated liberties was still fresh, the First Amendment cannot reasonably be taken as approving prevalent English practices. On the contrary, the only conclusion supported by history is that the unqualified prohibitions laid down by the framers were intended to give to liberty of the press, as to the other liberties, the broadest scope that could be countenanced in an orderly society." (p. 265) (Emphasis supplied)

The bitterness which prevailed in the colonies against English encroachment in the field of freedom of speech and press is described in the *Grosjean* case (*Grosjean v. American Press Co.*, 297 U.S. 233), where the Court said, referring to English license taxes on newspapers: "... these taxes constituted one of the factors that aroused the American colonists to protest against taxation for the purposes of the home government; and . . . the revolution really began when, in 1765, that government sent stamps for newspaper duties to the American colonies. These duties were quite commonly characterized as 'taxes on knowledge,' a phrase used for the purpose of describing the effect of the exactions and at the same time condemning them. That the taxes had, and were intended to have, the effect of curtailing the circulation of newspapers, and particularly the cheaper ones whose readers were generally found among the masses of the people, went almost without question, even on the part of those who defended the act." (pp. 246-247) "Any man who carried on printing or publishing for a livelihood was actually at the mercy of the Commissioners of Stamps when they chose to exert their powers." (p. 247) "The framers of the First Amendment were familiar with the English struggle, which then had continued for nearly eighty years and was destined to go on for another sixty-five years, at the end of which time it culminated in a lasting abandonment of the obnoxious taxes. The framers were likewise familiar with the then recent Massachusetts episode; and while that occurrence did much to bring about the adoption of the amendment (see Pennsylvania and the Federal Constitution, 1888, p. 181), the predominant influence must have come from the English experience. It is impossible to concede that by the words 'freedom of the press' the framers of the amendment intended to adopt merely the narrow view then reflected by the law of England that such freedom consisted only in immunity from previous censorship; . . ." (p. 248)

that there shall be no interference with freedom of speech indicates the adoption of the philosophy; and the proviso which is proposed to be added to the end of Section 326 again reveals the adoption of the English philosophy, because it expressly provides that the Commission shall not be limited in determining whether or not a renewal shall be granted except by the prohibition against censorship. It is to be hoped that radio broadcasting is not going to be forced to go through a century of protest in order to avoid the imposition of this foreign concept of freedom of speech upon it, as the American colonists did before our separation from England. If, as is indicated in the Supreme Court decisions quoted from above, these exactions of the English government, these infringements upon freedom of speech were, in fact, the major causes of the American Revolution, we can see how perilously close we are coming to an abandonment of the fundamentals for which our forefathers fought. In fact, as the Supreme Court suggested in the *Grosjean* case,<sup>24</sup> "To allow it (a free press) to be fettered is to fetter ourselves. A free press stands as one of the great interpreters between the government and the people." The same is true of radio broadcasting and if we permit this fettering to take place, then we are in fact fettering, not merely radio broadcasters, but the people themselves.

## The Situation of the Esquire Case Compared to the Present Situation with Respect to Radio Broadcasting

In the *Esquire* case,<sup>25</sup> the Postmaster General revoked the permit of the Esquire Publishing Company to use the second-class mail privilege on the theory that the so-called "Petty girl pictures and smoking-room humor" published in that magazine did not constitute literature within the meaning of the regulations set up for the administration of the second-class mail privilege. This action of the Postmaster General was taken upon the basis of *previous conduct* of the magazine. In other words, it constituted a denial of renewal of the permit used in that case, by the same sort of administrative determination as is involved when the Federal Communications Commission denies the renewal of a broadcasting license to a radio station licensee.

The Supreme Court in that case held that the action of the Postmaster General constituted a violation of freedom of the press, as contemplated by the First Amendment. The same limitation must be imposed upon the FCC as was imposed upon the Postmaster General.

24. *Grosjean v. American Press Co.*, 297 U.S. 233, 250.

25. *Hannegan v. Esquire, Inc.*, 327 U.S. 146.



## The Near Case Compared with the Present Situation in Radio Broadcasting

In the *Near* case,<sup>26</sup> a publishing company had been enjoined from future publication. The statute in that case was directed "not simply at the circulation of scandalous and defamatory statements with regard to private citizens, but at the continued publication by newspapers and the periodicals of charges against public officers, of corruption, malfeasance in office or serious neglect of duty."<sup>27</sup>

The Supreme Court held that the injunction was improperly granted and that it constituted an unconstitutional interference with freedom of the press. Here, again, we have a situation in which the injunction was granted because of *previous conduct of the publisher*, restraining him from publishing in the future. And here again the restraint was an unconstitutional abridgment of freedom.

## The Importance of Contempt of Court Cases

Contempt of court decisions of the Supreme Court, such as those in the *Near* case and the *Bridges* case are important not only as giving us the history of the adoption of the First Amendment and as showing the much wider scope of the constitutional guaranty of freedom of speech in this country as contrasted with that of the English common law, but also, because in these cases not only did the Court *forbid restraint upon publication by means of injunction based upon past conduct*, but also because the Court *refused to permit punishment* of the accused newspaper publishers, *even after the fact*. This point, also, has been emphasized recently in decisions of the Supreme Court in the *Florida* case<sup>28</sup> and in the *Texas* case.<sup>29</sup> In these cases, the Court has set up as the proper standard, that there shall be, not only no enjoining or censoring of editorial comment before the fact, but, also, that there shall be no punishment after the fact unless it can be shown that the situation was one in which there was a "clear and present danger" of actual interference with the administration of justice.

## Arguments Which Are Made for Abridgment of Freedom of Speech by Radio Broadcasting

Let us now consider the arguments which are usually made to justify the abridgment of freedom of speech by means of radio. Apparently some

26. *Near v. Minnesota*, 283 U.S. 697.

27. Note 26 *supra*, p. 710.

28. *Pennekamp v. Florida*, 328 U.S. 331.

29. *Craig v. Harney*, 331 U.S. 367.

mystical significance is read into the fact that radio broadcasting is *different*. Of course, radio broadcasting is different. It is different from speech amplified by the vocal organs and the mouth. It is different from the press. It is different, also, from the exercise of religion; from assembling to discuss public affairs and from petitioning for a redress of grievance. There is nothing in the First Amendment which says that because one medium is *different* from the other, or because one form of religious observance or assemblage is *different* from another that it, therefore, loses its status as one of the fundamental freedoms guaranteed by the First Amendment.

As a matter of fact, the difference between speech in its most primitive form and speech broadcast by a radio transmitter shows no greater difference, in scientific development, than does the development of the press from the first primitive forms to the present elaborate mechanisms; and the difference in its development, is no greater than the difference between a gathering of people in a forest glen to sing a few simple songs and to hear a simple religious service as contrasted to the elaborate services which can now be witnessed in the great churches with their magnificent organs and their great choirs and the rest of the accompanying ceremonials.

The only sense in which the difference between the radio and a primitive form of speech, or between radio and the other freedoms guaranteed by the First Amendment, become important is in determining how the right of freedom of speech shall be defined within the limitations of those necessary police regulations which society imposes for its protection in times of peace and in times of emergency. Thus, as radio broadcasting depends on electrical impulses, it is necessary — in order that the medium be protected and made useful and available for the people — that there be regulation in the allotment of frequencies and for insistence upon technical and other qualifications upon the part of those to whom frequencies are assigned. For this purpose, it is entirely proper to use a licensing system, just as it is entirely proper to use a similar system in connection with the use of the second-class mail privilege by newspapers and magazines; and just as it is necessary that police regulations be observed in connection with the other freedoms. One who had an engagement to speak at a public hall could not justify driving to the hall in an automobile without a license for the automobile and for himself as the driver, merely because he proposed to exercise the freedom of speech. It is necessary for him to have the license if he wishes to use that method of getting where he is going to make his speech. Many similar instances could be given of the same type of police regulation, health regulation, sanitary regulation, etc. upon which the peace and quiet, the comfort and the health of the community depends. But these limitations imposed by definition upon the



various freedoms do not justify abridgment. Neither do they justify departure from the concept of freedom which is implicit in the First Amendment, nor adoption of either of the other two concepts which I have described.

## Scarcity of Frequencies

Another favorite argument for abridging the freedom of speech by means of radio is that there is a limited number of frequencies available for this purpose. When this doctrine was first asserted, there may have been some facts to support the scarcity idea; but the facts no longer justify such an argument. There are, today, far more frequencies available than we had any idea of when we first began to regulate radio broadcasting in interstate commerce. At the present time, it is common knowledge that in most communities there are more radio stations operating or licensed to operate than there are newspapers. Indeed, it has been suggested that the number of licenses being issued is so great that it may result in the bankruptcy of many licensees.

Again, there is nothing in the First Amendment which says that it is proper to abridge freedom of speech because of the scarcity, whether it be a scarcity of public halls, of soap boxes, or churches, or printing presses, or newsprint. As a matter of fact, we are warned by our conservationists that the supply of timber is being rapidly exhausted and the present shortage of newsprint is probably merely the beginning of a more or less constant condition of shortage. Although there is a limit, as yet undetermined, of the number of these frequencies, yet we are told, also, that only God can make a tree; and man has been destroying trees faster than God is making them. If the argument which is made to justify abridgment of freedom of speech is applied to the press, some of these days we may have a government agency authorized to make allotments of newsprint. Obviously, the amount of regulation which should be used in such a case, should be the minimum; but it is entirely conceivable that if a government agency were established for this purpose, it would immediately begin to assume the necessity of great staffs of personnel and elaborate procedures for determining the persons to whom allotments of newsprint should be made. Would it be proper, under such circumstances, for such a government body to impose the sort of abridgments upon freedom of the press that are now imposed upon radio broadcasting? The question would seem to answer itself. Congress would do well to consider the possible implications of the precedent which is being set in connection with the regulation, in interstate commerce, of radio broadcasting, in connection with other media.

The idea of scarcity is a plausible one, but certainly, it provides not the slightest justification in fact or in law for an abridgment of freedom of speech as guaranteed by our Constitution.

## Monopoly

It is urged that radio broadcasting has the character of a monopoly; hence, that it is subject to regulation in order to prevent improper restraints upon trade; consequently, that herein lies a justification for abridgment of freedom of speech by radio. The argument is entirely without foundation. While Congress has power under the Commerce Clause to enact legislation to prevent monopolies, as it has done in the enactment of the Anti-trust Laws, this power is just as much subject to the limitation of the First Amendment as are any other powers which Congress exercises under the Commerce Clause. Congress may impose restraints which may be necessary to prevent or restrain monopolies. I agree with Mr. Denny that if it does so, these restraints should be defined just as precisely as are those in the anti-trust acts.

In this connection, it is well to consider the fact that in other instances in which the anti-trust laws are used for the prevention of monopoly, persons accused are given the opportunity for judicial determination of the issue. This is a much more American way of procedure than it is to put this power into the hands of an administrative agency which may make determinations on a basis of administrative interpretation with a highly limited possibility of judicial review.

In this connection also, let me consider briefly Section 19 of the bill which amends the Act by adding a new Section 333. Paragraph (a) of the new section sets out limitations on chain broadcasting, which are apparently designed to prevent monopoly. Paragraph (d) of the proposed new section provides that "it shall be the duty of the Commission to take such action as is necessary to expedite compliance with the provisions of this section . . ." Just what this language may mean, when subjected to administrative interpretation, is not clear. If the effect of it is to make the decision of questions appropriate for determination under the anti-trust laws, a proper subject for administrative action, then it would seem to provide an opportunity for further administrative control and indirect encroachment upon the activities of a medium of free speech. It would seem much safer to keep such law enforcement in the normal channels, letting the proper officers initiate prosecutions which will insure to all persons charged with law violation, the guaranties of due process in the courts.

This language, again — the language of Paragraph (d) of the pro-

posed Section 333 of the bill — is a good example of similar instances in the bill, of new language with ambiguous meaning which will be subjected to administrative interpretation, enhancing the power of the Commission to a point where the freedom of operation of the radio broadcasters will be more and more abridged.

## Unfairness

Another reason sometimes assigned for abridging the right of freedom of speech by radio is that it is “unfair” to permit commentators to slant news to one point of view or the other, to distort, to misinterpret and to abuse. No fair-minded person would quarrel with that proposition, but it is quite another matter to suggest that an administrative governmental agency should have power to coerce a medium of communication on that account, and that the right of freedom of speech should be abridged on such account.

At this point we can turn, again, with great profit, to the contempt cases, and consider the language which the Supreme Court has used with respect to such examples of unfairness. Thus, in the recent *Texas* case,<sup>30</sup> the Court, after considering the language which appeared in news articles and editorials concerning the trial which was there being reexamined, made this statement: “This was strong language, intemperate language, and, we assume, an unfair criticism. But a judge may not hold in contempt one ‘who ventures to publish anything that tends to make him unpopular or to belittle him . . .’” See *Craig v. Hecht*, 263 U.S. 255, 281, Mr. Justice Holmes dissenting. The vehemence of the language used is not alone the measure of the power to punish for contempt. The fires which it kindles must constitute an imminent, not merely a likely, threat to the administration of justice. The danger must not be remote or even probable; it must immediately imperil.”

In the *Near* case,<sup>31</sup> after tracing the history of the adoption of the First Amendment, the Court went on to say: “The fact that for approximately one hundred and fifty years there has been almost an entire absence of attempts to impose previous restraints upon publications relating to the malfeasance of public officers is significant of the deep-seated conviction that such restraints would violate constitutional right. \* \* \* The importance of this immunity has not lessened. While reckless assaults upon public men, and efforts to bring obloquy upon those who are endeavoring faithfully to discharge official duties, exert a baleful influence and deserve the severest condemnation in public opinion, *it cannot be said that this abuse is greater, and it is believed to be less, than that which*

30. *Craig v. Harney*, 331 U.S. 367.

31. *Near v. Minnesota*, 283 U.S. 697, 718-720.

*characterized the period in which our institutions took shape. Meanwhile, the administration of government has become more complex, the opportunities for malfeasance and corruption have multiplied, crime has grown to most serious proportions, and the danger of its protection by unfaithful officials and of the impairment of the fundamental security of life and property by criminal alliances and official neglect, emphasizes the primary need of a vigilant and courageous press, especially in great cities. The fact that the liberty of the press may be abused by miscreant purveyors of scandal does not make any the less necessary the immunity of the press."* (Emphasis supplied)

So far as concerns this particular phase of freedom of the press the Court has adopted an even more severe standard in safeguarding the right. Thus, even though charges of misconduct upon the part of officials may cause resort to violent means of redress, the Court says it is much better to protect the press against censorship and restraint upon publication. "There is nothing new in the fact that charges of reprehensible conduct may create resentment and the disposition to resort to violent means of redress, but this well-understood tendency did not alter the determination to protect the press against censorship, and restraint upon publication."<sup>32</sup>

Speaking to the same point in the *Grosjean* case,<sup>33</sup> the Supreme Court said: "In the ultimate, an informed and enlightened public opinion was the thing at stake; for, as Erskine, in his great speech in defense of Paine, has said: 'The liberty of opinion keeps governments themselves in due subjection to their duties.'"

I am sure I will be pardoned for saying in conclusion, upon this point, that many fine American citizens who hold radio station licenses, are very much puzzled at the indiscriminate abuse which is being heaped upon them for "poor radio programs." Although there are poor radio programs, there are also superlatively good ones. A scientific survey, recently made, reveals that the people think radio is doing a very good job, a better job in fact than are schools, churches, newspapers and local governments. In a debate in the English Parliament, a few months ago, it was said that some American radio programs are as much better than those of England, as are those of a professional performer better than of an amateur. Certainly, the indiscriminate criticism heaped upon all broadcasters is unfair; but that is, also, a part of the American process; and we should never consent to an abridgment of free speech and press upon any such ground. The American theory is that out of the welter of unfair charge and counter-charge, truth is more apt to emerge than can possibly happen under government controlled or "nursed" media of information.

<sup>32</sup>. Note 31 *supra*, p. 722.

<sup>33</sup>. *Grosjean v. United States*, 297 U.S. 232, 247-248.

## Good Taste

Sometimes it has been suggested that it is necessary for government supervision and direction of radio broadcasting — even to the extent of abridging free speech by means of radio — because the broadcasters are not sufficiently aware of what constitutes good taste to insure that the people will receive the proper kind of programs. Apparently, the FCC is very much concerned about this same problem as is evidenced by much of the contents of its so-called Blue Book, issued in March, 1946.

Upon this point, the Supreme Court has spoken with pungent exactness. Thus in *Bridges v. California*,<sup>34</sup> it said: "For it is a prized American privilege to speak one's mind, although with not always perfect good taste, on all public institutions."

Even more recently, in the *Esquire* case,<sup>35</sup> the Supreme Court has reemphasized this point of view. In that case the Court made a number of statements which are decidedly pertinent to the present situation with respect to radio broadcasting as follows: "The second-class privilege is a form of subsidy. From the beginning Congress has allowed special rates to certain classes of publications. \* \* \* The policy of Congress has been clear. It has been to encourage the distribution of periodicals which disseminated 'information of a public character' or which were devoted to 'literature, the sciences, arts, or some special industry', because it was thought that those publications as a class contributed to the public good. \* \* \* But that is a far cry from assuming that Congress had any idea that each applicant for the second-class rate must convince the Postmaster General that his publication positively contributes to the public good or public welfare. *Under our system of government there is an accommodation for the widest varieties of tastes and ideas. What is good literature, what has educational value, what is refined public information, what is good art, varies with individuals as it does from one generation to another.* There doubtless would be a contrariety of views concerning Cervantes' Don Quixote, Shakespeare's *Venus & Adonis*, or Zola's *Nana*. But a requirement that literature or art conform to some norm prescribed by an official smacks of an ideology foreign to our system. The basic values implicit in the requirements of the Fourth condition can be served only by uncensored distribution of literature. *From the multitude of competing offerings the public will pick and choose. What seems to one to be trash may have for others fleeting or even enduring values.* But to withdraw the second-class rate from this publication today because its contents seemed to one official not good for the public would sanction withdrawal of the second-class

34. *Bridges v. California*, 314 U.S. 252, 270.

35. *Hannegan v. Esquire*, 327 U.S. 146, 151, 154, 157, 158.

rate tomorrow from another periodical *whose social or economic views seemed harmful* to another official. The validity of the obscenity laws is recognition that the mails may not be used to satisfy all tastes, no matter how perverted. But Congress has left the Postmaster General with no power to prescribe standards for the literature or the art which a mailable periodical disseminates." (Emphasis supplied)

This statement by the Supreme Court in the *Esquire* case and others set out above conform, clearly, to the American concept of freedom of speech and of the press as they were written into the First Amendment. The idea that any administrative officer should have power to control such matters or to determine the tastes of the people of this country, is utterly foreign to our concept. What the Courts have said with respect to freedom of the press is equally applicable to freedom of speech by means of the radio. There is just as much reason for resisting any encroachments of this type in the one case as in the other.

## Star Chamber

The term "star chamber" is one which has a synonymous meaning, for American people, with that of arbitrary and capricious government action. It was the type of administrative government which prevailed in England during the long period of struggle against abridgments of freedom of speech, press, religion, assembly and petition. It is a curious fact that although the American people have this feeling concerning the term, they are apparently unaware that we are drifting rapidly into the same kind of government in this country. The present controls exercised by the FCC over one of the most important media of public communication — radio broadcasting — climaxes a long series of steps which have been taken in that direction.

The theory of our Constitution — the separation of powers into the Legislative, Executive and Judicial — has been, during the last century, subjected to a continual process of deterioration. About sixty years ago, the first decisive step in this direction was taken in the creation of the Interstate Commerce Commission. It is not necessary to tell the members of this body that the project was bitterly fought and only after many years did the Commission come to be accepted by the people. As time went by, other administrative organizations were created, and finally, during the last two or three decades, these administrative agencies have multiplied by leaps and bounds, until they now constitute one of the most important structural phases of our government, and combining legislative, executive and judicial functions in one.

The increased complexity of our present day civilization, the large corporate organizations and the political, economic and social needs of our people apparently call for a continuing extension of this type of government.

What is not so apparent is that the trend is definitely against the limitations imposed by our Constitution and that it is creating a situation in which the fundamental guaranties of the Constitution may easily be broken down.

The situation which has now developed was well stated by Justice Robert H. Jackson in a recent address,<sup>36</sup> as follows: "In the United States, once Congress delegates authority to an administrative agency, the Congress loses effective control of the use to which that authority will be put, because it places the power in the hands of an independent and sometimes antagonistic Executive department of government. Hence, Congress legislates with wearisome and confusing details, designed to foreclose abuse, on the theory that every administrator will push his authority to the uttermost limits and as far beyond as the Courts will permit — an expectation seldom disappointed."

## The Process of Administrative Interpretation

When a law creating an administrative agency is passed, or when such a bill as the present one is enacted, it becomes the duty of the administrative agency to interpret the new law in order that it may enforce it. Frequently, Congress uses language in such enactments which is susceptible of many interpretations. In fact, the very reason for creating such agencies lies in the fact, many times, that Congress, itself, cannot anticipate the many changing situations which will arise in the enforcement of the newly enacted law. The administrative agency, therefore, is called upon to apply the law and to interpret these more or less indefinite standards as it goes along from one emergency to another.

The power of the Federal Communications Commission is based, largely, upon its interpretation of the phrase "public interest, convenience and necessity." "The public interest" as a standard of administration is indefinite enough, at best. In the hands of administrative crusaders it becomes a hook upon which to hang many strange and devious notions. This thought was reflected in a recent statement by Senator Taft:<sup>37</sup> "*They have defied Congress. They have attempted to stretch their powers far beyond the limit of statutes. They have sought vast sums of money from the public purse*

36. Address before American Bar Association meeting, October 1946, *American Bar Association Journal*, Vol. 33, No. 1, January 1947.

37. *Washington Post*, February 22, 1947.



to help them carry out their plans, concealing as far as possible what the money was really to be used for. They created the conception of the bureaucrat against which the people revolted in the last election. *They have been unprincipled crusaders for what they perhaps thought were the public interests.*"

Unless these administrative interpretations are challenged in the Courts, they become the law, and those who are subject to their administration are forced to comply with them. The result in a case where such an agency controls a medium of communication has become substantially that described in the Supreme Court cases with respect to the press in England, prior to the separation of the American colonies. Paraphrasing the language of the Supreme Court in the *Grosjean* case,<sup>38</sup> we may say: "Any man who carries on broadcasting for a livelihood, is actually at the mercy of the Federal Communications Commissioners when they chose to exert their powers." I will now give a few illustrations of such exercise of power upon the part of the Commission to demonstrate this point. In a decision entitled *The Mayflower* case,<sup>39</sup> the Commission abolished editorials.

Preliminarily, it is not necessary to state that the right to editorialize is a fundamental of free speech and free press. As has been pointed out in connection with the contempt cases, not only is this regarded as a sacred right, but it is a right so rigidly protected by the Constitution that an editor cannot be punished for editorial comment concerning a court, even after the fact, unless it can be shown that what he said in the editorial created a clear and present danger of defeating the administration of justice. And in the *Near* case,<sup>40</sup> it will be remembered, the court pointed out that even though the editorial comments concerned public officials and were unfair, and even calculated to produce forceful reprisals, that was not a sufficient justification for enjoining him from proceeding to do the same in the future.

To the contrary, in the field of radio broadcasting, the Federal Communications Commission, in the now famous *Mayflower* case, has barred radio broadcasters completely from the performance of the editorial function. It is not necessary to give the details of the case as the present Chairman of the Commission, Mr. Denny, has stated in public that its effect is to prevent editorializing over radio broadcasting stations.

It must be said to Chairman Denny's credit that he now concedes the doubtful validity of the decision in the *Mayflower* case and indicates that he will be happy for a review of the case and a possible withdrawal of it.

38. *Grosjean v. United States*, 297 U.S. 232, 247: "Any man who carried on printing or publishing for a livelihood was actually at the mercy of the Commissioners of Stamps, when they chose to exert their powers."

39. In the Matter of *The Mayflower Broadcasting Corporation*, 8 FCC Reports, 333.

40. *Near v. Minnesota*, 283 U.S. 697.



However, as indicating the administrative point of view with respect to the matter, and as showing failure of the administrator to understand the reason for the invalidity of the decision, consider the following statement made by Mr. Denny at a public meeting in Chicago, on the same occasion that he confessed the *Mayflower* decision was probably wrong:<sup>41</sup> "Well, then, if the broadcaster is to be an advocate, that makes it necessary for the Commission in examining license applications to go into the question of what they will advocate — that is, what their editorial policies are going to be and what their ideologies are, and what their politics are, and what their philosophies are. I don't know if that is a good thing. Under the present system we don't have to rely on licensing as a means of achieving a balancing of views on the air. Each broadcaster is individually responsible for a balanced presentation regardless of what his own view may be. Well, those are the questions that trouble me on whether we should abandon the *Mayflower* Doctrine, and I think that more thought should be given to that. I wish, Judge, you and the others would think about these problems which I have raised before we consider the abandonment of the *Mayflower* Doctrine. We must know where that course leads." Imagine any government agent talking in such a fashion about licensing the editor of a newspaper or a magazine! It seems almost inconceivable; and yet, here is an honest, intelligent, painstaking administrator in charge of the operations of the Federal Communications Commission who has gone so far in his thinking from the fundamental guaranties of the First Amendment that he thinks it is necessary — even conceding the possibility that a radio broadcaster should exercise the privilege of editorializing — for the government to inquire what they are going to advocate, what their editorial policies, their ideologies and their philosophies are.

The decision of the FCC in the *Mayflower* case was never appealed. In fact, there was no basis for appeal. The Act, Section 402(b), limits appeals to licensees or applicants who have decisions rendered against them or who are aggrieved or adversely affected by FCC decisions. In the present case, no decision was rendered against the broadcaster because his renewal application, which was then under investigation, was granted.

What happened in that case was that while the hearings were taking place on the application for renewal, the representatives of the Commission persuaded the applicant to file an affidavit stating that he had not editorialized for some time — after the hearing started — that he had no editorial policy; that he promised not to editorialize in the future. The Commission said that in view of these promises, made without apparent

41. *Do We Have Freedom of Speech in the United States?*, a panel discussion at the 24th Annual Convention of the National Association of Broadcasters, October 24, 1946.

equivocation and in good faith, it would grant the license; that public interest, convenience and necessity, under these circumstances, would be properly satisfied and there was justification for a renewal. It went on to say, however, that if at any time in the future the licensee should lapse into his bad habit and start editorializing, the Commission would feel at liberty to examine the past record in determining what disposition should be made of his case.

As previously stated, under these circumstances there was no basis for appeal. The Commission had written into its opinion a philosophy completely foreign to the guaranties of the First Amendment and to freedom of speech as understood in the United States since the days of the separation of the colonies. News of the decision went throughout the United States like wildfire and was accepted by the broadcasters practically as a default judgment.

## The Scott Case

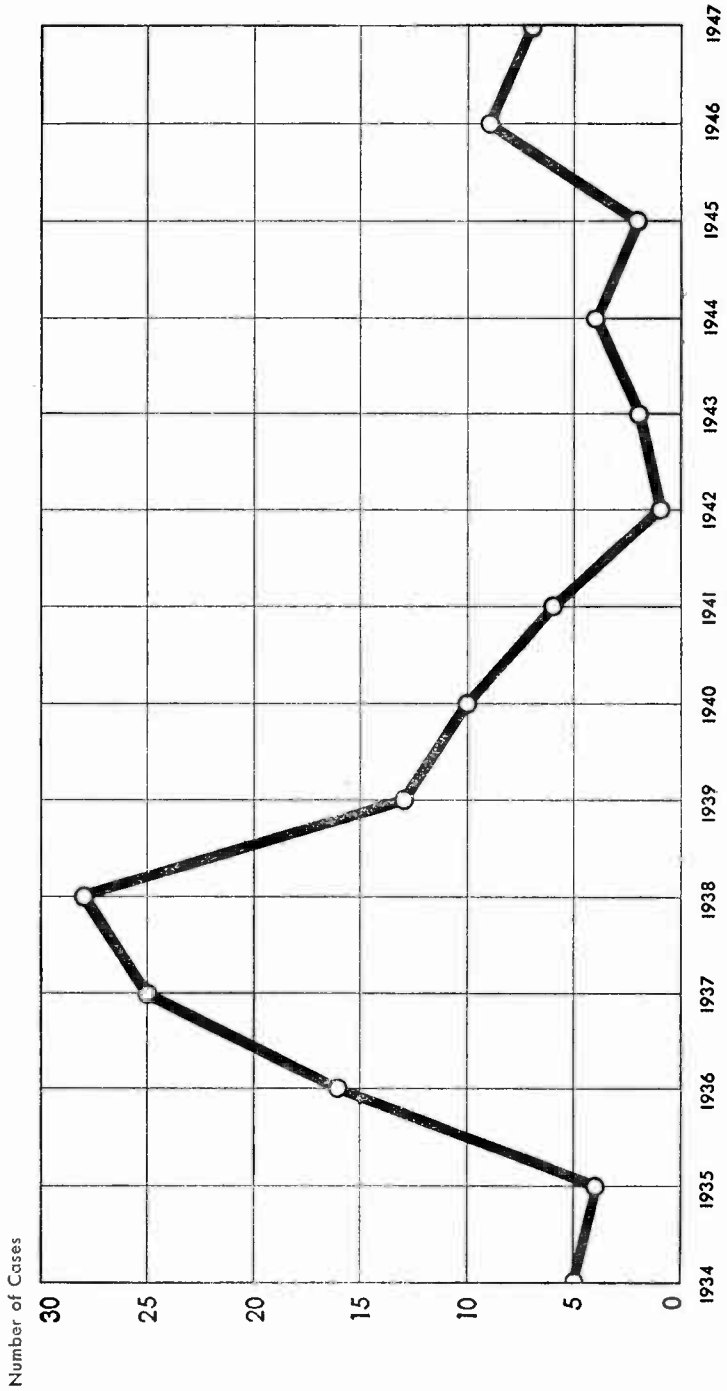
In the *Scott* case,<sup>42</sup> a professed atheist challenged the granting by the Commission of three station licenses on the ground that the licensees refused to provide time for the broadcasting of atheism. The FCC decided that the public interest, convenience and necessity required the granting of these licenses, but, it wrote into the opinion, at great length, its philosophy about atheism, to the general effect that religion is a controversial public question; that broadcasters should not be arbitrary in the allotment of time to speakers upon controversial subjects. It very clearly indicated that broadcasting licensees, who gave time for religious programs, should give time, also, for atheists. It should be noted in this connection that the Commission had, already, in other cases warned broadcasters that they should be very respectful of the ideas and ideals of their listeners and should be careful not to broadcast programs which would offend large majorities of the people.

In this case, again, we see a repetition of the same technique. No ground for appeal was provided because there was no revocation of license or denial of an application. But the Commission succeeded in writing into the opinion the philosophy which it wanted to enforce and impose upon the broadcasters of the country.

It is not necessary to give other specific instances of this type of administrative control over freedom of speech by radio. Many more similar illustrations could be given. It is significant that since the decision of the Commission in the *Mayflower* case, not a single appeal has gone to

42. In re Petition of Robert Harold Scott, Memorandum Opinion and Order of the Federal Communications Commission, July 19, 1946.

# **CASES APPEALED FROM THE FCC TO UNITED STATES COURT OF APPEALS FOR DISTRICT OF COLUMBIA**



## DISPOSITION OF CASES

Yr.	No.	Dismissed	Affirmed	Reversed	Other	Action by Supreme Court
'34	5	2	2			
				1		1 Cert. den.
'35	4	3	1			
'36	16	8	7	1		
'37	25	17	1			
				5		2 Cert. den. 2 Reversed
					2 remanded	
'38	28	21	3		2 remanded	
					2 motion to dismiss den.	2 Reversed
'39	13	13				1 Cert. den.
'40	10	9				
					1 certified to Supreme Court	1 Dismissed by agreement
'41	6	4	1			
				1		1 affirmed
'42	1	1				
'43	2	2				
'44	4	3	1			
'45	2	1				
				1		1 Reversed
'46	9	6	1		1 affirmed in part and remanded 1 pending	
'47	7	(Pending)				

the courts which presented the issue of freedom of speech or challenged the concept of government control over free speech thus developed by the Commission. For the convenience of the Committee, a chart is submitted herewith which shows the number of appeals from decisions of the Federal Communications Commission to the United States Court of Appeals for the District of Columbia, from 1934 to date. It is apparent from this chart that the total number of appeals has fallen off very greatly during the last few years and even the apparent increase in the number of appeals in the year 1947 is accounted for by the fact that all the cases which have been filed during 1947 involve a single point, to wit, the power

of the Federal Communications Commission to license daytime-only stations on clear channel frequencies without affording them a right to be heard. Presumably, all these cases will be decided as one case and none of them, obviously, involve the question of freedom of speech.

## The Blue Book

The culminating act of administrative interpretation in the abridgment of free speech by means of radio came with the issuance of the so-called Blue Book. In this Report, the Commission examined the following subjects as appear from the five titles in the book: "PART I: The Commission's Concern with Program Service; Part II: Commission Jurisdiction with Respect to Program Service; Part III: Some Aspects of 'Public Interest' in Program Service; PART IV: Economic Aspects; Part V: Summary and Conclusions: Proposals for Future Commission Policy."

An examination of the Report will indicate that large powers are claimed for the Commission in the general supervision of programming and of the business of the broadcasters. Reliance is placed upon language which appears in Justice Frankfurter's opinion in the *NBC* case,<sup>43</sup> an interpretation which, incidentally, was repudiated by Mr. Fly, who was Chairman of the Commission at that time, and also by Senator Wheeler, who was Chairman of the Senate Committee at that time. In this connection, I agree with Mr. Fly and with Senator Wheeler that the language of Justice Frankfurter, in the chain broadcasting case, did not assert power in the Commission to supervise programs of licensees or to control the business of the broadcasters. In this connection, also, it is interesting to note that the Report of the Commission failed to mention the language of the Supreme Court in the *Sanders* case:<sup>44</sup> ". . . 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 equipment, and financial ability to make good use of the assigned channel . . .*" (Emphasis supplied)

The Blue Book cited its decision in the *Mayflower* case as a controlling precedent and advised broadcasters that they could expect the Commission to watch with care their programming methods and the way in which they handled the large number of questions which the Commission set out in

43. *National Broadcasting Company, Inc., v. United States*, 319 U.S. 190.

44. *Federal Communications Commission v. Sanders Bros. Radio Stations*, 309 U.S. 470, 475.

Part III of its Report concerning programming, and warned them, also, that decisions in particular cases would be made as they had been made in the *Mayflower* case.

The situation as thus developed is, therefore, practically identical with that which existed in England when the press was subject to the control of the licenser and when the affairs of the country, generally, were controlled by administrative agencies of government, using the star chamber method; a method which violates several of the constitutional provisions including the freedoms of the First Amendment, the use of bills of attainder, violation of the due process clause and of most of the rest of the Sections of the Bill of Rights.

## The Need for Judicial Review

This brings us to a consideration of the need for judicial review, much more extensive than that now provided by the Act or by the present Bill. As already indicated, the Commission has been able to avoid judicial review by the technique of writing into its opinions dictum which is thus set up for the guidance of broadcasters, while at the same time deciding cases in such manner as to prevent the possibility of judicial review. The short-term licenses enjoyed by broadcasters, the extensive and practically unlimited power of the Commission to decide whether renewals shall be granted at the end of these short periods upon a basis of "public interest, convenience and necessity", and the capacity of the Commission for setting up standards of performance by means of reports, dicta, et cetera, has produced a situation in which the administrative interpretations of the Commission have become the law. I am satisfied that the Supreme Court would long ago have destroyed the decision of the Commission in the *Mayflower* case if it had had an opportunity to pass upon it. I am satisfied that a number of other decisions of the Commission, of a similar kind, would have received the same treatment if they had ever been gotten to the Supreme Court. Unfortunately, that Court has never had an opportunity to pass upon them, and there does not seem to be any prospect of such questions reaching the Court because of the possibilities which exist under the present Act of avoiding judicial review.

Whatever may be the merits of closely restricting the right of appeal from the decisions of administrative agencies, generally, certainly there is great need for opening up the right of appeal in a situation which involves such a fundamental right as that of freedom of speech by means of radio.

It is important to note that in other instances where fundamental con-

stitutional rights are involved, the power of appeal and the power of judicial review is not by any means so sharply circumscribed as it is in the case of appeals from the Federal Communications Commission. Thus, if the Postmaster General decides that a particular newspaper or magazine is not entitled to enjoy the privileges of the second-class mail, his action is subject to appeal and determination by the Court, upon a full investigation, not only of the law, but of the facts.

Another example is found in the case of appeals to the United States Supreme Court from the courts of the several States in cases where the decisions are challenged on the ground that they violate provisions of the Federal Constitution. Thus, in the recent Texas contempt case,<sup>45</sup> the Court said: "In a case where it is asserted that a person has been deprived by a State court of a fundamental right secured by the Constitution, *an independent examination of the facts by this Court* is often required to be made. See *Norris v. Alabama*, 294 U.S. 587, 590; *Pierre v. Louisiana*, 306 U.S. 354, 358; *Chambers v. Florida*, 309 U.S. 227, 228-229; *Lisbena v. California*, 314 U.S. 219, 237-238; *Ashcraft v. Tennessee*, 322 U.S. 143, 147-148. This is such a case.

In this connection, it will be noted that Section 22 of the pending bill, which amends Section 402 of the Act, for the purpose of opening up judicial review of decisions of the Commission, especially excepts from the liberalized provisions for appeal those appeals which come up under Paragraph (b) of Section 402. The appeals provided for under Section (b) are the ones from decisions of the FCC which present questions of free speech by means of radio. Consequently, the liberalizing procedure provided for in Section 22 will not accomplish the necessary results unless the exception, which appears in Lines 4 and 5 on page 32 of the Senate bill, is eliminated or other provision made to permit full appeals — upon questions of fact as well as law — to be taken from decisions rendered under Section 402(b).

## Political and Public Questions

Against the background of constitutional law which I have set out, it becomes necessary for me to oppose, also, that Section of the bill, Section 17, proposing to add two new Sections, 330 and 331, relating to discussion of public or political questions. I do not believe, first, that this is a proper subject for abridgment; I do not believe, second, that it is a subject which should be placed in the control of an administrative agency. While it is proper for Congress to pass laws to protect the elective franchise, the

45. *Craig v. Harney*, 331 U.S. 367.



powers should be administered in regular manner by the Courts, with the usual guaranties of fair trial and due process, with all the rights guaranteed by the Constitution.

As previously pointed out, the essence of freedom of speech according to the American concept is the freedom to discuss political and public questions of the kind mentioned in these Sections. The indirect controls which are provided by the proposed new Sections constitute unwarranted abridgments of the right of speech. Again, we should test the wisdom and the lawfulness of these proposals by asking whether anyone would countenance the imposition of such requirements upon the press. There is no sufficient difference between radio broadcasting and the press to warrant such a difference in treatment. This constitutes clear abridgment and should not be permitted. Moreover, present sections of the existing Communications Act, which contain similar provisions should be eliminated also.

## Identification of Source in News Broadcasts

Against the background of constitutional law which I have set forth heretofore, it becomes necessary, also, for me to oppose Section 18 of the bill. There is no more jealously guarded ethic in the journalistic profession than that sources of news should not be disclosed. Moreover, it would be a practical impossibility to comply with the provisions of this proposed statute. Consideration of Sections 17 and 18 will be more fully presented by witnesses who will follow me; but I mention them at this point merely as a part of my argument upon the subject of free speech as applied to radio broadcasting generally.

## Indecent Language and False Statements

Section 20, which proposes to add a new Section 334, insofar as it prohibits the utterance of obscene and indecent language, conforms to the limitations established by law in the definition of freedom of speech and the press, and, in my opinion, is properly included in the Act. I have serious question, however, as to the language which it is proposed to add, ". . . and no person shall knowingly make or publish any false accusation or charge against any person . . ." Not only does this violate the principles of free speech described by the Supreme Court in the *Grosjean* case, the *Near* case, the *Bridges* case, and in the contempt cases recently decided; but as a practical matter, it would make it impossible for discussion to be had over the radio, even of cases in which persons were

being tried for publishing false accusations or charges. My argument goes primarily to the first point. As pointed out by the Supreme Court in the *Near* case, our concept of freedom of speech insists that there shall be freedom, even to make false accusations and charges, particularly against public officers, in order that the essential characteristic of freedom of speech as a protection against government overreaching may be satisfied. There is no reason why such a limitation should be imposed in the case of radio broadcasting any more than in the case of the press. As pointed out by the Supreme Court in the *Near* case, the requirements of free speech and press even override the danger of forceful reprisals resulting from such charges; thus establishing a limitation upon legislative action or administrative action against freedom of speech which is more severe than it is in the case of police regulations generally.

While there is, of course, a persuasive argument which can be made in favor of such an abridgment, and a return to the English concept of freedom of speech, that is not the concept which was written into the First Amendment; it is not the concept which has been elucidated by the Supreme Court in many cases. If Congress has now come to a time when it wishes to abandon the established American concept of freedom of speech and the press and to go back to the system existing in England at the time of the colonies, then it should do so by initiating a constitutional amendment, which will reveal, clearly, the change in fundamental law which it proposes.

## Self-Control and Self-Discipline

Many complaints are made against radio broadcasters on the theory that they are not "cleaning up their own house." As a matter of fact, the broadcasters are making very strenuous efforts in that direction and have accomplished a great deal in the improvement of radio broadcasting programs. But the important point which I wish to emphasize, here, is that no self-respecting body of men can be expected to assume responsibilities of the kind called for in professional controls and in self-discipline, when they are being subjected, constantly, to interference, reprisals and intimidation from a government agency. Such activities of government have always been destructive of human freedom and of the assumption of responsibility and self-discipline by an independent people. In fact, that is one of the main reasons for insisting upon freedom of speech and freedom of the press according to American concepts.

## International Considerations

It is of great importance that Congress should seriously reconsider present trends in legislation and in administrative activities, respecting the media of free speech and the press, especially because of the situation which has developed with respect to free communication of ideas on the international scene. We are not in a very consistent position when we demand that other countries lift the "iron curtain" and subscribe to our concepts of free communication, when we are, at the same time, engaged in a steady process of encroachment upon freedom of speech and the press in this country.

# Don Petty

General Counsel, National Association of Broadcasters

I APPRECIATE the opportunity of appearing before you in connection with S. 1333.

I shall discuss the procedural and appellate sections of the proposed legislation.

## S. 1333 and the Administrative Procedure Act

The Administrative Procedure Act, which was enacted in 1946, was the culmination of more than ten years of serious study given by members of Congress to the problem of administrative law and procedure. The functions and operation of numerous government agencies were objectively analyzed and studied. None was singled out for punishment. Through the Administrative Procedure Act Congress intended to protect the people of this country by insuring a government of law rather than of men.

In view of this, it is apparent that S. 1333 should guarantee every citizen, as a minimum, all of the rights guaranteed by the Administrative Procedure Act.

However, a general comparison of some sections of S. 1333 with the corresponding sections of the Administrative Procedure Act illustrates that to accomplish this result the provisions of the Administrative Procedure Act should be incorporated specifically in S. 1333.

1. Section 21 of S. 1333 relates to declaratory orders. I assume that it was intended to incorporate the section as subsection (e) due to the fact

that the existing subsection (d) of 401 of the Communications Act is not repealed.

Section 21 of S. 1333 grants the Commission the right to issue a declaratory order only "in a case of actual controversy." On the other hand, under section 5 (d) of the Administrative Procedure Act the Commission is authorized to grant a declaratory order "to terminate a controversy or remove uncertainty."

The need for the use of declaratory orders by administrative agencies to remove uncertainty is widely recognized. In the Final Report of the Attorney General's Committee on Administrative Procedure, pp. 30, 31, it is stated:

"In yet another respect there is room for developing predictability in the administrative process, without in the least weakening its ability to adapt itself to new needs or further experience . . . But the declaratory judgment attainable through the courts is not the answer to uncertainties which are present in the realm of administrative law. The time is ripe for introducing into administration itself an instrument similarly devised, to achieve similar results in the administrative field. The perils of unanticipated sanctions and liabilities may be as great in the one area as in the other. They should be reduced or eliminated. A major step in that direction would be the establishment of procedures by which an individual who proposed to pursue a course which might involve him in dispute with an administrative agency, might obtain from that agency, in the latter's discretion, a binding declaration concerning the consequences of his proposed action."

Section 5 (d) of the Administrative Procedure Act recognized that need and established for administrative agencies the same basic principles that govern declaratory judgments in the courts. See Report #752 of Senator Pat McCarran, from the Committee on the Judiciary relating to the Administrative Procedure Act, Senate Document 248, p. 204.

In addition, under Section 21 of S. 1333 the issuance of the declaratory order is entirely permissive, while under the Administrative Procedure Act, Section 5 (d), issuance is required by the Commission in the exercise of its sound discretion. The language of Section 5 (d) of the Administrative Procedure Act is to be preferred because it forces the Commission to act or refuse to act according to the well-established legal standard of sound discretion. Whether or not the discretion exercised is in fact and law sound is reviewable, as it should be, in court.

2. Section 22 (g) of S. 1333, relating to review by the court on appeal, provides that findings of fact by the Commission, if supported by substantial

evidence, shall be conclusive unless it shall appear clearly that the findings of the Commission are arbitrary or capricious. And Section 22 (f) provides that the record upon appeal shall contain such information and material as the court may by rule prescribe.

However, Section 10 (e) of the Administrative Procedure Act, relating to the scope of review provides, in part, as follows:

“(e) SCOPE OF REVIEW. — So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) *arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law*; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of sections 7 and 8 or otherwise reviewed on the record of an agency hearing provided by statute; . . . In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error.”

It is self-evident that Section 10 (e) of the Administrative Procedure Act provides a much broader and more effective review of Commission action. In view of the virtually unanimous support of the principles of the Administrative Procedure Act, I see no reason for narrowing those principles here.

In addition, S. 1333 leaves the content of the record on appeal to be determined by the court. But Section 10 (e) specifically prescribes the contents, thereby establishing rights and assuring uniformity.

It is clear from a comparison of the two sections and the statement of Senator White on the introduction of S. 1333 that Section 22, subsection (g) is intended to restate existing law found in Section 402 (e) of the Communications Act of 1934, as amended, and that it does not take into consideration Section 10 (e) of the Administrative Procedure Act. In my opinion, in considering this subject, Section 10 (e) of the Administrative Procedure Act should be followed.

3. Section 24 deals with hearings before the Commission and, according to the statement of Senator White on the introduction of the bill, is designed

to make definite and certain the procedure to be followed by the Commission where a hearing is required.

Again, this subject is covered by Section 8 (b) of the Administrative Procedure Act. Although apparently S. 1333, Section 24, was intended to clarify the hearing procedure before the Commission when compared with Administrative Procedure Act, Section 8 (b), many ambiguities and uncertainties are apparent due to the use of different language and different treatment of the subject in the two sections.

For instance, Section 24, of S. 1333 at p. 40, line 15 through 18 provides:

“Any final decision, order, or requirement shall be accompanied by a full statement in writing of all the relevant facts upon each issue submitted for hearing as well as conclusions of law upon those facts.”

On the other hand, Section 8 (b) of the Administrative Procedure Act, dealing with the same subject matter, provides in part as follows:

“All decisions (including initial, recommended, or tentative decisions) shall become a part of the record and include a statement of (1) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record; and (2) the appropriate rule, order, sanction, relief, or denial thereof.”

It should be noted that S. 1333, Section 24, requires “a full statement in writing of all the relevant facts” but does not require findings of fact. However, Section 8 (b) of the Administrative Procedure Act requires “findings and conclusions, as well as the reasons or basis therefor.” Again, the two quoted sections differ in that said Section 24 uses the words “all the relevant facts,” while said Section 8 (b) uses the words “material issues of fact, law, or discretion presented on the record.”

The result of this difference in language is, at the best, ambiguity and confusion and, at the worst, a retreat from the principles of the Administrative Procedure Act by a narrowing of the right of appeal. Therefore, I suggest that Section 24 of S. 1333 be deleted and section 8 (b) of the Administrative Procedure Act be substituted.

I believe it is clear from the foregoing illustrations that in order to assure the rights guaranteed by the Administrative Procedure Act and to avoid possible ambiguity and consequent confusion those sections in S. 1333, dealing with the subject matter covered by the Administrative Procedure Act, should conform to that Act. Conformance can be achieved in either of



two ways, by amending the specific sections of S. 1333, or by adding a simple additional provision to S. 1333 to be identified as Section 26, as follows:

Nothing in this Act shall be construed to be in derogation of any right secured to any person under the provisions of the Administrative Procedure Act.

Since the passage of the Administrative Procedure Act, the question has been raised whether or not Section 5 (c) thereof, requiring the separation of functions in administrative agencies, applies to the Federal Communications Commission in respect to its action on applications for licenses. That section provides, in part, as follows:

"This subsection shall not apply in determining applications for initial licenses . . ."

The legislative history of this part of Section 5 (c) of the Administrative Procedure Act makes it clear that the exception was not intended to be invoked by an agency where to invoke it would preclude fair procedure. In the Senate Committee Report, Legislative History, Senate Document 248, pp. 203, 204, it was stated as follows:

"The exemption of applications for initial licenses frees from the requirements of the subsection such matters as the granting of certificates of convenience and necessity which are of indefinite duration, upon the theory that in most licensing cases the original application may be much like rule making . . . There are, however, some instances of either kind of case which tend to be accusatory in form and involve sharply controverted factual issues. Agencies should not apply the exceptions to such cases, because they are not to be interpreted as precluding fair procedure where it is required."

Again, in the House Report, Senate Document 248, p. 262, it was stated as follows:

"The exemption of applications for initial licenses frees from the requirements of the section such matters as the granting of certificates of convenience and necessity, upon the theory that in most licensing cases the original application may be much like rule making . . . There are, however, some instances of either kind of case which tend to be accusatory in form and involve sharply controverted factual issues, to which agencies should not apply the exceptions because they are not to be interpreted as precluding fair procedure where it is required."

In view of this, it is clear that the licensing function of the Federal Communications Commission is the very type of procedure which was not

intended to be excepted from the basic rules of adjudication set forth in Section 5 of the Administrative Procedure Act. Proceedings on applications for licenses for radio broadcast stations invariably "tend to be accusatory in form and involve sharply controverted factual issues."

Therefore, I suggest, that to secure certainty of procedure, the following subsection be added to Section 5 of S. 1333 at the end thereof as subsection (k):

In every case required by this Act to be determined on the record after opportunity for hearing the same officers who preside at the reception of evidence shall make the recommended decision or initial decision except where such officers become unavailable to the Commission. Save to the extent required for the disposition of ex parte matters as authorized by law, no such officer shall consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate; nor shall such officer be responsible to or subject to the supervision or direction of any officer, employee, or agent engaged in the performance of investigative or prosecuting functions for the Commission. No officer, employee, or agent engaged in the performance of investigative or prosecuting functions for the Commission in any case shall, in that or a factually related case, participate or advise in the decision, recommended decision, or Commission review except as witness or counsel in public proceedings: And provided further, That the Commission shall not employ any attorneys or other persons for the purpose of reviewing transcripts of hearings and/or preparing drafts of opinions and/or findings of fact except that any legal assistants assigned separately to any Commission member may for such Commission member review such transcripts and prepare such drafts. No examiner's report shall be reviewed either before or after its publication by any person other than a member of the Commission or his legal assistant, and no examiner shall advise or consult with the Commission, with respect to exceptions taken to his findings, rulings, or recommendations.

This section would remove all existing doubt and make complete the separation of the adjudicatory and the investigatory and prosecuting function contemplated by the Administrative Procedure Act.

## Renewal of Licenses

Section 10 of S. 1333 provides for amendment of section 307 (d) of the Communications Act of 1934, as amended, which relates to renewal of licenses.

In this connection, at the outset I quote Chief Justice Groner of the United States Court of Appeals, speaking of the identity of the interest of the public and the broadcaster in the renewal of a broadcasting license:

"The installation and maintenance of broadcasting stations involve a very considerable expense. Where a broadcasting station has been constructed and maintained in good faith, it is in the interests of the public and common justice to the owner of the station that its status should not be injuriously affected, except for compelling reasons. *Chicago Fed. of Labor v. Fed. Radio Comm.*, 59 App. D. C. 333, 41 F. (2d) 422." — *Journal Co. v. Federal Radio Commission*, 48 F. (2d) 461, 463.

To secure the "interests of the public" and achieve "common justice to the owner of a station," and at the same time to stay with the framework established by Congress in the Communications Act of 1934, as amended, I suggest the following procedural amendment to S. 1333:

**"Sec. 10.** Subsection (d) of section 307 of such Act is amended by *striking out the word 'may' where it appears in the last sentence thereof and substituting the word 'shall' therefor; by striking out the following* ~~by striking out from said subsection the following language appearing in the last sentence thereof: ' , but action of the Commission with reference to the granting of such application for the renewal of a license shall be limited to and governed by the same considerations and practice which affect the granting of original applications.'; by inserting a period after the word 'licenses' preceding such language, and by inserting the following sentence at the end of said subsection: "When application is made for renewal of license which cannot be disposed of by the Commission under the provisions of section 309(a) hereof, the Commission shall employ the procedure specified in section 309 (b) hereof and pending hearing and final decision pursuant thereto shall continue such license in effect."~~ *substituting the following therefor: "unless, upon the receipt of such application, the Commission forthwith requests and there is forthwith instituted an action for revocation, as provided in section 312 hereof: Provided, however, That pending the grant of such application by the Commission and/or the final judgment [in such action, including the final judgment] on appeal, if an appeal is taken, the prior license shall continue in full force and effect."* (Legend: Language in italics, suggested addition; language lined out to be eliminated.)

Such a procedural change would meet a long-felt need in the broadcasting industry. It would provide that security necessary in the conduct of any business requiring the substantial capital investments required to permit the proper development of broadcasting. It would also insure sound plan-

ning, sound operation and, consequently, better service to the public.

The theory upon which my proposed section is based is not new. Under the patent and copyright acts exclusive rights are granted for 17 and 28 years respectively. Congress has always recognized that such exclusive rights are necessary to bring forth those inventions and intellectual creations without which our society would not exist as we know it.

## Revocation of Licenses

Section 14 of S. 1333 would amend Section 312 of the Communications Act of 1934, as amended, relating to revocations.

I agree that the present revocation section should be amended. However, I go further than S. 1333, Section 14, and suggest that the plan for revocation be completely revamped. Accordingly, I propose that that portion of Section 14 of S. 1333, amending Section 312 (a), be deleted, and the following substituted therefor:

SEC. 312 (a) Upon request of the Commission it shall be the duty of the district attorney of the United States in and for the district in which a station is located or is proposed to be located to institute in the United States District Court in and for said district and to prosecute under the direction of the Attorney General of the United States a civil action for the revocation of a construction permit or station license. In any such proceeding the court, in the exercise of its sound judicial discretion, may revoke a construction permit or a station license because of conditions which would have warranted the Commission in refusing to grant a license on an original application, or for violation of or failure to observe the terms and conditions of any cease and desist order issued by the Commission pursuant to subsection (d) hereof; Provided, however, That no such action shall be instituted and no such revocation shall be ordered on the basis of any act of the construction permittee or station licensee done more than three years prior to the date of the institution of such action, or done prior to the date the application for the permit or license which is the subject of the action was filed, whichever is earlier.

(b) In any such action the rules of procedure and evidence applicable to other civil actions in the United States district courts shall be applied.

(c) The parties to any such action shall have the same right

of appeal or review as is provided by law in respect of other decrees and judgments of said court.

The revocation of a license is death to a radio broadcaster. Consequently, the fundamental principles of our law require that this extreme penalty be inflicted in the first instance only by a court in the community in which he operates, and reviewed on appeal by a court in his general area. Only the people in any community are familiar with its needs. Only they are able to balance the extent to which a broadcaster performs his duty to serve those needs against the alleged grounds for revocation of his license. Why then, should the termination of his business, representing his time and money and effort in serving his public, be in the power of men who are strangers to his operation and to the needs of that public?

Furthermore, in the constant threat of revocation by the licensing agency lurks a twofold danger. First, it serves to discourage the investment of substantial capital and to attract the great ability necessary to give the best in broadcast service. Second, it enables the Commission to exercise arbitrary regulatory power without fear of effective challenge. Few broadcasters dare risk their licenses by contesting regulations or orders, no matter how doubtful their legality may be.

In addition, not to be overlooked is the great saving in time and money to licensees who must defend themselves in revocation proceedings, as well as to the government.

Finally, it cannot be said that this suggested procedure will hamper the Commission in the proper performance of its regulatory function, for S. 1333, Section 14 (b), gives the Commission authority to issue cease and desist orders. This is a sound method of enforcing compliances by licensees with the Communications Act of 1934, as amended. Its effectiveness is demonstrated by its successful use in other regulatory statutes, as, for example, the Federal Trade Commission Act.

## Commission Hearings

Section 12 of S. 1333 would amend section 309, Communications Act of 1934, as amended, relating to hearings on applications for licenses.

From subsection (b) at line 23 I would strike the words "economically or." The Supreme Court has established, in *FCC v. Sanders Brothers*, 309 U.S. 470, that economic injury to an existing station is not a proper issue before the Commission in the determination of whether to grant or with-

hold a radio broadcast license. As was there said, "If such economic loss were a valid reason for refusing a license this would mean that the Commission's function is to grant a monopoly in the field of broadcasting." Again, "Congress intended to leave competition in the business of broadcasting where it found it, to permit a licensee who was not interfering electrically with other broadcasters to survive or succumb according to his ability to make his programs attractive to the public."

I believe firmly in this principle. To permit those alleging economic injury, without more, to contest the grant of applications is not only to violate this principle but is to complicate and burden both the Commission and the participants in hearings.

In addition to this suggested change in Section 12 of S. 1333, I would also add a new paragraph to the end of subsection (b) substantially as follows:

In the event there are two or more applications for station licenses, the granting of more than one of which would result in the violation of the regulations of the Commission made pursuant to section 303 (f) hereof, and the Commission determines that the grant of more applications than are permitted under said regulations would except for those said regulations serve the public interest, convenience or necessity substantially equally, it shall make its grants on the basis of the order of the priority of their filing.

Where competing applicants are equal in all respects, but their simultaneous operation would result in prohibited interference, this section would require the Commission to grant the license to the applicant who first filed his application. It appears to me that such a procedure offers a practical answer to the question often asked by the Commission: how can the Commission choose between otherwise qualified applicants if it cannot consider their prospective programs?

Furthermore, it would reduce the possibility of the filing of applications in bad faith for purposes of delay. The seriousness of this problem was recognized by the United States Court of Appeals in *Colonial Broadcasters v. FCC*, 105 F. (2d) 781, 783, where the Court said:

"... it is neither fair nor reasonable, [to put an applicant] in hodgepodge with later applicants whose records are not made at the time his application is heard. For to do so would encourage 'strike' applications and would replace a fixed and easily applied standard with one of unlimited individual discretion, and this, we think, should be avoided."

## Applications

The fundamental necessity for a clear recognition by the Congress that the First Amendment guarantees free speech to radio broadcasters has been made clear by other witnesses.

As Section 308 (b) of the Communications Act of 1934 now reads the Commission is authorized to procure information concerning applicants' "character" and "other qualifications" and "the purposes for which the station is to be used" and "such other information as it may require." The Commission construes these terms as being sufficiently broad to justify it in delving into practically anything.

Consequently in order to prevent the circumvention of the mandate of the Constitution and the will of the Congress this section must be amended. I suggest that Section 308 (b) of the Communications Act of 1934, as amended, be amended as follows:

*"(b) All such applications shall set forth such facts as the Commission by regulation may prescribe as to the citizenship, ~~character,~~ and financial, ~~and technical,~~ and other qualifications of the applicant to operate the station; the ownership and location of the proposed station and of the stations, if any, with which it is proposed to communicate; the frequencies and the power desired to be used; the hours of the day or other periods of time during which it is proposed to operate the station; ~~the purposes for which the station is to be used; and such other information as it may require; and the class of station proposed by the applicant,~~ as determined under Section 303 (a) hereof. The Commission, at any time after the filing of such original application and during the term of any such license, may require from an applicant or licensee further written statements of fact *concerning the matters set forth in this subsection* to enable it to determine whether such original application should be granted or denied or ~~such license revoked; whether revocation of such license should be requested,~~ as provided by section 312 hereof. Such application and/or such statement of fact shall be signed by the applicant and/or licensee under oath or affirmation. (Legend: Language in italics, suggested addition; language lined out to be eliminated.)*

## Definitions

Sections 2 and 3 of S. 1333 amend section 3 of the Communications Act of 1934, as amended, with respect to definitions. I have the following specific suggestions with respect to these: Section 2 amending Section 3 (o) of the Communications Act of 1934, as amended, should be stricken, so that there



will be no doubt that the dissemination of radio communications intended to be received by the public *indirectly* — as for instance, by the employment of auxiliary and relay stations — will not be subject to regulation under the common carrier provisions of the Act. No amendment to Section 3 (o) of the Communications Act is needed because it accomplished the desired result.

I suggest that Section 2 of S. 1333 amending Section 3 (p) of the Communications Act of 1934, as amended, be amended as follows:

“(p) ‘Network broadcasting’ or ‘chain broadcasting’ means the simultaneous or delayed broadcasting *on a single broadcast band* of identical programs by two or *more connected* stations ~~however connected.~~” (Legend: Language in italics, suggested addition; language lined out to be eliminated.)

The purpose of this suggested Amendment is to make possible the rapid development of new broadcasting, such as FM, by permitting established stations to broadcast, as they now do, on both bands simultaneously without subjecting themselves to regulation as being engaged in chain broadcasting. In addition, there is no apparent reason for possibly changing the established meaning of the word connected in its context in 3 (p) of the Communications Act.

I suggest that Section 3 of S. 1333 adding Section (dd) to section 3 of the Communications Act of 1934, as amended, defining “network organization,” be deleted. Besides being confusing in its application, it constitutes another restriction on the right of the licensee to freely contract in connection with the operation of a broadcast station.

A. D. Willard, Jr.

Executive Vice-President,  
National Association of Broadcasters

**M**Y NAME is Arthur D. Willard, Jr. I am the Executive Vice President of the National Association of Broadcasters, representing 1300 U.S. broadcasting stations and networks. I have had 20 years of sales, programming and management experience in radio.

Section 16 of the bill would amend Section 326 of the Communications Act of 1934. This Section 16 was, undoubtedly, intended to limit the powers of the Commission. It specifically prohibits the Commission from interfering with the business of the licensee and from affecting or controlling the substance of any material to be broadcast by any radio broadcast station.

In these two particulars, the authors of the bill have apparently sought to protect the broadcasters from possible encroachments by the Federal Communications Commission. Indeed, the NAB has long sought just such a definition of the FCC's powers. The establishment and strict interpretation of these two principles would go a long way toward safeguarding freedom of speech by prohibiting both direct control of programs or indirect control through economic interference or economic sanctions. It is a source of great disappointment to broadcasters that the authors of the bill, having specifically shown every intent to remove the Commission from the control of the program structure of American radio in terms, should, in the last sentence of Section 16, hand it directly back to the Administrative Agency in the very words which the Commission itself uses to claim that control now.

This last sentence reads: "Provided that nothing herein contained shall be construed to limit the authority of the Commission in its consideration

of applications for renewal of licenses to determine whether or not the licensee has operated in the public interest."

The Federal Communications Commission has held for years that the term "public interest" invests in them the right to examine and evaluate the program policies and programs of radio stations in determining their fitness for the renewal of their licenses. That has been their interpretation of the words "public interest" in the Act of 1934. Broadcasters are very much concerned over what the Commission's interpretation might be if, as in this bill, they are given the right, in terms for the first time, to consider programs and business practices as part and parcel of "public interest" whenever a broadcaster comes before them for a renewal of his license?

The Federal Communications Commission has constantly maintained that it was the intent of Congress, implicit in the words "public interest" contained in the Act of 1934, that the Commission should consider the "over-all" program structure of a radio station in granting the renewal of license. The FCC, in its recent Blue Book, reiterates this assertion of power in terms.

And the Commission contends that this examination and evaluation of a station's "over-all" programming is not censorship because it (the Commission) does not pre-censor programs but only reviews them, and because it (the Commission) does not consider single programs on their content but only the "over-all" program structure or policy.

If, indeed, that be the intent of Congress — I devoutly hope that it is not — then the last sentence of Section 16 of the bill, to which I referred at the beginning, would have the effect of writing this assertion of power into the law for the first time.

I would like for you to examine with me this word — "over-all" — which the Commission so frequently uses and upon which it places so much stress. As a practical broadcaster, I am tempted to urge to you that there is and can be no such thing as "over-alls" or examining "over-all" programs or program policies. Practically, it does not — and I suspect that it cannot — work because when the FCC comes to the point of making a decision based upon program matters, it makes that decision upon the pertinent facts in each individual case and its findings, in the final analysis, are always based on individual programs or individual program policies. The Commission itself admits as much in the very Blue Book upon which it now relies for its assertion of authority to consider these "over-alls."

In its own words — in Section C, Part III of the Blue Book, the Commission says: "Rather than enunciating general policies, the Commission reaches decisions on such matters in the crucible of particular cases." And in a footnote, it says, "See, for example, the *Mayflower* case." This is the case and the Commission decision which denies the broadcaster the right

to editorialize in direct violation of the Constitution and Section 326 of the Communications Act.

This brings us to a series of very practical points affecting a broadcaster's day-to-day operation.

When the Commission, in violation of the First Amendment and in violation of Section 326 of the Act, specifically requires a station to cease editorializing in order to retain its license — and then applies the rule to more than a thousand broadcasting stations — is that considering “over-all” program policy — or is that censorship?

When an FCC opinion warns radio stations carrying religious programs that they had best provide facilities for atheists to deny the existence of God — is that a consideration of “over-all” programming?

For 25 years it has been the voluntary practice of the vast majority of U.S. radio stations to give equal time to opposing points of view on controversial issues. Indeed, this practice was a cardinal point in the NAB Code. So effective and so widely observed was this policy that in public opinion polls upon the subject, the people — by walloping majorities — have voted radio the fairest of all the media of mass communication in giving both sides of arguments. Yet the FCC, again, based on its policy of making decisions in the crucible of individual cases, has assumed this function as one of government and has required, as a prerequisite of maintaining a station license, that a broadcaster must “provide full and equal opportunity for the presentation to the public of all sides of public issues.” Is this a consideration of “over-all” policy?

Incidentally, in the bill now before you, this provision becomes law — and with a new twist — for in Section 17 of this bill, radio stations giving time to one side of a controversial question will, in effect, have to give twice as much time to the opposing side.

In his testimony before a subcommittee of the House Appropriations Committee recently, Chairman Denny, of the FCC, was asked about the Commission requirement that broadcasters report percentage of commercial programs and the number of commercial announcements carried by each broadcaster. In reply, he said, in effect, if the amount of commercial content reported is large, that's like running up a red flag and then we will examine further to see whether the station should be set for hearing on its application for renewal of license. Is that not the same kind of indirect censorship by economic control which the Supreme Court has steadfastly prohibited in its decisions against efforts to tax or withdraw the second-class mailing privilege from newspapers and publications?

The bill cures none of these existing evils and, indeed, amends Section

326 of the present Act in such a way as to confirm them as the will of Congress.

If this be the intent — and I can hardly believe it — allow me, as a longtime radio station operator, to make a few observations on the future implications of such intent.

The same electronic miracles that have brought you radio have a great many more wonders in store. Some weeks ago, in Philadelphia, two newspapers and their affiliated radio stations successfully demonstrated a sustained and near perfect presentation of facsimile broadcasting. Many top experts in both the journalistic and radio field believe, as I do, that tomorrow's newspaper may be printed daily on a facsimile receiver in your home. When that day comes, the newspapers of America will be subject to the rules and regulations of the Federal Communications Commission. Where will be the freedom of the press which successive Congresses and Courts have protected for 156 years when the regulation prohibiting editorializing applies to the facsimile newspaper, and when the rule requiring equal opportunity for all sides of public questions becomes law for the American press?

Incidentally, by the standard applied to radio broadcasting stations, a good many American newspapers would be virtually 100% commercial. Certainly they would not be denied facsimile licenses on this basis?

I have been urging U.S. editors and publishers to examine carefully the rules and regulations of the Federal Communications Commission in the light of the miracle of facsimile broadcasting. This is a pursuit worthy of every free American's attention.

Even closer to realization than facsimile is television — an art of great import to our industry and to the motion picture industry as well. For much of television will be broadcast from film — whether it is received directly into the home or by groups in tele-theaters which are already being equipped for the purpose. Television, of course, like broadcasting and facsimile, is subject to the rules and regulations of the Federal Communications Commission. Would the opinion requiring broadcasters to devote time to atheists to answer religious programs apply? If the "King of Kings" were shown in tele-theaters, would the producers have to provide a spectacle on atheism to counteract it?

I note with interest Eric Johnston's recent announcement that the film industry will undertake editorial shorts as a public service. If these are televised, will the movie industry be hauled into hearing as were broadcasters? I've urged moving picture executives also to examine the rules and regulations of the FCC in light of television.

I earnestly believe that we are face to face here with a grave decision, of incalculable importance to our national well being and the future of our democratic institutions. I sincerely believe that Congress must enact a law which makes radio "as free as the press" — or — stand by and watch the press and motion picture subjected to the same government controls — the same methods of intimidation, the same "censorship" — as radio suffers today.

Section 9 of the White bill amends subsection (b) of Section 307 of the Communications Act and is found on page 11 of the bill. It provides that in considering applications for licenses . . . the Commission shall make such distribution of licenses, frequencies, hours of operation and power . . . as to provide a fair, efficient and equitable distribution of radio service . . . giving effect in each instance to the needs and requirements thereof.

In this section of the White bill, the authors probably refer, in the words "needs and requirements thereof," to the economic needs and requirements as well as others. Radio broadcasting in the United States is a free competitive enterprise and is not, in any sense, a public utility. This concept is clearly spelled out in the Communications Act of 1934 and confirmed beyond the shadow of a doubt by the Supreme Court in the decision in the *Sanders Bros.* case in which the Court prohibited the Commission from taking into account, in its licensing process, the economic aspects of a grant. This Section 9 could, in effect, nullify this decision of the Supreme Court and would give the Commission discretion to take into consideration, in the granting of licenses in a community, the economic consequences of the addition of stations in that community. The National Association of Broadcasters takes strong issue with this section.

Since the very beginning of broadcasting, our people have devoutly hoped that the day would come when there would be frequencies available for any person, firm or corporation desiring a radio station and when an absolutely free competitive situation would exist. Slowly but surely, with the coming of FM, with scientific advancements in the art of electronics, we have been approaching a condition in which there might be available frequencies for anybody who had the qualifications and the money to enter the business. Then, in our judgment, even the last excuse for certain types of program regulation, which we feel are an infringement upon freedom of speech, would vanish. Now comes this Section 9 of the White bill, which would extend the powers of the Commission in their licensing function and would give them the right to determine, though certainly not to capacity, the number of broadcasting stations which a community could support.

It seems obvious to us that if a government agency has the right and power to protect existing broadcasting facilities in a community against

competition and to create artificial quasi-utilities, that it must, in turn, have the power to regulate rates, sales prices and so on. I hardly need call to your attention the fact that such power over the economics of a medium of mass communication is a serious threat to its freedom and to freedom of expression. I feel sure that the authors of this bill had no intention of overriding the Supreme Court decision and, indeed, in Section 16, amending Section 326 of the Act, they evidence an opposite view when they prohibit the Commission from interfering with the business aspects of broadcasting.

We strongly urge that the words "giving effect in each instance to the needs and requirements thereof" be deleted and, in their place, the words "with due consideration to proper engineering standards" be substituted.

With respect to Section 8 of this bill, amending subsection (j) of Section 303 of the Act, I have a very brief observation. I am at a loss to understand why it is necessary to place upon the radio stations of America the onerous burden of providing voluminous records of programs, and to prescribe burdensome uniform systems of financial reports, if the language in Section 16 of the Act is interpreted literally. I cannot understand the necessity for detailed financial reports if the Commission is prohibited from regulating the business aspects of radio, and I cannot understand the need for voluminous program reports if the Commission is prohibited from controlling the substance of any material to be broadcast by any radio broadcasting station.

It seems to me that the two sections are inconsistent, and that the only purpose which uniform financial reports and program reports can serve would be to provide the licensing authority with specific information upon which to regulate programs and business practices in some form.



# Robert K. Richards

Director of Public Relations,  
National Association of Broadcasters

WISH to offer a statement highlighting the corollary development of publishing and broadcasting in the United States. This is presented in an effort to reinforce the thesis that radio broadcasting is governed by the First Amendment to the Constitution and subject, therefore, to the same guaranties of freedom that apply to the press, the pulpit and public assemblies.

This statement is intended as supplemental testimony to that heretofore offered in support of the contention that Section 326 of the Communications Act of 1934 (Section 16 or S. 1333) should be strengthened to provide such guaranties.

The intention here is to establish that radio in the United States can be as free as the press; that such latitude in broadcasting is desirable, consonant as it is with the requirements of democratic government; that broadcasting will not have attained its full development as an instrument of democracy until the measurement of its performance in the public interest is determined by the people (as is the case in the press) rather than by the licensing authority.

That there is danger of censorship where there is power to license is implicit in S. 1333, wherein it is provided that Section 16 shall amend Section 326 to change the titular heading to "Censorship." Appearing in the new language (S. 1333) is the statement (b) "The Commission shall have no power to censor, alter, or in any manner affect or control the substance of any material to be broadcast . . . etc."

If it is the intent of the language to deny all mechanics of censorship to the licensing authority, then Section 3 of S. 1333 should contain specific definitions of the words "censor" and "substance."

I subscribe to the belief that the Federal Communications Commission's Blue Book (Public Service Responsibility of Broadcast Licensees, March 7, 1946) and the Mayflower Decision (which holds that licensees have no privilege of advocacy) are instruments of censorship.

There are only two avenues to the thought processes of man: the eye and the ear. If we are to undertake a philosophy of Government which anticipates free access to those avenues, as I understand the Bill of Rights to assert, we cannot differentiate between them. Whether a man reads something or hears something does not fundamentally alter the proposition that he thereby acquires knowledge.

The same knowledge transmitted over a broadcasting station to listening ears or transmitted through new columns to reading eyes is, in the final analysis, directed to the mind of man. Consequently one instrument of transmission should be subject to no more control of its product than the other, if the avowed purpose of free media in a free nation is to enlighten the people.

If such premise is acceptable, then new legislation governing broadcast licensees should endeavor to clarify beyond any reasonable doubt the limitations placed upon the licensing authority.

I do not believe the present Act does so, for despite its language the Commission has adopted such a decision as that encountered in the Mayflower Case; and the Commission has issued the Blue Book which — as defined by Chairman Charles R. Denny, Jr. before the Appropriations Committee of the House of Representatives (1947) — establishes "standards" that "comprise the gloss which the Commission's decisions have written around the words 'public interest, convenience and necessity'."

Nor do I believe that S. 1333, as written, does so, for it incorporates in its language the undefined term, "substance," and adds the proviso: "Provided, that nothing herein contained shall be construed to limit the authority of the Commission in its considerations of applications for renewal of licenses to determine whether or not the licensee has operated in the public interest."

The Commission's Chairman has testified that this phrase "public interest" permits the establishment of standards which represent "gloss." I understand that "gloss" has a special meaning to a lawyer, i.e., functions and powers not conferred by law. Five of the seven members of the Commission are attorneys and would be conversant with this definition, one presumes.

If a Commission comprised for the most part of attorneys acknowledges that legislative language gives it the power to "legislate beyond the statute," we encounter here two specific dangers:

(1) The surrender of legislative power by the duly constituted law-making body, the Congress of the United States.

(2) Negation of our historic governmental concept that the law should comprehend, and make provision against "the insolence of office."

A brief examination of the development of a free press in this nation illustrates the emergence from "licensed authority" of one of our great media.

Movable type was discovered by Gutenberg in 1443. (One might consider this in context with the discovery of the audion tube by Dr. Lee DeForest in 1906.)

The first press established in the Colonies was installed at Harvard College in 1638. (Exactly 280 years later, in 1918, the vacuum tube began to replace the old spark and arc transmitters.)

The first newspaper published in America issued in 1690 from the press of Richard Pierce in Boston, under the masthead "Publick Occurrences." (The first regularly operated standard broadcasting stations in the United States — KDKA Pittsburgh and WWJ Detroit — went on the air in 1920.)

The early newspapers, such as *Publick Occurrences*, were licensed by the Crown. And the first radio stations were licensed by the radio division of the Department of Commerce.

Radio stations, in the early days (circa 1920) were licensed primarily because of the confusion which resulted from the limitation on the number of available frequencies.

The first newspapers were licensed arbitrarily, for purposes of Governmental censorship.

According to Robert W. Jones in his *Journalism in the United States* (E. P. Dutton & Co., Inc.), "The first American editors were confronted by coldly hostile officials inclined to discipline any critical comment." This policy is best evidenced by one instruction from the Crown, which stated "and for as much as great inconvenience may arise by liberty of printing within our said territory under your Government you are to provide by all necessary orders that no person keeping any printing press for printing, nor that any book, pamphlet or other matter whatsoever printed without your especial leave and license first obtained."

It is interesting to observe, inasmuch as in the current broadcasting legislation we are dealing with the phrase "public interest, convenience and

necessity," that even in this early 17th century regulation by the Crown, the word "inconvenience" was introduced. The term, in this instance, anticipated that the inconvenience was one which the Crown felt would cause most distress to the king's ministers, with little concern given to the "convenience" of the public.

During these early days of colonial printing, the hand press in use — similar to the screw-type wine press — was so small that a four-page paper usually required four impressions. The paper was moistened before the impression was taken and between runs the paper was suspended from strings to dry. Printing ink was of poor quality, for the most part home-made. It was smeared on the form by hand with a piece of buckskin. (One finds analogy here in the early, faltering development of broadcasting — when the few listeners who could hear stations listened on headphones, and found the static as disturbing to their ears as the smeared newspapers were to colonial eyes.)

Newspaper printing as a mechanical art really made little progress until the 19th century. Had Gutenberg walked into an American print shop in 1800, most authorities agree, he would have found little to surprise him.

In 1822, Daniel Treadwell of Boston built a press with a wooden frame designed to be driven by steam. Isaac Adams, of the same city, improved the Treadwell press in 1830. (In 1923, the principle of negative feed-back to stabilize and reduce distortion in transmission circuits, modulators, amplifiers, and detectors, also describing automatic volume control, was developed by Stuart Ballantine.)

The newspaper then, about one century before broadcasting did so, was emerging from the experimental "baling wire" era as a result of laboratory research.

Most of us consider the emergence of broadcasting from a distorted signal reaching a mere handful of people to its position today, 27 years later, as a phenomenon.

Yet the newspaper proceeded from small weekly operation with limited circulation to metropolitan daily operation with large circulation in a span of 30 years — between 1830 and 1860.

In 1775 there were 37 newspapers in the Colonies. In 1840, there were 1631 in the United States; and by 1850, the figure was 2302. (On Jan. 12, 1922 there were 30 broadcasting stations in the United States; by 1940, there were 814; by Jan. 1, 1947 there were 1523.)

Mechanical development accounted for the increase in both media — mechanical development *which made it possible to establish more units and to extend the coverage of the individual units.*

Impetus was given to newspaper development by the first cylinder press, developed in 1846. It was installed by the *Philadelphia Ledger*. A ten cylinder rotary press was capable of 20,000 impressions hourly — heralding the day of big newspaper circulation. (In 1925, KDKA Pittsburgh and WGY Schenectady tested 50,000 watt transmitters which were to multiply manifold the audience available to radio — by increased output — as did the rotary press in the newspaper field.)

In 1848 newspapers discovered a system for employing telegraphic and landwire communications to form a network news-gathering agency, the Associated Press. (The first network broadcast was between WEAf New York and WNAC Boston in 1923 — five years before the National Broadcasting Company was to establish the first coast-to-coast network. There are now four coast-to-coast networks, and four nationwide news-gathering services.)

In 1861, the curved stereotyped plate was developed — and cylinder presses thereafter imprinted by this plate process, rather than by cylinder-set type. (And in 1932, the velocity microphone was perfected by RCA — making possible more faithful reproduction of sound, as the stereotype made possible more faithful reproduction of typeface.)

The analogy between the development of the press and the development of broadcasting can be carried forward in greater detail. But this should serve sufficiently to indicate that there was sharp correlation between the two in the mechanical phase.

The importance of this historic relation is to be found in this remarkable development: as the unlicensed press has advanced in its capacity to serve the people, the cause of a free press has advanced as well; BUT as licensed broadcasting stations have advanced in their capacity to serve the people, their freedom has been retarded.

We have then a situation which is not consonant with the philosophy of our form of government.

The conception that the FCC is trustee for the American people is completely erroneous. Sovereignty in the United States is vested in the American people. The American people delegate it to Congress.

That authority — the people's authority — cannot be delegated to anyone, except for limited purposes designated by Congress.

As a consequence, there exist no trustees for the American people, for the Constitution's guarantee of rights reserves those rights to individual citizens.

This theory finds successful acceptance and is practiced in the area of the press. It is not practiced in broadcasting.

One of the nation's first newspapers of pre-Revolutionary days to successfully oppose the oppressive censorship of the Crown was Benjamin Franklin's *Pennsylvania Gazette*.

In the early 18th century the following advertisement appeared in the *Gazette*:

"Superfine crown soap — it cleanses fine linens, muslins, laces, chintzes, cambric, etc., with ease and expedition, which often suffer more from the long hard rubbing of the washer, through the ill qualities of the soap than the wearing." That was probably the first "soap commercial" in American history and it was written by Benjamin Franklin himself in 1732 — just 42 years after the first newspaper was founded in America. (Radio, considerably maligned these days in certain quarters for its commercials, is 27 years old.)

It is at least diverting to note also that Benjamin Franklin was in other diversified pursuits; this in view of the fact that some regulatory implications have been attached to the diverse pursuits of a few broadcasting station owners. Mr. Franklin was not only a trader of considerable renown but, additionally, owned a company which produced two popular patent medicines of the day: (1) True and Genuine Godfrey's Cordial and (2) Seneka Rattlesnake Root.

It is not difficult to conjure, for example, what Benjamin Franklin might consider a philosophy for regulating broadcasting today — especially in light of the fact that he not only was one of America's first editors to militantly demand freedom of the press, but also found a place in chronologies of radio's development through his kite experiments in an electrical storm in 1749.

As the Colonies approached the revolutionary period of our history, several newspapers were established which began to shake off the yoke implied in that masthead dictum "Published by Authority." Among these was 21-year-old Isaiah Thomas of the *Massachusetts Spy*; Sam and John Adams contributed richly to the *Boston Gazette*; Benjamin Edes, John Gill and John Hancock were others. Attempts to suppress such papers as the *Massachusetts Spy*, and indict its publisher as guilty of seditious libel, failed. The public was beginning to awaken to the value of the press as a force for common good. This process was hastened by the famous pamphlets of Tom Paine during the revolutionary period.

It was the newspapers' active part in the Revolution which gained prestige for their owners.

Printers emerged from the conflict with something of the dignity which identifies editors today. It was a far cry from November 17, 1734 when Peter Zenger was tried for "publishing several seditious libels having in

them many things tending to raise factions, tumults and sedition among the people . . .”

It was the stirring defense of Mr. Zenger by Andrew Hamilton which laid the foundation for free press in the United States, when Mr. Hamilton said: “I hope to be pardoned, sir, for my zeal upon this occasion: It is an old and wise caution that ‘when our neighbors’ house is on fire, we ought to take care of our own.’ Withal, blessed be God, I live in a government where liberty is well understood, and freely enjoyed; yet experience has shown us all (I’m sure it has me) that a bad precedent in one government is soon set up for an authority in another and therefore I cannot but think it mine, and every honest man’s duty that (while we pay all due obedience to men in authority) we ought at the same time be on our guard against power, wherever we apprehend that it may affect ourselves or our fellow-subjects.”

This brief review of the development of the press as it relates to the development of broadcasting is offered to indicate that the difference between the two media is not one that can be defined by the boundaries of public interest. Both exist to serve the public interest. Both have emerged into fuller development after distressing periods of trial. Each survives by revenue collected from advertisers. Each, in its way, strives to inform and to entertain.

The difference that originally did exist is one not accentuated by method of operation, historic development, or content, but rather by a physical phenomenon: the limitation on the number of frequencies available for broadcast. But even this phenomenon has grown less important in recent years. Additional frequencies have been found so that the Federal Communications Commission was able to allocate in the year 1946 more broadcasting stations than had been allocated in the U.S. in the previous 11 years. (The Commission announced only June 16, 1947 that 100 new FM channels would be available in July.)

We shall now see coming into play in the broadcasting business, more directly than ever, the principal factor which has caused a leveling off in the number of newspapers in the country — the economic factor. Chairman Denny of the Commission himself testified before the Appropriations Committee that he thought many stations would fail because economic survival was impossible in such a competitive market.

But even in the presence of this development (the lessening of the factor of scarcity of frequencies) there has been an increase in regulatory control. This increase has been evidenced by regulatory actions of the Commission in interpreting the Communications Act of 1934. It is the opinion of most broadcasters that these regulations have gone far beyond the intent



of Congress. They have enforced these regulations upon broadcasters "by authority" that has been assumed. They have in many ways (viz., Mayflower Decision and Blue Book), reintroduced into a free medium in our democracy the old theory of "by authority."

It cannot be argued logically that one man, a broadcaster, is less capable of serving the public interest than another man, a publisher. Or if this is asserted, then what of the anomalous situation which finds approximately 35% of the broadcasting stations in the country owned by newspapers? Does it follow that one who can operate a newspaper with the public's interest at heart (without "over-all review") must be subjected to such "over-all review" in the content of his radio programs?

Between 1830 and 1860, the newspapers of this nation left the laboratory mind and entered the social conscience — with the development of new methods of printing.

Nothing less than this has happened to broadcasting in the last three decades.

Today American newspapers use about 4 million tons of newsprint annually. Last year \$200,000,000 in raw materials were converted by the newspapers into a product which sold to the public for \$750,000,000. Radio, which once reached only a handful of our population, today can be heard by over 90% of the citizens of the United States.

We have compared the historic development of publishing and broadcasting, both as mechanical devices for communications and as instruments for social progress.

Let us look at them, side by side, today, considering the nature of their content.

About 20% of the average station's time today is devoted to news. (This is approximately the percentage allocated to news by representative metropolitan dailies.)

About 5% of a station's time is programmed for commentaries (and you will find about that percentage space allocated to columnists who are commentators for the readers).

The liveliest news on the air is programmed at best listening hours — 8 a.m., 12 noon, 11 p.m. — when a maximum audience is available. The newspaper accomplishes this same purpose by headlining news on page one.

The following comparison highlights the similarities in content between the newspaper and broadcasting station:

## NEWSPAPER

Women's Pages  
Society Pages  
Comic Pages  
Classified Ads  
Display Ads  
Weather "Ears"  
Syndicated Fiction  
Crossword Puzzles, etc.  
Letters to the Editor

## BROADCASTING STATION

Women's News  
Social Notes  
Mystery Programs  
Children's Shows  
Spot Announcements  
Sponsored Program Commercials  
Weather Announcements  
Daily Serials  
Quiz Programs  
Forums

Radio has pursued not only the tradition, but the pattern of the press — in all but one vitally important respect.

Radio has no editorial page. Radio is denied an editorial page by the regulatory caprice of the Federal Communications Commission and that existing threat to radio's freedom is compounded by such made law as the Blue Book.

On July 3, 1945, President Truman — who is spokesman for the Democratic Party — stated, in a letter to *Broadcasting Magazine*:

"In my opinion, the free voice of radio never has faced a more important challenge in its 25-year history than that which lies before it now as Allied weapons are turned upon the last enemy of liberty. Broadcasters must direct their energies in the future, as they have so nobly in the past, toward the liquidation of all resistance to the principles upon which their own free charter is founded.

"Our lawmakers demonstrated admirable foresight by decreeing that America, as the birthplace of radio, should have a free, competitive system, unfettered by artificial barriers and regulated only as to the laws of nature and the limitation of facilities. That this system has worked is demonstrated by radio's remarkable strides as a public service medium. The wisdom of that original policy, moreover, is reflected in radio's quick transition to full-fledged war service — a task yet unfinished. Since Pearl Harbor, American radio has written its own Magna Charta. But beyond the day of final victory there lie myriad problems.

"Radio, with the press, must give inspired leadership and lend its facilities to making more intimate and workable the relationship between the people and the Government. For radio itself there are challenging days ahead. New services are in the offing — services such as television and FM broadcasting, which will open new vistas of opportunity for public service.

"American radio is in good hands. With many hundreds of new stations possible by virtue of the opening of these new frontiers by our scientists and engineers, the free competition of the present will become even freer.

"The American system has worked and must keep working. Regulation by natural forces of competition, even with obvious concomitant shortcomings, is to be preferred over rigid Governmental regulation of a medium that by its very nature must be maintained as free as the press.

"I salute America's broadcasters who have been, in their fashion, warriors for our common purpose and solicit their continued zeal in the cause of freedom and decency."

In 1940, the Republican Convention adopted this plan in its platform:

"The principles of a free press and free speech, as established by the Constitution, should apply to the radio. Federal regulation of radio is necessary in view of the natural limitations of wave lengths, but this gives no excuse for censorship. We oppose the use of licensing to establish arbitrary controls. Licenses should be revocable only when, after public hearing, due cause for cancellation is shown."

The Constitution guarantees against enactment of law which will abridge freedom of speech.

The Democratic Party wants radio "as free as the press."

The Republican Party wants radio "as free as the press."

And certainly the people would not reject it, if one considers the results of a survey reported in the volume, "The People Look at Radio" (by Paul F. Lazarsfeld, Director of the Bureau of Applied Social Research, Columbia University; and the late Harry Field, of the National Opinion Research Center, University of Denver).

Here is one table from that volume, published in 1946:

## Attitudes Toward Fairness of Radio Stations, Newspapers and Magazines

	RADIO STATIONS	MAGAZINES	NEWSPAPERS
Fair	81%	45%	39%
Not fair	8	22	49
Don't know	11	33	12
Total	100%	100%	100%

The Communications Act of 1934 apparently does not provide for such freedom. Certainly, Section 16, S. 1333, as written, does not do so, for it offers less protection than the existing Act.

This is the cornerstone provision of radio legislation. Even now, facsimile is emerging — as did radio and the press, in their early days of development — from the laboratory.

It is now possible to transmit an 8½ by 11 inch page via facsimile in less than one minute.

The question may not be, in the world of tomorrow: Will radio be as free as the press? It may be, and in the context of this proposed law lies the answer: Will the press be free?

# Frank E. Pellegrin

Director, Department of Broadcast Advertising,  
National Association of Broadcasters

**I** SINCERELY appreciate this opportunity to appear before this Committee and express my views on the business of "commercial" phases of the proposed legislation now under discussion.

I respectfully urge that the language of Section 16 of the bill be revised to make it unmistakably clear and unqualified that the Federal Communications Commission shall have no authority to regulate the business of a broadcast licensee, nor to exercise any control over the economics of this form of free and competitive American enterprise. The present language of Section 16 of the bill, proposing to amend Sec. 326 of the Act is, in my opinion, ambiguous; on the one hand it states that "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 unless specifically authorized in this Act," (Sec. 326, a) and later it states: "*Provided*, that nothing herein contained shall be construed to limit the authority of the Commission in its consideration of applications for renewal of licenses to determine whether or not the licensee has operated in the public interest." (Sec. 326, b).

As a matter of practice the Commission has assumed power to regulate much of the business of the licensee, and if the above proviso is enacted into law, it is believed the Commission will engage even more actively in regulating the business of the broadcaster.

For example, in filing applications for a broadcast license, the applicant has been required by the Commission to state what percentage of his pro-

grams will be commercial, and what percentage will be sustaining. This promise has been weighed by the Commission in granting, or refusing, a license. In periodic reports to the Commission and in subsequent applications for renewal of license, the licensee has been required to state what percentage of his time was devoted to sustaining programs and what percentage was commercial. The effect of this regulation over the business of the broadcaster is restrictive, inimical to the best interests of the American system of broadcasting, and therefore is not in the public interest.

For instance, an applicant for a license may in all good faith state that he intends to devote 60% of his time to commercial programs and 40% to sustaining programs. He then is committed to this arbitrary division, year after year. But in the meantime, economic conditions are likely to change. Rapidly rising costs of operation may alter his situation sharply. The commercial rate that he was able to charge in order to operate on a sound basis by selling 60% of his time, may have to be lowered because of one or more variable factors such as the influx of more radio stations into his market and consequent division of audience; increased competition from other stations or from other advertising media at lower rates; a loss of network affiliation or a change in network affiliation that might bring about a loss of audience and a resultant necessity for lowering rates; development of new techniques or of new advertising services, including radio services such as FM, television, facsimile, and so forth. In short, it is impossible for any broadcaster definitely to set up an arbitrary division of his time into sustaining and commercial, and be sure that he can always continue to operate on a sound basis. The necessity for him to stay within the arbitrary limits forced upon him by Commission regulation may drive him into bankruptcy, or into a lowered standard of operation in the public interest. The alternative under the present system, of course, is for the Commission to allow a licensee to change from time to time the arbitrary division of his broadcast time into commercial and sustaining, *but to allow this, the Commission would thereby be forced to consider the economics of radio broadcasting, and this is believed to be contrary to the intention of the Congress in writing the Act.*

It should be emphasized that any arbitrary division into "sustaining" and "commercial" time is actually meaningless, insofar as public interest is concerned. Broadcasts of the New York Philharmonic Orchestra were unquestionably in the public interest when they were carried on a sustaining basis by stations of the CBS network; were they any less in the public interest under sponsorship by the United States Rubber Company, when that company used about 3½ minutes during the intermission of the hour-and-a-half program to deliver a commercial message? The broadcast of major league baseball games is believed to be in the public interest. Does it

make them any less so, if the Atlantic Refining Co. sponsors the broadcasts and uses approximately five minutes out of every hour of broadcasting to tell about its goods and services? It can be asserted that, in nearly every instance, a program that is worthy of being broadcast on a sustaining basis is worthy of sponsorship; that programs thus sponsored nearly always become *better* programs, by virtue of extra promotion placed behind the program by the sponsor, as well as by the broadcaster who is being remunerated and thus can afford additional promotion; by the guarantee of the best possible time for broadcasting to reach a maximum audience of those interested in that particular type of program; by assurance that programs thus sponsored will not be shifted or moved on the station's schedule; by increased interest and attention to the program and its innumerable details by all those concerned, including top management which is naturally conscious of the remuneration received; the announcers and artists who under present labor contracts are in most cases paid an increased scale on sponsored programs; the continuity writers, producers and all other station personnel who are, of course, always aware that it is the commercial sponsorship of programs that makes their jobs secure.

As a matter of fact there is no such thing as a "sustaining" program anyway. All programs are "commercial" in the sense that somebody pays the bill. No programs are "free." If the expense of broadcasting a program is not paid by a commercial sponsor, it is paid by the owner of the station, who thereby becomes its "sponsor." So the arbitrary designation by the Commission of "sustaining" and "commercial" is actually meaningless, especially to the listener. (Cf. "The People Look at Radio," University of North Carolina Press, edited by Lazarsfeld and Field and based on a nationwide survey of radio listeners conducted by the National Opinion Research Center of the University of Denver. One person out of every five interviewed believed that *all* radio programs were sold to advertisers.)

In view of the above, there is no justifiable reason for the Commission to insist on a fixed percentage of "sustaining" time. Action of the Commission in so doing results in:

- a) a violation of the Communications Act
- b) unwarranted regulation over the business of the licensee
- c) unauthorized interference with the licensee's control over program content

Therefore, this bill should specifically prevent the Commission from interfering in any way with the business problems of broadcasting under the American system of free and competitive enterprise. Such a specific prohibition upon the Commission is believed necessary because otherwise,



their interference will result in confusion and chaos. It is obvious, I believe, that commercial problems in the American economic system and within the radio industry are constantly shifting and changing. For example, we are now witnessing what has been termed an "economic revolution" in some of our southern states. Wages and salaries, terms and conditions of employment, the number and size and character of advertising sponsors, the number and character of competitive advertising media — these and many other factors which influence the business of broadcasting have changed radically within recent years and are still changing. Is it not unreasonable to expect that a broadcast licensee should still maintain the exact methods of doing business under these new conditions that he was able to maintain when he first applied for his broadcast license many years ago?

Or, to take another example, what of the licensee who obtained his license many years ago in a city like Los Angeles, only to find in the intervening years that the population of that city has increased by 100 per cent, that living conditions, business conditions, advertising practices, competition, radio listening habits and many other factors have changed so radically that there is hardly any resemblance between the city in which he began operations, and the city in which he is now forced to observe the same conditions that were set forth in his original application?

Some opponents of the American system of radio broadcasting have pointed to the prosperity of broadcasters as evidence that the Commission should have power to regulate their business. The Commission itself in some of its statements has used the same line of argument. It should be pointed out, however, that the profit figures which are cited in such instances are based on earnings generally in the period of 1940 to 1945 — those years immediately before and during the war when nearly all American business enterprises enjoyed unprecedented prosperity (and when such profits were largely drained off anyway by excess profits taxes of about 90%). This was, furthermore, a period when the licensing and construction of new broadcast stations were "frozen." This meant that the relatively few existing stations enjoyed an abnormal prosperity. But one does not find these opponents or critics of the American system citing the income figures of broadcast stations, say, for the period of 1930-40, when many stations operated at a loss, and when some were forced out of business. Nor do these critics take into account the fact that since the "freeze" on licenses and construction of new stations has been removed, literally thousands of new competitors have appeared on the American broadcasting scene. It is confidently predicted that at least two thousand more stations will be licensed for AM, FM, television, facsimile and other forms of broadcasting. This will inevitably have a profound effect upon

the business of broadcasting in the years to come, and constitutes a compelling reason for preventing the Commission from interfering with or regulating the business of the licensee.

The Commission's argument in justification of its interference with the business of broadcasting, has been the assertion that it exercises jurisdiction over a scarce commodity — the limited number of radio frequencies available to any single community. Now, as a matter of fact, the simple and historic economic factor of ability to operate at a profit is a more sound and effective control *over a commodity that is no longer scarce*, than would be the Commission's interference or regulation. Under old Commission standards it was often true that the number of radio broadcast frequencies available to any single community was limited. But this is no longer true. With AM and FM and television and facsimile, there are now more radio facilities available to any market than the market will support. Newcomers to broadcasting now do not even approach the Commission with an application for a license until they have first made sure, by their own independent study, that the market in question gives reasonable promise of being able to support the new enterprise. For that same reason, applications submitted to the Commission have subsequently been withdrawn. Also for that same reason, hundreds of available FM facilities are still going begging, despite all the pressure put upon AM broadcasters by the Commission to apply for them and despite all the encouragement the Commission has been trying to give to entrepreneurs outside the radio industry, by articles and speeches pointing to the high profits that some broadcasters have made during the recent lush years.

For example, we may point to Gadsden, Alabama, a city of only 36,000 population, which formerly had only one radio station, but now has five. Or Phoenix, Arizona, a city of 65,000 people, where formerly there were two stations and now there are six, plus another two in nearby Mesa which also cover Phoenix, for a total of eight stations. Or we may point to our own city of Washington, D. C., where until a few years ago we had only six radio stations. But now, counting the new stations that the Commission has licensed within the District as well as in the nearby suburbs — stations that deliver a very good signal to the residents of the District — we can count thirteen AM stations, 11 FM stations and four television stations already licensed or with construction permits — *a total of 28 radio broadcasting enterprises where formerly there were only six.*

In the face of these facts, surely the old argument of "regulation because of scarcity" will hardly hold water.

For reasons given above it is believed that the legitimate limiting factor in broadcasting should be the economic factor operating in its

normal American way, rather than the unauthorized, unwarranted, unrealistic and disruptive factor of interference by the Commission with the business of the broadcast licensee.

Further, and parallel, evidence to support this request for specific language in the Act to prohibit the Commission from regulating the business of the licensee is available in the Commission's prevailing practice of requiring the licensee to devote a stated percentage of his time to various types of programs, including such categories as education, religion, agriculture, news, entertainment, fraternal, etc. Yet the nature and the needs of the community may change completely over the years. The character of the population may change. Local customs and institutions may change. What was once a definite need in the community, to be served by the broadcaster, may have become a surfeit, and the licensee may be powerless to supply a *new* need of the community because of the arbitrary limitations and antiquated obligations imposed upon him. Again, he can petition the Commission for relief or for permission to change his arbitrary table of percentages, but this takes time, may involve some expensive hearings, and forces the Commission to investigate the economic factors involved which are, and should be, outside their jurisdiction.

This inability of the licensee to remain flexible, to serve his listeners to the best of his ability in the light of their changing needs and desires, may have a profound effect upon his business. It may deprive him of listeners and thus of the means of obtaining the advertising revenue necessary to support his operation; it may play into the hands of a competitor who is not thus artificially restrained by the Commission. It places an unnecessary and unfair hardship upon the licensee. This bill should specifically prevent the Commission from requiring any such arbitrary division of program time into stated categories.

In its prevailing practice of regulating the business of broadcasting the Commission is also making use of certain arbitrary definitions, yardsticks or rules-of-thumb which work a hardship on the licensee. For example, under the present system, when a broadcaster submits his program report as required by the Commission, *any program in which one commercial announcement appears is counted as a "commercial program," even though that announcement takes up only a few seconds of a 15-minute program.* This, roughly, would be comparable to stating that a full page of a newspaper is "commercial" if only small advertisement appears thereon. Yet this is typical of any such arbitrary rulings or interpretations the broadcast licensee must cope with at present. By specifically preventing the Commission from assuming any control or regulation over the business of

broadcasting, this Act would render a great service to the American radio system.

The Commission now requires a station to submit numerous lengthy and involved reports, disclosing in minute detail all of its earnings and expenses. Other reports are required, disclosing complete information regarding programs. Yet, under the Act, the Commission has no authority to require this type of information. If the Commission has no use for this material, why should it place such a burden upon broadcasting stations? The man-hours required to keep and compile such reports, the accounting system required by the Commission in order to submit the information in specified form, and the extra expense involved in this year-round compliance is an unnecessary burden upon all stations, especially upon the smaller stations with limited personnel and income. It is therefore respectfully urged that this bill specifically prohibit the Commission from requiring such irrelevant and unauthorized reports.

Section 3 of this bill is ambiguous, insofar as it seeks to amend Section 3 of the Act, adding subsection (dd), to define a "Network organization" as meaning "any person who sells or clears time . . . for the presentation of programs, produced either by itself or others, to be broadcast simultaneously over more than one broadcast station irrespective of the means employed . . . ; but shall not include advertising agencies or persons who contract directly with the licensee or broadcast station for broadcast time for their own use." It is believed that such language would cover the many firms of national radio sales representatives who have been in business for many years and who render a necessary and valuable service, yet who should not be subject to network controls because they by no means perform the functions or occupy the place of a network, and actually are no more than sales agents for the stations they represent. Such language also covers the individual licensee who has an AM station and an FM station which broadcast some programs simultaneously. Since there are already scores of such individuals, and undoubtedly will be hundreds more, it is extremely doubtful if it is the intention of the Congress to require these hundreds of licensees to be considered as "networks." Such language also covers many situations of dual ownership that now exist, such as one in Nebraska, where station WOW in Omaha, for example, is connected by line with station KODY in North Platte, for the simultaneous broadcast of some programs. Both stations are owned by the same corporation, WOW being the principal outlet and KODY being a satellite station to complete the market coverage picture of WOW, and in this sense is considered as a "bonus" or a "booster" station. Yet under the language of this bill, that licensee would be a "network organization."

Presumably these licensees would be required to conform to all the Commission's regulations respecting network organizations, including the keeping of special records, the filing of special reports, and numerous other burdensome obligations that might work an intolerable hardship in a direction not intended by the Congress nor desired by the Commission. This bill therefore should be revised to provide for such further exceptions.

Section 15 of this bill is too restrictive, places undue restraint upon the licensee, and would serve to prevent him from operating in the public interest. This section proposed to amend Section 315 of the Act, subsection (c), so as to limit the use of a station's facilities during any political campaign to the candidate himself, or some person designated by said candidate, or by a political party whose candidate's name appears on the ballot and those whose duly chosen responsible officers designate a person to use such facilities.

Under the terms of this limiting language, some of those persons or organizations in a community, who may have a great stake in the election, would be prohibited by law from using radio facilities. Such organizations as the League of Women Voters, or the Parent-Teacher Association, or the School Board, or the Ministerial Alliance, or the Boy Scouts — or any one of dozens of other worthy and responsible civic organizations — might be excluded from the air by inability to obtain the written endorsement of some candidate. Candidates and issues could not be impartially discussed. *Thus would American political practices be reversed*; instead of the candidate seeking the endorsement of such civic organizations, as in the past, the organizations would have to curry the favor of the candidate and obtain *his* written endorsement in order to express their views or explain their convictions to the public.

No such restrictions are placed upon newspapers or any other means of communication. Radio stations would be placed at an unfair competitive advantage. With the development of facsimile broadcasting, it is believed that for all practical purposes this part of the bill would be rendered inoperable by the First Amendment.

It is respectfully urged therefore that the bill be revised to place within the exclusive control of the licensee the authority over all political and other programs to be broadcast over the facility he is licensed to operate.

Subsection (c) of Section 15, as proposed in this bill, is also restrictive and unfair inasmuch as it would prevent any political broadcast during a 24-hour period preceding any election. Again, no such restriction is placed upon newspapers or other media. Facsimile broadcasting would present an insuperable problem of compliance in view of the First Amendment.

The public interest would not be served. Stations which rely for a necessary portion of their revenue on the sale of time for political programs would be unfairly penalized by this substantial loss of income.

Section 17 of this bill is contrary to the public interest, in that it specifically denies to broadcast licensees control over program content. In the language of the proposed new Section 330 of this Act, this bill would require a licensee to permit the broadcast of any program on a public or controversial question, merely provided it would not subject him "to liability for damages or to penalty of forfeiture under any local, State, or Federal law or regulation." He is specifically denied the power to censor, alter, or in any manner to affect or control the substance of any program material so used.

Subject to that narrow restriction of liability for damages or penalty, the licensee would be powerless to prevent the broadcast of programs which, although stopping short of libel or slander, by ordinary standards of good taste might violate the sensibilities of large numbers of listeners; might subject the licensee to abuse, scorn or ridicule by his listeners; might result in the loss of business through cancellation of contracts, expiration of contracts and failure to renew, or simply in the failure of prospective advertisers to use the facilities of the station. It is respectfully submitted that the most priceless possession of the licensee is the *goodwill* of his listeners. Upon that intangible, sensitive, delicate and highly mutable thread hangs the very existence of the broadcasting station. Yet the licensee would be powerless to protect the goodwill of his station against those who could use its facilities in the manner described under Section 17 of this bill. Such persons would in every case — or certainly in nearly every case — be "special pleaders" because they would be appearing on behalf of a political candidate or on either side of a public issue. Their first concern would naturally be the special cause they represented. The standards of good taste that the station might have carefully and painstakingly built up over a period of many years, the broadcasting policies the station might have established after long experience, these would mean nothing to the occasional user of the station, who might, indeed, be making his first and last appearance before that microphone. While his script might contain nothing in the nature of libel or slander, or anything that could definitely be said to put the licensee in danger of penalty or forfeit *under the law*, it might be shot through with statements completely out of keeping with the character of the station and its listening audience, with half-truths, with vulgarisms, with remarks that would antagonize, or inflame, or disgust large segments of the station's audience.



In fact, the author of this bill apparently recognizes the need for the licensee to be able to protect himself, his station and his audience, because in Section 19 of this bill, it is proposed to add the following subsection to protect the licensee against the network with which he is affiliated, by prohibiting "any contract, arrangement, or understanding, express or implied, with a network organization,"

*"(5) 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 a program of outstanding local or national importance for any offered by the network;"* (emphasis supplied).

In other words, if this bill is careful to protect the licensee against his own network, which has a definite stake in the success of his station and the goodwill it has built, why should it not be equally zealous to protect him against the casual user, the special pleader with no stake at all in his station or in the goodwill of his listening audience? If the licensee is considered by the author of this bill to be a competent judge in rejecting network programs which he reasonably believes to be unsatisfactory, unsuitable, or contrary to the public interest, why is he not equally competent to judge on the same basis with respect to program material submitted *not* by a network, which from a practical standpoint would hardly have any ulterior motives to serve in his market, but submitted by an infrequent and inexperienced user of radio, a special pleader with a definite axe to grind, and to whom the welfare of the station is surely secondary, at best?

Therefore we urge that the Congress give to the licensee the power to control the content of every program broadcast over his station; the power to censor any speech or other material in the light of the public interest, good taste, established station policies, and all other proper considerations that would be consonant with the licensee's stewardship of the facility under his charge.

In summary, then, I respectfully submit:

That this bill should specifically and unqualifiedly prohibit the Commission from interfering with the business of the broadcast licensee. The Commission should be prevented from requiring arbitrary commitments for dividing time into commercial or sustaining, or with respect to program content, and from requiring irrelevant and burdensome reports regarding finances and programs. The proposed definition of a "network organization" should be revised to exclude national radio sales representatives, operators of AM-FM stations, and certain other types of dual-station operators which



are not in effect and are not intended to be network organizations. The broadcast licensee should be given complete and exclusive control over program content, including the sole right to determine who shall speak, and the right to censor any material intended for broadcast. No arbitrary time-ban should be placed upon any type of program to radio's competitive disadvantage.

In his business operations as well as in program control, the broadcaster should truly and effectively be set free.

# Harold Fair

Director, Program Department,  
National Association of Broadcasters

**I** SPEAK to you from over twenty years of experience in building and producing radio programs, both local and network, including twelve years as program manager of one of the largest and most active broadcasting stations in the Middle West, WHO, Des Moines. I wish to speak on the following sections of S. 1333, known as the White Bill.

## S. 1333. Sec. 9(b).

This section will follow Section 307(a) of the 1934 Act which directs the Commission, subject to limitations of the Act, to grant a license when public convenience, interest, and necessity will be served thereby. The lack of definition of the term "public convenience, interest and necessity" has presented broadcasters with an ever-present ambiguity, which has invited misinterpretation and therefore invasion of the licensee's complete right to control the character and substance of his programs. Section 9(b) of S. 1333 adds that the Commission shall distribute licenses, frequencies, and hours of operation and power among the several states and communities so as to provide fair, efficient and equitable distribution of radio service, giving effect in each instance to the needs and requirements thereof. Here again, in the word "service" there is ambiguity, which through the same misinterpretation could be construed to mean "program service." It has seemed inadvisable or impossible to define the term "public interest, convenience and necessity" but in this instance, if our assumption is correct that both terms apply only to technical facilities — that is, those facilities which enable a

radio station to broadcast an adequate signal in a given area — then such a definition could and should be included in Paragraph (b), making perfectly clear the meaning of the word “service.” In this context, it is possible that the term “public interest, convenience and necessity” would assume the same connotation and to that extent at least remove the threat of increased control of program content by the Commission.

### S. 1333. Section 14 (a).

This provides that: “Any station license may be revoked (1) because of conditions coming to the attention of the Commission since the granting of such license which would have warranted the Commission in refusing to grant such a license.” This presupposes that the license was granted partially on the basis of proposed or promised program policies contained in the original application. Strict application of this provision would restrict materially deviation from such policies even though in the opinion of the licensee this deviation would be desirable and necessary from the standpoint of good programming. Conditions in the licensee’s locality or circumstances surrounding his operation could conceivably change during the period of the life of the license to such an extent that material changes in program policies would be desired or required. Changing economic conditions could seriously affect station programming. Available talent from local resources might alter or dwindle; changes in the station program and production personnel might result in different program policies as skills and talent of new staff members varied. These and other perfectly normal developments might dictate deviation from original program plans, yet the possibility of negative or punitive action on the part of the Commission as a result, would be an inhibiting factor and tend to retard progress or advisable change in those previously established policies.

### S. 1333. Section 15 (a), (b), and (d).

While all three of these paragraphs reflect recommendations in the proposed NAB Standards of Practices, now in the process of development, they seem to me to prescribe the station operator to an uncalled-for degree. The self-regulation which recommends equal time for all candidates is an agreement to the principle of good programming, and recognizes the right of free expression. To my knowledge, no such law regulating newspapers exists. If we are in fact to emerge with a law which makes radio as free as the press, I believe these three paragraphs should be stricken.

Furthermore, if we have, as we insist, the right to editorialize, these provisions make it mandatory for a licensee to provide free time for reply to any statement of opinion he or his editor might make over his own facilities

regarding a political or public controversy. Again, to my knowledge there is no such law regulating newspapers.

### S. 1333. Section 15 (c).

The apparent intent of this paragraph is to protect the candidate from unauthorized attack, or support. Provision for this has been made in the proposed Standards of Practice. However, the language of this paragraph is so specific that if taken literally it would eliminate the presentation of a candidate's case by any means other than a straight political speech. In the past such presentations have taken many other forms, including high professional dramatizations, forums, round-table discussions, etc. The proposed NAB Standards of Practices also recommends a prohibition against dramatization of a political or public issue broadcast with the intent of keeping such broadcasts on an intellectual and thoughtful plane rather than appealing to emotions through dramatization. This is, however, entirely beside the point and the wording of Section 15(c) places a definite restriction on the manner or method of presenting political broadcasts. If the industry deems it advisable to make such a prohibition it falls rightfully within the realm of self-regulation for the reasons stated above. I do not believe such regulation has any place in this law. I believe that the wording of this paragraph should be changed to permit such programming, or the use of such techniques as are deemed advisable so long as they are not misleading to the public, and conform in every other respect to the law.

A further, and more serious objection to this Section 15(c) is the fact that it prohibits any responsible citizen or group from voicing an opinion on such matters without written authorization from a candidate or a political faction. As an example, the Parent Teachers Association could and should be vitally interested in candidates for the local school board, regardless of political affiliation. Such a group would be in a position to know the duties and qualifications of a board member, and their opinions, as voiced by their spokesmen, would be of sound value. Yet this law clearly and unequivocally prevents them from using the air for such a purpose.

### S. 1333. Section 16 (b).

This section, which amends Section 326 of the 1934 Act, states unequivocally that the Commission shall have no power to censor, alter, affect or control the substance of program material broadcast by a licensee. However, the same paragraph, (b), gives the Commission unlimited authority to determine whether or not an applicant has operated in the public interest.

I realize that a definition of the term "public interest, convenience, and necessity" is difficult or virtually impossible to achieve. Therefore, the

present bill retains this ambiguity which permits such elasticity of interpretation that abuses can still arise. In this present wording I can see no reason to expect relief from those philosophies of the Commission already expressed in the Blue Book, other than that relief provided by review and hearings before the Commission or the courts.

Of equal or greater importance, in my mind, is the fact that the new bill accepts this philosophy and in so doing constitutes a continued threat to the fundamental right of freedom of speech. There is no question as to the reaction of station managers and program managers to these implications. It is only natural that program policies will be formulated that will tend to conform to these philosophies already expounded by the Commission in the Blue Book. Even in my own experience as a program manager, I have many times seen programs of doubtful quality and effectiveness given time on the air simply because they would improve the appearance of the station's program record if and when examined by the Commission.

### S. 1333. Section 17.

My thinking on Section 15(a), (b) and (d) as expressed earlier in this memo applies in every way to that portion of this section preceding the first proviso.

# J. Harold Ryan

Vice President and Treasurer, The Fort Industry Company

I AM Vice President and Treasurer of The Fort Industry Company which operates radio stations in the middle west and south.

I should like to qualify myself today as a witness principally as former assistant director of the Office of Censorship, during the war, and only secondarily as a broadcast licensee. In the former experience, I served as assistant director in charge of the Broadcasting Division under Byron Price, director, from December, 1941 to April, 1944 — subsequently serving for fifteen months as president of the National Association of Broadcasters.

My references in testifying are particularly to Section 18 of the bill, which provides an amendment to Section 332(a) of the Communications Act of 1934; and to Section 16 of the proposed bill, which amends Section 326(a) of the Communications Act.

SECTION 18 — This section of S. 1333 is entitled "Identification of source in news broadcasts." I should like to say as one who has had experience as a censor during time of war — and only in such periods of emergency is censorship of our free media legal in the United States — that Section 18 of S. 1333 is harsher as an instrument of censorship than was the code of wartime practices issued by the Office of Censorship during the war, and by terms of which broadcasters voluntarily governed their operations against releasing information of value to the enemy.

The Commander-in-Chief of the Armed Forces of the United States

entrusted the censorship of communications to the Office of Censorship. At no time did the Office of Censorship impose any such far-reaching restrictions as identification of source upon any media.

During the war, as a matter of fact, we undertook to pursue a policy diametrically opposed to this — for the reason that we felt a practical and workable system of censorship could be evolved, on a voluntary basis, which would forward the aims of our armed forces and, at the same time, not do permanent damage to one of our most important Constitutional guaranties: freedom of expression.

The code of wartime practices for American broadcasters, referred to above, asked only that station managers take full responsibility for the material broadcast over their facilities during the conflict; it requested that stations be prepared to delete such information as was defined in the code with one exception — where such information was released by an appropriate authority.

An appropriate authority, for example, would have been General Marshall, who, it was presumed by the Office of Censorship, could and would weigh the values of national security before releasing any statement of implied military significance to the enemy.

Consequently, there were frequent conferences when some persons in high positions during the war gave newspaper and radio correspondents background information which they felt could be broadcast or published, without attribution, in the best interests of forwarding the cause of victory. We knew of these instances in the Office of Censorship and we did not require correspondents to identify the source of such material.

I should like to testify to the great success of the voluntary system of censorship which was originated and blueprinted by Byron Price. Among broadcasters there was no single instance in which the licensee of a broadcast station knowingly violated any of the principles of the code of wartime practices. To set up, in peacetime, a censorship of our greatest means of mass communication that is more severe and restrictive than any censorship observed during wartime is unthinkable and can be fraught with the most dangerous results. I earnestly appeal for the elimination of Section 332(a) and (b) as amended in its entirety. I should like to quote also, in this regard, from a book *Weapon of Silence*, written by Theodore F. Koop, who served during the war both in a civilian and military capacity as an executive assistant to Byron Price at the Office of Censorship.

On page 188 of that book in a sentence concluding a chapter on the activities of the Broadcasting Division, Mr. Koop writes: "Thanks in no small part to Byron Price, as well as to its own members, the broadcasting



industry was able to stand before freedom-loving America on an equal footing with the press."

SECTION 16 — It is my belief that anything in this Section that anywise impairs freedom of speech is detrimental not only to broadcasters but also to our entire nation and should be eliminated. I, consequently, find objection to the phrase, "the substance of any material," etc. because I believe this will be greatly misunderstood and I am sure, from past observation, that it is subject to diverse interpretations. I also feel that the right and duty of the licensee of such radio stations to determine the character and source of material to be broadcast should not be given "subject to the limitation of this Act," and that, consequently, the quoted phrase should be eliminated. I note with much concern that any mention of the right of free speech which appeared in this original section has been eliminated, and for the sense of security and for reasons of clarity this phrase should be restored to this section.

As for the last proviso, "that nothing herein contained shall be construed to limit the authority of the Commission in its consideration of applications for renewal of licenses to determine whether or not the licensee has operated in the public interest" — this should be eliminated. Under Section 312(b) as amended by Section 14 of the proposed bill, the Federal Communications Commission is given the right to serve upon the licensee a cease-and-desist order regarding any action of the licensee in violation of any rule or regulation of the Commission authorized by this Act. The proviso to which I object has been the means by which the Commission has assumed to exercise control and censorship over the programs of radio stations, and has been the means by which such pseudo-regulations as the Blue Book have been promulgated. Consequently, to protect the broadcasters' right of freedom of speech as custodians for the people, and to provide against any misunderstanding or any inclination on the part of any body regulating radio broadcasting to assume unto itself powers not expressly given to it, this proviso should be eliminated.

As a long-time broadcaster, I have always believed that radio must be as free as the press. The guarantee of freedom of speech in the First Amendment to the Constitution, I believe, applies just as thoroughly to the spoken word as it does to the written word. Unless the safeguards of radio legislation give as great a freedom to broadcasting as is given to the press, then ultimately freedom of speech, as we know it in the press, will be assailed and weakened. This becomes especially evident when we consider facsimile, which ultimately may result in a newspaper of the air produced by electrical impulses, and which will come under the jurisdiction and the regulatory

power of government, just as broadcasting does today. If, therefore, the amendments to the existing Communications Act do not clearly assure freedom of broadcasting, they may serve as an entering wedge against our traditional freedom of the press, which has been maintained by such costly and determined efforts.

# Paul W. Morency

Vice President, Travelers Service Broadcasting Corp.,  
and General Manager, Radio Station WTIC  
Hartford, Connecticut

I AM, and have been for eight years, a director of the National Association of Broadcasters. I am a director of The Advertising Council. I am a director of Broadcast Music, Inc. and I am Chairman of the Stations Planning and Advisory Committee, representing independent stations which are affiliated with the National Broadcasting Company. This committee is elected annually by independent affiliates. I appear today as Vice President of the Travelers Broadcasting Service Corporation and General Manager of WTIC.

While there are many sections of the bill with which I am not in accord, I would like to speak specifically on the following sections: first, Section 17, which amends Part 1 of Title III of the Communications Act of 1934; second, Section 18 of the White Bill, amending Part 1 of Title III of the Act. This section is titled "Identification of Source in News Broadcasts." Finally, I should like to speak to Section 19 of the bill which also amends Part 1 of Title III of the '34 Act and which section is entitled, "Limitations on Chain Broadcasting and Station Ownership."

The proposed Section 330 of Section 17 seems to me impractical in operation because of the proviso starting in line 12, "That the time, in the aggregate, devoted to different views on any such question shall not be required to exceed twice that which was made available to the original user or users." This proviso would potentially more than double the amount of time which any radio station would have to allocate to the discussion of any public question. All radio stations at present operate on the principle that

both sides of a public or controversial question shall receive equal treatment, and as there are usually two substantially opposing views on any public question, two broadcasts on that subject virtually covers the subject. It seems to me that under this provision — as above quoted — the door would be wide open for innumerable facets of opinion to demand time for the presentation of a view which might very well differ in such a minor degree as to be inconsequential to the main issue. Again, if two opposite viewpoints are permitted to broadcast to counter the original broadcast from the proponent, I would assume, in all fairness, that the proponent would again have the right to present another broadcast to equalize the time. And, if during this broadcast, there was presented a small difference in viewpoint from the original broadcast, then the door would be open for a merry-go-round which might go on indefinitely.

The result of procedure under this provision would be to place the power of enforcement in the hands of the Federal Communications Commission, since I assume that any complaints of non-compliance with the provision would be addressed to that body. Because the broadcaster would have no way of knowing what the Commission would consider important or unimportant, and could have no previous knowledge as to what a decision might be, he would be in an unenviable position in judging his operation.

The ultimate end of such a provision might well be to curtail the discussion of public questions rather than to encourage them. In times like these, when it is so important for people to be informed on all the important questions of the day, public discussion should be encouraged by all practical means and not discouraged. It might very easily have an effect directly opposite to that which is intended. This provision might well require a broadcaster to devote entirely too much time to a subject which was of minor importance to the public, to the detriment of the presentation of the greater issues — this by requiring too much time to be devoted to a single subject without regard to its importance.

Proposed Section 331, also a part of Section 17, requires an immense amount of detail. It requires that before a broadcaster may permit the use of his station for a presentation of any public or political questions under Section 315 or 330, he must procure in writing from the person or persons arranging or contracting for the broadcast time (a) the name of the speaker or speakers; (b) the subject of the discussion; (c) the capacity in which the speaker or speakers appear; that is, whether on their own account as an individual candidate or public officer, or as the representative, advocate, or employee of another; and how the time for the broadcast was made available, and if paid for, by whom. All of this information must be announced at the beginning and end of each broadcast.

During political campaigns, it is not unusual for a political party to use five-minute broadcasts. This is particularly true of single station broadcasts. Under this proviso, most of that five-minute period would be devoted to comply with this provision to the great detriment of the speaker, his cause and the public. The speaker would have paid for time on which he could not propound his views and the public would merely be hearing two lengthy and repetitious announcements. Even on quarter-hour programs, particularly where more than one speaker was involved, this requirement would be very onerous and wholly impractical.

Radio stations at the present time fully identify speakers, parties and subject-matter, but not in anything like the detail required by this provision. I assume that the objective here is to provide the listener with sufficient information so that there will be no possible deception. I feel that that is adequately covered in the present Act and by the voluntary custom and tradition within the industry.

There is a further provision in this section, relating to the case of a public officer, where the announcements are not quite so detailed but still require the announcement at the beginning and end of the program, covering the subject of discussion and whether or not the office is elective or appointive, and the political unit or political officer involved in the election or appointment. A great many stations have regular programs each week from their Representatives, Senators, Governors and locally elected and appointed officers. It would be extremely onerous to have to follow this procedure as outlined for broadcasts covering such well-known figures as Senators, Governors and local officials.

I come now to Section 18 of the bill and proposed Section 332(a) — "Identification of Source in News Broadcasts." The first sentence of this section reads as follows: "All news items or the discussion of current events broadcast by any radio broadcast station shall be identified generally as to source and all editorial or interpretative comment, if any, concerning such items or events shall be identified as such and as to source and responsibility."

This part of Section 332(a) would directly limit the ability of any radio news reporter to gather news. For instance, as soon as the fact were known that every news broadcast had by law to reveal the source of all information, then immediately important sources of news would dry up as far as radio was concerned. This is a point on which news reporters have gone to jail; have suffered rather than reveal the source of their news. Hundreds of radio stations, realizing their responsibility in the dissemination of local news, have their own local and regional news reporters, as we

do at WTIC. We have legislative reporters in Connecticut, and our reporters, if they were to be required to identify all the sources of their news, would be immediately handicapped in a competitive way in delivering our listeners the same news that the newspapers would be able to deliver to their readers. This is a clear discrimination as between media, and would place radio at a distinct disadvantage in its reportorial function.

More than that, responsible surveys now show that 64% of all of our people get most of their news from radio, and to place such a limitation upon our reporters who gather and disseminate the news is a public dis-service and I know that this could not be the objective of this group.

In addition to the fact that it would cut down news service to the people, the provision, in my opinion, is impractical. It would require frequent interruption of news broadcasts to identify sources, to the complete confusion of the listener. At WTIC, our present custom is to announce at the conclusion of each news broadcast the fact that our broadcasts are made up from dispatches from Associated Press, International News Service, Transradio and our own reporters, and this is a practice generally followed by radio stations throughout the country. More detailed and specific disclosure of sources than this would run into the objections which I have outlined.

The last part of my testimony concerns Section 19 of the bill, entitled "Limitations on Chain Broadcasting and Station Ownership" — the proposed Section 333. I don't believe that contractual relations between a network and an independent station should be made the subject of legislation. The result will be an inflexible set of rules which will certainly not conform to the rapidly changing needs of the industry. Many new things are entering the art, such as facsimile, frequency modulation and television, and no expert could write statutory provisions of this kind which would be just and equitable for all segments of the broadcasting industry.

Part 4 of Section 19, under (a), reads: "which gives any network organization an option upon periods of time which are unspecified or which gives one or more network organizations options upon specified periods of time totaling more than 50 per centum of the total number of hours for which the station is licensed to operate or upon a total of more than two hours in any consecutive three-hour period . . ."

As I understand Part 4, all independent stations licensed to operate 24 hours a day would be permitted to option to one or more networks 50% of that 24-hour period — or 12 hours. This is more than the present regulations allow, and any regulation which permits the network to demand more time on option is, to my mind, detrimental to the best interests of the independent stations and the service which they can render to their local area.

This provision is particularly important at the present time because of the increased number of stations, which fact gives the networks more stations to choose between and, consequently, increased bargaining power. The present regulation covering option time which has been in force for the last few years has, in my opinion, worked out very well and allows flexibility in the arrangement of program schedules. In addition, this regulation has allowed sufficient time at peak listening hours for local stations to do a perfectly adequate job for their local audiences.

I feel that the suggested provision would hamper the presentation of the best programs at the most suitable times.

In conclusion, my general comment on the provisions which I have discussed is that they are detrimental to good community and regional operation because they take away from the flexibility of the individual broadcaster's operation. Flexibility — and in flexibility, I include timeliness — is one of the great public assets of radio and each step toward inflexibility makes for poorer not better service to the listener.



# Campbell Arnoux

President and General Manager,  
Radio Station WTAR, Norfolk, Virginia

I AM a member of the Board of Directors of the National Association of Broadcasters.

In reference to Section 8(j) of the bill, which amends subsection (j) of Section 303 of the Act—such amendment provides that uniform systems of financial reports may be required from the licensee of each station doing a particular type of broadcasting, which reports shall disclose the financial statements of any such radio organizations; and further provides that this information may be used by the Commission on its order “in any proceeding before the Commission.”

This bill seeks to prohibit the Commission from regulating the business management of any radio station or to fix or regulate rates charged by any station. The filing of such detailed financial reports is, therefore, unnecessary. Stations are not common carriers, and this detailed information of a confidential financial nature is not within the scope or province of the Commission. Further, the amendment gives the right of the Commission to make such information public in any hearing or proceeding of any kind before the Commission, which could act to the damage of the station and the advantage of its competitors in many instances.

The bill, on the contrary, should carry a provision prohibiting the Commission from inquiring into the financial affairs of licensees, or requiring regular financial reports, as contemplated in the amendment; and stipulate that only such financial information be furnished as is necessary to convince the Commission, in the case of an applicant, that it is financially

qualified to carry out the terms of the license sought; or, at renewal time, to review the financial condition of the licensee to the extent that it may determine if it is still financially sound and able to discharge its obligations under the terms of its license. Any further information of this character is unnecessary and against the spirit and provisions of Section 16 of the bill limiting the Commission's powers in regard to regulation of the business of the licensee. Further, a provision should be written into the bill requiring the Commission to keep all such information as may be necessary to it to determine financial responsibility in the case of a grant or a renewal confidential at all times.

In connection with Section 9, subsection (b) of Section 307 of the Act, which is amended by Section 9, subsection (b) of the bill, the final clause of the amendment, which reads "giving effect in each such instance to the needs and requirements thereof," should be eliminated and the words "consistent with standards of good engineering practice" be substituted therefor.

As it now reads, this last clause transfers the matter of station grants to a quasi common-carrier status and brings into the Commission's decision factors of competition. The Commission would have to decide whether the grant would be proper to eliminate a condition of monopoly, or, on the converse, whether it should be denied because to grant same would create too much competition from an economic standpoint. Other sections of the bill do not give the Commission such powers. It would tend to regulate the business of broadcasting in any given community, and to regulate the business of broadcasting is to invoke the powers of censorship through the pocketbook — which can be just as effective as any other type of censorship.

In reference to Section 15(c) of the bill, which amends Section 315 of the Act, this amendment prohibits sale of time to individual citizens who wish to speak for or against the candidacy of an applicant for public office unless such individual is approved in writing as the spokesman or representative of a candidate. It also would act to prohibit the sale of time for the same purpose to organizations such as the Grange, the Farmers Union, the PAC, or any other organization of citizens who have a stake in an election but are neither the representatives of a candidate nor a recognized political party. These persons and individuals, under the general safeguards governing political campaigns, should not be denied a right to the air.

This amendment should also be rewritten to define a legally qualified candidate or a political party as one which is legally qualified in the State in which the station is located.

In connection with Section 15(d) of the bill, which amends Section 315

of the Act, this subsection as amended is too vague. There might be a large number of persons or organizations with varying shades of opinion in connection with a public measure to be voted on. How is it to be decided which person or organization shall give the "different" view in the event that fifty such persons make application to do so? As written it could be interpreted that *all* who apply *must* be given equal opportunity to air *their* different views. This provision might well result in no discussion of the matter on the air as a defense measure on the part of the station to avoid excessive time being allotted, and putting the over-all program structure of the station badly out of balance, to the detriment and annoyance of the listeners.

In reference to Section 15(e) of the bill, which amends Section 315 of the Act, there is no valid reason whatever why political broadcasts should not be made the day before an election. Interest in an election is highest the final day of the campaign; listeners are most receptive to political messages at that time and they are most appropriate in the program structure. As most elections are on Tuesday, and since most stations do not sell time for political programs on Sunday — nor do candidates wish to buy time on Sunday — this amendment, in many instances, would mean that the last broadcasts of a political campaign would be three days before the election — on the previous Saturday. It appears to this witness that such a restriction is in violation of the rights of free speech, as it says, in effect, "you can talk on certain days but you cannot talk on one day." It also is discriminatory against broadcasting as no other method of reaching the public is so restricted — newspapers, public meetings, billboards, films and the like being permitted under our laws to give political messages to the people on any day and at any time.

In reference to Section 15(g) of the bill, which amends Section 315 of the Act, the wording of this amendment is too vague and general. The word "approximate" in reference to the time of the day or night is too general and hard to administer by the station. "Equal opportunity" in its relation to time should be spelled out more precisely, by stipulating segments of the broadcast day that follow industry practice as to "equal time," such as time between the hours of 8 a.m. to 12 noon, 12 to 6 p.m. and 6 to 11 p.m., with the proviso that any equal segment of time within these time divisions be considered "equal" from the standpoint of the amendment. It should also be provided that equal opportunity can be accorded by the station by allotting equal time as defined above on any day or night of the week of the campaign, with the exception of the final and last day of the campaign when the equality of time would have to be observed on the same day, within the same time division.

In reference to Section 17, Part 1 of Title III of the Act, which is amended by adding two new sections entitled "Discussion of Public or Political Questions," this section seems to be vaguely written and, therefore, subject to conflicting interpretation. What does the word "substance" mean? If it is meant that, aside from giving the licensee the right to delete slander, libel, obscene or indecent statements and the like, he cannot otherwise alter or change the text once he has agreed to broadcast such a talk or program, then the word "context" should be substituted for the word "substance."

These sections further put the burden of deciding what constitutes libel or slander, or the like, on the licensee. If he decides in conflict with the opinion of the person or organization seeking to broadcast the statements and he deletes same according to his, the licensee's, best judgment, then the licensee may find himself faced with a complaint to the Commission which, in turn, will find itself faced with making a judicial decision as to whether the items did indeed constitute libel, slander, or the like. At the least, the licensee, in agreeing to permit each such public or political question broadcast under the terms of these new sections, runs the hazard of a hearing before the Commission with its attendant expense, anxiety and loss of prestige in his community. The practical result of these provisions, as previously written, will — in this witness's opinion — tend to diminish instead of increase the airing of public questions.

To accomplish the results sought by these new sections, safeguarding provisions should be written into the section saving the licensee harmless from libel and slander damages, exactly as is provided in the sections dealing with talks of candidates for political office.

If this is not done, then the licensee should be given the specific right to cut the speaker off the air if he departs from his prepared speech after it has been cleared for slander, libel and the like by the station management. In the past it has happened that a speaker, who had previously submitted a written copy of his talk that contained no statements that were illegal, suddenly, while broadcasting, departed therefrom and uttered slanderous and libelous statements. The station is then put into a difficult and dangerous position.

Either the licensee should be protected by statute from damages for libel, slander and the like, or the station should be permitted by the bill to cut the speaker off the air if he departs from the written speech as submitted to the station in advance.

# Maurice Lynch

Representing Chicago Federation of Labor,  
Licensee of WCFL

THE proposed changes in and additions to Section 315 and other related sections need considerable scrutiny and clarification. Section 315 of the Communications Act of 1934 provides for "equal opportunities" for duly qualified candidates for political office only, with no censorship. The proposed changes and additions contained in Bill H.R. 3595 and S. 1333 give the same rights and privileges to representatives of candidates and to regularly organized political parties in a political campaign; also to both sides in any public measures to be voted upon.

Paragraph (c), Section 315, proposes that "No licensee shall, during a political campaign, permit the use of the facilities of a broadcast station for or against any candidate for any public office except (1) by a legally qualified candidate for the same office; or (2) by a person designated, in writing, by such candidate; or (3) by a regularly organized political party whose candidate's or candidates' names appear on the ballot and whose duly chosen responsible officers designate a person to use such facilities." (Sub-paragraph (3) cannot apply in primary elections.)

What about persons whose names do not appear on the ballot — being prohibited by law, as in some states — but who are the candidates of their party? I refer to the Communist Party candidates particularly. In some states "write-ins" are legalized. This is a point that should be clarified so that the licensee can definitely determine the status of such candidates.

Paragraph (f), Section 315, proposes, "Neither licensees nor the Commission shall have power of censorship over the material broadcast under

the provisions of this section: Provided, that licensees shall not be held liable for any libel, slander, invasion of rights of privacy, or any similar liability imposed by any State, Federal or Territorial or local law for any statement made in any broadcast under the provisions of this section, except as to statements made by the licensee or persons under his control." (This last sentence seems superfluous, as the licensee as such is prohibited from making any statements under the provisions of this section.)

Is the licensee fully protected by paragraph (f) from criminal or civil liability in States where laws are in force prohibiting libel and slander from being broadcast over the radio?

I would suggest that copies of all talks should be in the hands of the radio station authorities at least twenty-four hours before the time set for the broadcast — forty-eight hours would be preferable — so as to give the speaker sufficient time to make changes or corrections, and to delete profane, obscene, or indecent language.

Paragraph (b), Section 326, proposes, "The Commission shall have no power to censor, alter, or in any manner affect or control the substance of any material to be broadcast by any radio broadcast station licensed pursuant to this Act, and no regulation or condition shall be promulgated or imposed by the Commission which shall interfere with the right and duty of the licensee of any such station to determine, subject to the limitations of this Act, the character and source of the material to be broadcast: Provided, that nothing herein contained shall be construed to limit the authority of the Commission in its consideration of applications for renewal of licenses to determine whether or not the licensee has operated in the public interest."

I would say it would be better if the Commission would immediately inform the licensee of any violation either by commission or omission and ask for an explanation and correct its practices, rather than let it go until the term of the license is about to expire.

The licensee might be ignorant of any violations, and it would be rather severe to punish him by depriving him of his opportunity for a livelihood and his investment, while perhaps not being wilfully guilty of any violations of the law or regulations.

Section 330 proposes, "When and if a radio broadcast station is used for the presentation of political or public questions otherwise than as provided for in Section 315 hereof, it shall be the duty of the licensee of any such station to afford equal opportunities for the presentation of different views on such questions." It provides, among other things, that neither the licensee nor the Commission shall have the power to censor, alter, or in any manner affect or control the substance of any program material. It also

provides, "That no licensee shall be required to permit the broadcasting of any material which advocates the overthrow of the Government of the United States by *force or violence*." It provides further, "That no licensee shall be required to broadcast any material which might subject the licensee to liability for damages or to penalty or forfeiture under any local, State, or Federal law or regulation." It also provides that 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.

This Section 330 seems vague and contradictory.

What are the "political or public" questions other than those provided for in Section 315?

Would Communism be one of them?

If so, must the licensee give time to the Communists or any of their related organizations, such as the fellow travelers and underground workers?

Must they (the Communists, etc.) actually say they will if they can *overthrow the form of government of the United States* before the licensee can claim the right to refuse them the use of his radio facilities? There are those who claim that the right to overthrow or abolish the form of government of the United States is provided for in the U. S. Constitution and the Bill of Rights; but there is no such provision in the Constitution or the Bill of Rights.

There is a provision in the Declaration of Independence that peoples have the right to change their form of government or to abolish it. But that was written years before the Constitution or the Bill of Rights. It was written when a foreign power governed the American Colonies. The purpose for which the Declaration of Independence was written and approved was achieved at Yorktown, Va., in 1781, and confirmed in Paris in 1783; and subversive elements should not be aided in any manner in nullifying the great accomplishments for which so many sacrificed their all. Radio facilities should be denied them in the promotion of their designs.

One part of this Section 330 prevents the licensee and the Commission from censoring, altering, or in any manner affecting or controlling the substance of any program material, while another part of the section gives the licensee 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.

Those two parts of Section 330 seem to be contradictory.



The section does not provide for any protection to the licensee from liability under State, Federal, or local laws, while paragraph (f) Section 315 does.

(The words "sufficient time in advance of its intended use" ought to be definitely specified as twenty-four hours or forty-eight hours.)

A provision should be added to the bill to cover cases where an organization, not a duly organized established political party, purchases time on a radio station, and the commentator talks on various current issues. During pre-election campaigns the commentator discusses the merits and demerits of opposing candidates, and urges the election of several of the candidates — perhaps as many as six or seven or more — not necessarily all of the same party. Cases like this are not covered by Section 315, and it is extremely difficult to comply with the letter of the law regarding "equal opportunities."

Section 334 (first paragraph) reads: "No person shall utter any obscene, indecent, or profane language, and no person shall knowingly make or publish any false accusations or charges against any person, by means of radio communication."

This is entirely proper. But who is to be held responsible? Does it apply to Sections 315, 326, 330, 331 and 332? Shall the licensee censor and delete the talks of political candidates where obscene, indecent, and profane language and false accusations are contained in the script, which Section 315 seems to prohibit? An addition should be included in Section 334, that the licensee shall not be held liable for any objectionable language or statements mentioned in this section which might be interpolated by a speaker, and which are not contained in the script submitted to the licensee.

# Harry Bannister

General Manager of WWJ, WWJ-FM, WWJ-TV, Owned and  
Operated by The Detroit News, Detroit, Michigan

**A**S A radio station operator my sincere hope is that existing radio laws be amended or re-written. If there is lack of unanimity among broadcasters as to what should or should not be included in this new legislation, I hope you gentlemen of the Senate do not become exasperated or discouraged.

Broadcasting seems to foster individualism. It is most difficult to get as many as three broadcasters to agree about anything; above that number it is almost impossible to achieve agreement. Maybe that is as it should be. Maybe that very individualism is the ingredient which has made American radio the finest on earth.

At any rate, I hope you gentlemen will bear with us and not throw up your hands. Please let us have a new law governing radio. Above all, do not permit the status quo to continue. Nothing could be worse than the current confusion, with bureaucracy running wild.

As an over-all observation, it seems to me that Sections 15, 16 and 17 are too involved and complicated. They could stand a lot of simplification and clarification, else they will tend to promote confusion rather than to diminish it.

In Section 15 it is stated at the outset that no station is compelled to carry political broadcasting. I think it should also be stated that no station is compelled to carry a program discussing any specific public question. Naturally, we're going to carry discussions of all important issues, as,

after all, we strive always to attract listeners. If enough people are interested in any question, we'll do something about it; and of course, we'll give both sides equal opportunity. But we don't want to clutter up the airways with long-winded dissertations, pro and con, on the love-life of the Hottentots or on someone's ideas as to how every one can make a thousand dollars a day without working. If the licensee is worthy of a license in the first place, then he should be trusted to decide whether or not an issue is of sufficient importance and interest to warrant time on his station. But it should be made crystal clear that there is no compulsion to throw open facilities.

Permit me to cite a case showing how the lack of such a proviso has fostered bureaucracy. On my own station, for 27 years we have tried by every means at our disposal to run the finest kind of radio station, observing and exceeding both the letter and the spirit of "public interest, convenience and necessity." I could submit a truck-load of testimonials from every walk of life which would attest to the fact that our efforts have been recognized.

Yet, only a few months ago, when our license came up for renewal, one of the Commissioners refused to cast his vote for renewal, but instead voted for "further inquiry" — a fact which was widely publicized in the industry and which cast an unwarranted stain on a long and honorable record.

Why did he do this? He did it, as he informed our representative, because some 18 months previously we had become involved in one of those situations which are inevitable in broadcasting. A professor who is an eminent scientist from one of the mid-western universities had been invited by a local group to speak in my town. It was the sort of thing which happens every day. You can judge of the impact this visit made on our community by the fact that while we have a number of auditoriums which will hold from 5,000 to 15,000 people, the sponsors of this appearance scheduled it in a school auditorium, holding perhaps 1,500 people. And the professor failed to fill even this small hall. Yet, I was asked to cancel a full hour of superb NBC programming in the heart of the best evening hours, to interrupt the listening habits of a million people, and to chase off the majority of my vast audience, in order to carry this speech. Because I refused to do so, this group complained to the Commission. And based on that complaint, a Commissioner voted against renewing our license. This sort of thing has happened to others. I think any new law should so define responsibility that these things cannot happen again, and I think that simplicity and clarity are needed in the law if these things are not to happen again.

Here is another case in point: One of the most controversial issues now before us is the revision in the labor laws. My station has covered this

subject, fully and dispassionately, in our newscasts. In addition, we carry, weekly, a program originating in Washington consisting of a round-table discussion by four Senators and our Washington correspondent, Blair Moody. This program covers all important legislation while it is in the making, and, always, Mr. Moody chooses two Senators on one side and two on the other. A number of these broadcasts have been devoted to labor laws. I am certain we have explored thoroughly the entire situation.

Yet, last week I received several telegrams from both the CIO and the AFL asking me to carry programs protesting against the enactment of the Taft-Hartley Bill. Feeling that we have already covered the matter comprehensively and fairly, I refused to carry these programs, as to do so would have upset the balance maintained to date. I am certain we will be cited to the Commission as "unfair," but the record will reveal we have been both fair and thorough. Yet I know one Commissioner who will not take this view, and without a specific proviso in the law we are helpless and unprotected.

Paragraph D of Section 15 rather frightens me. It says that if a station permits the use of its facilities on a public question which is to be voted upon, then it must allow equal time for the presentation of each different view.

I'm thinking of an issue which has been greatly debated in my town. We need a modern airport desperately but we haven't been able to decide on a site because half a dozen different sites have been suggested, with no meeting of minds. Supposing we had on the municipal ballot, at our next election, a proposal to construct an airport on what Detroiters call "the Northwest site." I shudder to think of our vast audiences dwindling away at the endless talk of chimerical airports. As I read this paragraph, we must allow equal time to the advocates of the Willow Run site, to the Wayne County site, to the Canadian site, to the City Airport site, and to the River-front site, all of which have been suggested. I think it would be better to allow equal time to those in favor of the proposal and to those opposed.

Similarly, I dislike the first paragraph in Section 17 which provides that if there are varying views in opposition to a question of public importance, the opposition may have twice as much time as the original proponents. Is it not true that this will make it possible for opponents to a suggested measure, by varying their lines of opposition, to ask for and obtain an opportunity of convincing our audience which will be twice as great as that afforded the affirmative side? Would it not be better to lump the opposition in an allotment of time equal to that of the proponents?

Section 18 deals with news sources. I do not quite understand it. In substance it states that the sources of news must be identified, fore and aft.

But the context is somewhat clouded because it could be interpreted to mean that each item in a newscast must be identified as to source.

On my own station our newscasts are preceded by an announcement reading "we now present the news as compiled from the dispatches of the Associated Press, the United Press, and by the staffs of the Detroit News and of WWJ."

But there is no attempt to identify each item as to source — although occasionally the newscaster may introduce an item by saying something like "from London comes an Associated Press dispatch which says." I'd hate to do this before every item on each newscast. It would become quite annoying and boresome and time-consuming to the degree of restricting news coverage. I hope that Section 18 will not compel us to do any more than is now contained in our introduction. Frankly, I see no need of it.

Commentators are another problem. Some of them get pretty big for their breeches. My own opinion is that radio would be better off without some of its highest-rated commentators, but I think that any attempt to regulate their activities by law is dangerous and that such an attempt would constitute an infringement of the constitutional guarantees of free speech.

Sensationalism enters into every phase of our national life and we cannot hope to keep it out of radio. It so happens that neither my station nor the network with which we are affiliated, NBC, goes in for sensation-seeking commentators. And as our opposition in seeking listeners, a number of them have attracted immense audiences which I would dearly love to annex. But I still don't want to see them regulated or limited.

I do not think that the answer to the commentator problem lies in attempting to prescribe it by law. Rather I think it lies in helping radio to continue the job it has done in the past quarter-century of slowly but steadily enlarging the understanding and consciousness of our people. Over-regulation would hinder rather than help this work.

Turning to the section on networks, No. 19, there is one paragraph which I dislike more than anything else in the bill.

It is paragraph 4, which limits network optional time to not more than two hours in any consecutive three-hour period.

It may sound strange to you that a station manager says he doesn't like a proviso in the bill which will give him more time to use locally. But I don't like it because, basically, it is bad for the entire radio structure, and therefore in the long run it will hurt my station.

The network is the heart of radio, the core of the entire industry. It is the network system which has contributed most to the greatness of our industry, and anything which tends to weaken or to destroy the excellence of network service is fundamentally bad for all radio.

Certainly I'd love to have that extra time, but after a while, when because of the decline in my network programs my whole audience declines, along with the usefulness of my station to its community, I won't be so happy.

A network depends primarily on being able to deliver blocks of time on all its stations. And because the network furnishes its stations with the programs which command the largest audiences, it is fitting and proper that the best listening hours, in solid blocks, should be allocated to network programs.

At present on my station the network uses 8:00-11:00 p.m., eastern standard time, which are undoubtedly the top listening hours on week nights. Supposing, as proposed in this bill, the network time started at 8:00 p.m. and ran only until 10:00 p.m. instead of until 11:00 p.m. I would lose one-third of the high-audience shows I now have in the best evening bracket. I wouldn't like that. I'd probably lose a lot of audience, as I cannot hope to duplicate for one hour nightly the fine shows now being delivered by NBC. I can put on a program occasionally which compares favorably with NBC's best — and that's more than 95% of our stations can do — but I cannot hope to do so on a production basis, night after night.

I know that many people, advocates of various causes, have complained that not enough good evening hours are available over the top stations in their respective communities because of the fact that the networks take up this time.

Please consider, however, that the 60,000,000 radio sets in this country were purchased primarily because the buyers of these sets wanted to be entertained, and not because they wanted to be enlightened, educated, elevated, preached at, or anything else. It's all right, now and then, to let someone do all these things, but no matter how vital the message may be, you cannot hope to reach the ears, mind, heart or conscience of the listener, **UNLESS HE'S LISTENING**. And if you punch any great big holes in his entertainment programs, he just won't be there to listen when you attempt to make a better or smarter man out of him.

It's a matter of fine balance. Radio must consist mostly of entertainment in some form or another. If you have enough entertainment, you have lots of listeners. Then you can hand out occasional doses of culture, uplift, education, religion, etc., and more than do a good job. But if you cut the entertainment and increase the other classifications unduly, you might as well forget radio as a medium for making a better human race, because no one will listen excepting those who deal in the things they would substitute

for entertainment, and presumably such people do not require elevating influences of any sort.

Speaking as a network affiliate, I ask that you do not place this limitation on network operations. I think the status quo is quite satisfactory as regards relations between networks and their affiliated stations. There has been a lot of loose talk about "network domination" and about freeing affiliates from their slave status, but honestly, gentlemen, if our state is that of serfs, we're quite happy about it. We have our differences within each network, but whatever they are, they're relatively simple and require no legislation in order to achieve adjustment. My station's most valuable asset is its NBC affiliation. Therefore I am deeply concerned about anything that hurts NBC.

I have one final suggestion: I would like to see included in the law a proviso which would make it impossible for anyone to procure a license if that person has owned a radio station and has sold it. There is a lot of trafficking in licenses and apparently no one is doing anything to stop it.

I see nothing wrong in anyone selling a station for a profit. But I see great wrong in permitting such a person to repeat the process.

The Detroit News and I personally regard the assignment of a wavelength, out of the public domain, as a sacred trust. We wouldn't think of selling our station at a profit, which we could easily do, in the hope of starting another station with the proceeds and still have money left in the bank. Yet that sort of stuff is going on constantly, and people who have disposed of their radio properties at fancy prices pop up shortly afterwards with new stations, which presumably in time will be sold for further gain. I think this trafficking in frequencies should be specifically forbidden by law. There undoubtedly are some worthy exceptions. I can think of one, namely, in the case of a network which requires an originating station in some talent point, such as New York or Hollywood. In order to acquire such a station that network may have to sell another station so as to stay within the number it is permitted to own. But, outside of such legitimate needs, I think a law is required prohibiting this bad practice.

In closing I want to state that after carefully studying your proposed bill I am impressed by the fact that you have made a conscientious effort to help radio. For this I thank you. If there are any points on which I have expressed criticism or disapproval, I have ventured to do so only because I am certain that you want this from a station operator. I would like to see my suggestions incorporated in the law, but if you should decide that my views are unsound or that they represent an individual or industry view-



point rather than a national viewpoint, I am more than ready to honor your considered decisions.

All intelligent broadcasters recognize that there must be regulation, else chaos would result, but please give us a law which will make that regulation definite, specific, understandable, and leaving as little as possible to the whimsy of imperfect man. And above all, give us a law.

# Marshall Pengra

Manager, Radio Station KRNR, Roseburg, Oregon

I AM manager of radio station KRNR at Roseburg, Oregon, and supervising director of station KFLW in Klamath Falls, Oregon. I do not own stock in either radio station, nor any stock in either newspaper to which the stations are licensed. Roseburg is a town of approximately 10,000. Klamath Falls is about 30,000.

I am here to express certain opinions relative to the proposed legislation affecting the radio broadcasting industry which this committee is considering.

The major portion of my comment concerns Section 16 of the proposed legislation which has to do with the "business regulation" of a radio station.

During the twelve years that I have been actively engaged in the operation of radio stations, my experience has been largely confined to the low power or local station in the small town. It has been my experience during these years that radio broadcasting as an industry has been steadily and continuously losing what little freedom of operation it once enjoyed through a consistent multiplication of rules, regulations and restrictions flowing from the FCC. Neither the proposed legislation nor past regulation has ever accorded the broadcaster, in specific and unmistakable language, the right and privilege to operate his station under the American system of unrestricted free enterprise.

The language of Section 16 of the proposed legislation amending section 326 of the Act, under "Censorship," provides 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

broadcasting station UNLESS otherwise specifically provided in this Act." The phrase "unless otherwise specifically provided in the Act" is the stone wall. No sooner does the proposed legislation provide that the Commission shall not regulate the business of a broadcasting station than a catch-all condition is immediately appended and we're right back where we started. The proposal that the Commission not be allowed to regulate the business of a radio station is nothing more than a constitutional right of free enterprise which has always been guaranteed in this country to all other types of free enterprise.

The American system of broadcasting is a medium of mass communication and is a free private enterprise by any comparative standards, yet it suffers business regulation by Commission rules and practices that no other private enterprise has ever suffered since the right of freedom of speech was established.

In the very same document — this proposed legislation — which specifically provides that the Commission shall not regulate the business of a radio broadcast station unless otherwise specifically provided in the Act, there appears in Section 8 the following provision:

"The Commission shall have authority to make general rules and regulations requiring stations to keep records of such programs, transmission of energy, communications or signals as it may deem desirable; and to prescribe uniform systems of financial reports which may be required from the licensee of each radio station."

Note that the provision specifically says among other things a "record of programs, and a system of uniform financial reports."

Let me show you the required FCC forms for the submission of these two reports which are requested annually and which are usually mailed to the broadcasters from 30 to 60 days in advance of the deadline for filing with the Commission.

Speaking of further business regulation, take the case of the man who is applying for a radio station. In his application he is required to set forth in detail, with exhibits, the character and types of program service he proposes to furnish when the station finally goes on the air. He is required to show (Page 36, form 301, as revised April 25th, 1944) the TOTAL AVERAGE WEEKLY time to be devoted to such program classifications as Entertainment, Education, Religious, Agricultural, Fraternal, News, etc. He is further required to state the number of hours and percentage of time per month to be devoted to sustaining programs — those without paid sponsors — and commercial programs. The applicant is also required to state what percentage of the total monthly time will be used for network programs (if he contemplates an affiliation), both sustaining and commercial.

This, of course, is only a small part of his application, and very simple to handle, since the elapsed time between the filing of his application and the time of final grant may only be a matter of eight months to two years during which time prices, labor conditions and community problems and development remain absolutely constant to fit the information given in the application.

To get to the point in this case — let's have the station granted at once — and it has now completed three years of operation. It is time for license renewal. Time to fill out another application and to show again how much time is being devoted to all the types of programs originally set forth in the application, and to show again how much time is devoted to paid programs and how much time to sustaining programs.

This is the check-up. This information reveals to the FCC how the broadcaster is maintaining those percentages in program time that he originally said he would, and if he took in a greater percentage of paid programs than he set forth in the original application.

And what happens if his percentages have changed with changing conditions in his town? A check-up is made by the FCC before the license renewal is granted.

This, gentlemen, is Business Regulation with a capital B under implied threat of losing a license to broadcast.

True, the provisions of the present Act do not specifically state that percentages in types of programs and in sustaining and commercial time cannot change, but the Commission's prescribed right of inquiry and required reports in this connection constitute a serious business regulation through implied threat of losing a license or having it held up pending investigation.

Ask any broadcaster his reaction to showing his complete breakdown by hours and percentages of his program structure for his renewal of license application and his annual program report, and let him tell you what he suffers and why.

With another example, I'd like to show how the declaration of the amount of time to be devoted to sustaining programs and commercial programs very neatly devolves into the most vicious type of business regulation.

Broadcaster X applies for a radio station. In his application he states that he expects (eventually) to operate his station on a 70-30 percentage basis. Remember, this statement is a requirement of the Commission. He eventually expects to have 70 per cent of his time sold and on a commercial basis and the other 30 per cent will be sustaining time — no income from it. During the first year of operation his progress is comparatively slow,

and he has far less than 70 per cent of his time sold commercially. He's just in the normal building-up process so he gauges his operation carefully — keeps his expenses as low as he can in order to get into the black as quickly as possible. Two more years of hard work pass and things are looking up. The station has been on the air three years, and the staff has grown to pretty fair size — operation costs have gone up with station growth. New equipment has been added. The station is building itself up inside as well as outside, and, lo and behold, the station manager finds that he has reached the point of having 70% of his air time sold commercially. This is slightly serious because that was the limit provided for in the original application. And just at this point, what happens? A new station is granted in his area and goes on the air. Bingo — competition! News print loosens up at the local newspaper a bit and more advertising space is available over there. Conditions have changed and prices are sky-high and some of the advertisers are getting a little jittery. Now, competition has set in, conditions have tightened up. Wages haven't dropped a bit and the squeeze is on. If competition forces an advertising rate decrease because the two stations split up the audience, how can he keep his head above water unless he steps over the 70 per cent commercial deadline? Can he afford to squabble with the Commission about that? Can he cut down his staff and let the other station beat him out? He's right in the middle, and that original REQUIRED regulation making him state his percentage turned out to be a very rough business regulation.

Who is to say, and by what right, how much of its time a radio station can sell? What authority, constituted or otherwise, can assume the responsibility for public taste and preference in radio programs to such a degree as to presume to say what programs are in the public interest and which are not, and how great a percentage of time should be allotted to specific types of programs? And who shall specify that any programs are to be sustaining unless at the manager's discretion? Is there a law that a grocery store must agree to give away a certain percentage of its food in order to open up for business?

The natural law of preference on the part of the public has been the natural law determining the success or failure of private American business enterprise. The manufacturer, the individual merchant, the newspaper — all survive and thrive or decline and fall on the natural law of public preference. There is no longer the scarcity of frequencies in radio that makes a licensee secure without thought of programming or listeners. Over 100 radio stations in this country are up for sale on the present market, and many frequencies are going begging. Stations in AM are springing up at a tremendous rate since the war-time freeze has been lifted on radio station

applications, and the prospect of over 700 new FM stations is a matter of record at the Commission.

Can there be any question that public preference and acceptance will determine which stations will thrive and grow and which ones, through inadequate programming and insufficient listening audience, will be dropped by the advertisers and subsequently forced either out of business or into new programming fields to hold their own?

All the business regulation that radio needs is open competition in its field, and the radio audience and the advertisers will become the most compelling and exacting regulatory forces that could be devised.

That is the basic American principle of free enterprise. I challenge anyone to say that radio has not earned its right to the freedom that other free, private business enterprises enjoy.

## Don S. Elias

Executive Director of Radio Station WWNC, owned and operated by The Asheville Citizen-Times Company, Asheville, North Carolina, and Vice-President of The Asheville Citizen-Times Company

SOME four years ago — in November, 1943 — I appeared before some of you distinguished gentlemen to urge passage of a new radio law. That was on the occasion of consideration of the so-called White-Wheeler Bill (S. 814). That bill died aborning, I believe.

I appear before you again today in a similar role. I believe the supreme need of American radio 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.

The legislative vehicle before you, the bill of Senator White, is designed to achieve the end of appropriate regulation of the dynamic radio medium. With some of its provisions I am in hearty accord. But I recognize in it many of the provisions of the White-Wheeler bill, which failed of enactment, I assume, because it failed to find favor in Congress, with the regulatory authority, or with the industry.

Being a newspaper publisher and a broadcaster, rather than a lawyer, I first turned to the section-by-section analysis of the White Bill upon its introduction. I found myself in sympathy with much of it. But quite frankly, when I read the bill itself, I discovered provisions which seemed to fall far short of or go beyond the goal sought.

From preceding witnesses you have heard about specific objections to provisions of the bill as now written. With much of what has been said I



am in agreement. I differ with certain of my colleagues, however, in respect to a few provisions, to which I will presently address myself.

First, let me say that I concur in those provisions of the measure which are designed to prohibit the licensing authority from:

1. Discriminating against station ownership, such as newspaper ownership of stations.
2. Regulating the business of broadcasters.
3. Invoking the so-called AVCO procedure of open-bidding in station transfers.

There are other provisions in the measure which I feel are highly desirable but which, because of qualifications, seem to me to undo the very ends sought to be accomplished.

Considerable stress, I note, has been placed upon the so-called political and controversial issues sections of the White bill, designed to provide equal opportunity and access to the microphone. Unlike some of those who have testified, I feel that stations should be held liable for that which is broadcast over their facilities. The broadcaster, in my judgment, must assume the responsibility of — and, therefore, have the authority to censor — libelous, slanderous, or false accusations. There is strong doubt in my mind whether Congress can legislate in such a manner as to save the broadcaster harmless in such instances.

It seems to me the legislative effort to regulate and control political broadcasts and discussions of controversial issues will be the cause of much confusion, controversy and dissatisfaction on the part of the public and the broadcasters. The answer to every problem which arises in the day-to-day operation of radio simply cannot be spelled out in a legislative enactment.

I respectfully submit that the end which your Committee seeks could be achieved through the device of a simple mandate in the law which, in substance, would require that all broadcasters treat fairly and without prejudice all qualified candidates for public office, and their duly authorized spokesmen, and that they be given substantially equal opportunities on the air.

In other words, I would urge the Committee to provide for what might be described as “censorship of accusation” by the station licensee, but not “censorship of argumentation.”

In examining the record of these hearings last week, I have noted that there exists considerable confusion as to the recognition of radio on an equal footing with the press. I am both a publisher and a broadcaster. In my two-score years in the newspaper business and nearly a score in radio, I feel I am qualified in some small way to compare the media.

Radio, to me, is an electronic printing press. It is as simple as that. We publish two newspapers in Asheville. We have one broadcasting station, with another coming up — an FM outlet. We get national and international news for our newspapers from the press associations. We supplement that with local news, gathered by our city staff. We buy syndicated columns and comics and other features. We sell local and national advertising.

For our radio station, we get national and international news from the same press associations. We get national program service, including news, from the Columbia Broadcasting System, which, in a measure, is the counterpart of the news association. We buy syndicated features by transcriptions. We have access to local news and programs through departments of our broadcasting station created for those functions.

My function as an executive of the newspapers varies little from my duties as director of our station. The only difference may be that I am constrained to spend more time on the radio end because it is a more dynamic, a faster-moving medium — and because we have the competition of four other stations in town!

We publish the only newspapers in our city. Once there was competition. We consolidated because it was economically inadvisable to compete. By joining forces, we were enabled to give our subscribers better newspapers.

I've read a lot in the record about the "limitation" factor in available assignments in radio being responsible for some degree of program and business control. The condition I cite as to radio in Asheville is typical of almost every city in the country. There are more stations than newspapers today. I doubt whether that situation will obtain two or three years from now.

There has been lots of testimony about the vast increase in the number of stations. We are told that FM will make possible the licensing, not of a mere 1,000 stations, but of 5,000 stations in the next few years.

There has been no testimony, however, about stations which have gone off the air. I recall that in 1927 or 1928, there were upwards of 100 so-called educational and religious stations on the air. Today, I believe the records will show, there are about two dozens. That's because they couldn't stand the economic gaff. And that means only that they didn't please a large enough segment of the audience to justify their economic existence.

Which gets us to the question of program control, which has consumed more space in this record than any other subject. Properly so.

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 some 1,700 standard 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 New Dealers and Democrats. There may be a Mugwump or two among us. 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 our 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 1,700 broadcasters — and the legions to come in FM and television — than in the custody of seven men domiciled in Washington. This is not said to flatter broadcasters or depreciate the capabilities of the gentlemen who compose the Federal Communications Commission. We broadcasters 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; therefore, more sensitive to the disciplines of listener opinions.

There is a grave peril to radio freedom implicit in the very fact that stations must be licensed. When the original Radio Act was written in 1927, licensed broadcasting was held necessary — regrettably so — because of the physical and technical limitations on radio. That was Senator White's intent when he was a member of the House. He often has inveighed against bureaucratic efforts to control the business and program aspects of radio.

The old argument was that if there were a superabundance of wavelengths, Federal licensing would be needless and perhaps an unconstitutional invasion of the domain of free speech. The march of electronic science since 1927, in a practical way, has achieved that goal of superabundance, for even Chairman Denny testified that he thought the rigors of competition would result in the demise of many, many stations in the months ahead.

To me it is no answer to contend that there is a limit to the capacity of the radio spectrum. Nothing is limitless, not even the grains of sand on the beaches. The answer in radio is that economic saturation is being achieved ahead of exhaustion of the physical wavelengths available.

So I make the plea to you gentlemen that 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 aggression.

In the drafting of new legislation, you gentlemen carry a tremendous responsibility. We hope we have convinced you that radio is what I have heard called "audible journalism." We hope we have buried the "limitation" hoax, just as you have been convinced over the years that newspapers should not be denied the privilege of station operation.

We ask you to see to it that the freedom of broadcasting is imbedded in the basic radio law so that those who administer that law will understand it beyond shadow of doubt.

## Edmund Craney

I AM a resident of Butte, Montana. I have been in the radio broadcasting business since 1922 and am still operating the station I started then. I believe in the future of radio broadcasting in the United States and the best proof of that is that it has been my business for twenty-five years and I hope to remain in it for the rest of my life. I am not a lawyer; I am not an economist; I have no fancy college degrees; I just know something about the practical operation of small and medium-size radio stations, serving small and medium-size communities. I operate radio stations in Spokane, Washington; Portland, Oregon; Butte, Helena and Bozeman, Montana. Also, I am interested in a station in Ellensburg, Washington, and in a station now under construction in Missoula, Montana. Four of these stations are network affiliates; three with NBC and one with Columbia.

I appreciate this opportunity to appear before you as a private broadcaster. I have been a member of the National Association of Broadcasters since 1929. I tell you this because I have read with interest the lecture delivered your Committee by Judge Miller, the head of the NAB. As one who has to cope with the day-to-day problems of trying to entertain the public, present the day's news and allocate time on the air so all shades of opinion may be made available to the public, I hasten to say that I know there is a first amendment to the Constitution and I am in favor of upholding it, as well as all other Constitutional provisions. But, some of us may have forgotten that at the time that first amendment was written there was no great system of mass communication as we know it today.

If every person in the country could have a broadcast station without interfering with anyone else; if no two or more of those stations were ever hooked together as a network, we wouldn't have to worry about a thing. There wouldn't even be a need for the Federal Communications Commission.

But today when we license companies and individuals to broadcast to great masses of our population — when we have the red or green light of access to air time on a national basis turned on or off by a handful of men at the head of four networks — when it is within the power of those men to combine their facilities and put only one voice — one set of ideas or one philosophy of government before the people of these United States to the exclusion of time for any answer — then we are faced with serious problems which Congress must consider and I, for one, am most happy to see Congress wrestle with it.

Mass communication, and in particular radio broadcasting, has made it necessary that Congress spell out the rules by which the dissemination of many ideas, many thoughts, and many different philosophies of government are to be accomplished. It is not enough to say: a licensee is financially qualified — a frequency is available — start broadcasting. S. 1333 recognizes this fact and I am happy to see the kind of thinking that has gone into the drafting of this bill. I don't intend to say the bill is perfect; I don't think there is any legislation — proposed or enacted — that is perfect. As a practical broadcaster, I want to be of whatever help I can in telling you how a few of the sections of this bill will work "as I see them." First, though, let me say this: anything can be sold by radio — merchandise or ideas. Radio talks to great masses of people — people, many of whom do not take the time or trouble to inform themselves in any other way. Some speakers who appear regularly each day or each week become household authorities to many listeners. It is to the interest of the people to know whether it is truth or fiction — fact or the coloring of fact, that they are hearing.

I have just returned from a trip to South America. In one country I learned of a newspaper that had its radio station closed down because the paper had been unfriendly to the government in power. In many countries to the south of us all stations in a country are frequently hooked up for a simultaneous broadcast of some high government official or for government edited news, and no one is permitted the use of the radio to answer. We do not have the same thing in this country, but I call attention to the fact that when the President of the United States speaks — be he Republican or Democrat — his voice is heard on all four chain systems simultaneously, as well as over many non-chain or independent stations.

However, when the opposition answers it is given a single network or frequently only part of one. Now I am in favor of every President talking directly to the people. It is a great thing. It is a service that radio certainly should render the public. I do think though that some plan should be worked out so the public might hear an answer even to the ideas of the President when he talks on a controversial issue. Yet, I do not know of a single case where complete "equal opportunity" for such answer was afforded. I don't mean an answer over a network of 10, 20 or 100 stations, with some of the stations delaying the answer by recording and putting it on late at night. I don't mean an answer in a time bracket opposite Bob Hope or Fibber McGee and Molly or some other top show that has gathered through the years great listener attention. I mean an answer over the same identical stations hooked up for simultaneous broadcast without the competition of top shows to distract the listeners' attention. That is the only way we can have genuine free speech on the radio — provide equal facilities and equal time. That, I believe, was the real intent of the first amendment. That is the way to have an informed public opinion — and that is the way to preserve a democratic republic.

I am not talking legalistically, but in my opinion the effect is the same whether free speech is "abridged" by government or "limited" by monopoly or private control. The test is the listener — either way he is being deprived of what he is entitled to hear and know. The founding fathers didn't intend to let you talk from the steps of the Capitol and allow me to answer only from the center runway at the airport with the roar of plane motors drowning me out. I cannot believe Judge Miller represents many thinking broadcasters on this point.

Senator White and the Committee deserve commendation in attempting to solve this problem in S. 1333.

Senator White, in introducing this bill, said: "The purpose of the bill is largely to clarify the meaning and intent of the existing act and to rectify some of the defects which have become obvious during the past twelve years of administration of the law."

The procedural sections can and have been dealt with by lawyers better than I can. It is in connection with the policy sections pertaining to freedom of expression on the radio — censorship or radio station operation — that I may be of some help to this Committee.

## Section 7

With respect to Section 7 of the bill, which limits the Commission's power in rule making pertaining to stations engaged in chain broadcasting: I don't know whether this is good or bad — it is something the networks should be



happy about because they certainly objected to the Commission rules pertaining to network operation several years ago. This section must be considered in connection with Section 19 in which the network rules have been written into law. As a station operator, I am inclined to like this as it tells me definitely what the rules are under which I will have to operate. Regarding paragraph (a) (4) of Section 19 — I rather like the two-hour option in each three-hour period of time, although some of my broadcast friends have testified otherwise. Such an option arrangement would allow my stations to have news or other local public interest programs more frequently than is now possible. This feature is more important in the sparsely populated areas of the country than in the metropolitan areas. It is, however, not a matter of major concern to me.

Beginning with paragraph (c) of Section 19 you have endeavored to solve a most perplexing problem — monopoly through ownership or control.

It is important to point out that monopoly is not being corrected when limitation of ownership is based on mere numbers of stations; for example, the owner of a 250 watt station is by no stretch of the imagination in the same position as the owner of a 50,000 watt station. Do you gentlemen realize what the coverage of a 50,000 watt clear channel station is? Do you realize what it is worth in a monetary way? Actually, one 50,000 watt clear channel station well located may be worth as much as fifty 250 watt stations! Do you realize that in radio, many factors beside that of the number of stations owned by one licensee must be considered as elements in building monopoly? Location on the dial — that is, whether a station is at the lower or upper end of the dial; the power assigned, which I already have mentioned; the geographic location, whether a station's signal is protected to within a five mile, a twenty-five mile, or a one hundred mile radius from its transmitter. All of these are factors — and to a radio broadcaster they are bread-and-butter factors.

The approach to these problems through Sections 7 and 19 may not be the only answer. But this much is clear: it is better to try something than it is to sit still and do nothing. I do not have to tell you gentlemen that if we in the industry remain blind we will wake up one day facing an irresistible clamor for government ownership or operation. I don't want to be around when that day comes; I know you gentlemen don't want it to happen and I believe that prudence and wisdom compel some action now to avoid that happening. May I impress one thought upon you — there may be more monopoly in the ownership of one 50,000 watt clear channel station than in the ownership of twenty 250 watt stations or four or five 5,000 watt stations.

## Section 9

When I first read Section 9 I approved of its obvious intent. Then I read what Chairman Denny of the Federal Communications Commission had to say about this section, so I read it again. I cannot agree with the fears expressed by Chairman Denny regarding this section.

It seems to me this section places a responsibility on the Federal Communications Commission to make a fair and just distribution of radio facilities. This responsibility rests with you here in Congress; as the representatives of the people you have no other alternative than to pass it along to the Commission you have created to do this work. It is a responsibility the Commission will have to accept — a responsibility to see that not just the people of the great metropolitan areas of the country receive radio service but that the people of the rural areas receive radio service.

Radio surveys show conclusively that the listener wants a radio service for the people of the metropolitan areas designed for their particular needs and broadcast by stations located in their areas; and similarly a radio service designed for the needs of the people in the rural and smaller communities served by stations located in their areas and constantly alive to their wants and problems.

The Federal Communications Commission Chairman appears to be worried over the Commission's ability to administer such a paragraph in the law in distinguishing between communities with applications pending and those with no present applications. I should like to call attention to the Commission's policy in making allocations in the FM band in which they have already designated specific frequencies and specific numbers of frequencies to various communities all over the country. Similar allocations have been made in the television bands.

Let me make clear what I am driving at. How is it that the Commission is not fearful of making economic determinations in allocating frequencies in FM and television bands and shies away from making them in the AM band? The Commission Chairman told you, of course, that the FM and television allocations were technical engineering allocations and that economic factors did not enter into them. If that is so, ask yourselves why metropolitan New York is assigned twenty FM channels and Butte, Montana, two channels? That pattern is repeated all over the country — Lewiston, Maine, has two channels while Boston has ten channels; Chicago has eighteen channels and Ardmore, Oklahoma, only one channel.

Of course, as a practical matter, it is late but certainly not too late for just such a plan to be worked out in the AM band despite the fact that

present practice appears to be to force all regional and local AM licensees out of the band — and that means out of business.

This may have been in Chairman Denny's mind when he said, "It is not and should not be part of the Commission's job in licensing radio stations to consider the effect of the licensing of such station on the economic position of existing stations in the same community, or, conversely, the possible impact of such existing stations on the financial position of the applicant."

I have no fear of competition under a set of equitable rules. I have no fear of any rules so long as they are the same for my competitor as they are for me. The rules in radio have never been the same for all licensees. For example, I can come to Washington, get a license, erect a station and have a coverage of 100,000 potential listeners in an area within a radius of 25 miles. I make my plans, spend my money for equipment and then for programs, and eventually establish an audience in the area. Then one morning I wake up and find I am working with an entirely different property. Some other station has been put on my frequency and, in place of being protected for 25 miles, the signal from my station is protected only for 15 miles and I have lost a substantial portion of my listening audience. This occurred — and bear in mind my hypothetical example is happening all the time in radio broadcasting — because the Commission in issuing construction permits, does not conform to its own standards of engineering practice. The particular channel on which I operate is no longer the same channel, in effect, and my whole status has been completely changed. My investment is the same, but the listeners I have built up through good programming, which incidentally cost me money, have been lost through no fault of mine. My competitor, on the other hand, may well be on a frequency on which no other station in the country is operating and on which the Commission will not even accept applications.

I believe this is a good place to refer to Chairman Denny's testimony before the House Committee on Appropriations, which he affirmed before this Committee — testimony in which he admitted that many of the stations which the Commission has licensed are going to go broke. That is a significant admission. He uses that admission to prove that the Commission is following competitive practices — a survival of the fittest.

Actually, of course, the Commission has for years taken many economic factors into account in granting licenses. But, most important, its constant chiseling away at engineering standards by revising the radius a station serves is itself an economic determination in the guise of an engineering one.

When Judge Miller advocates not giving the Commission power to consider economic factors, and the Commission Chairman says he can't

accept them, I say they must not be aware of the practical effect of the decisions of the Commission.

Judge Miller is, of course, new to radio. He knows little of its practical problems. If he had conferred with enough of his members who operate radio stations he would have learned that it is this very policy of granting hundreds of licenses on regional and local frequencies which makes the little fellow in broadcasting smaller and the big fellow bigger; it places the networks in the position of enforcing better contracts for themselves and poorer contracts for the affiliate.

All this makes me wonder for whom in the NAB the Judge appeared — those who pay the highest dues or those who are the most numerous. A comparison of his statement before you and that of Mr. Trammell of NBC is revealing. I think there is a great deal of significance in Judge Miller's admission to this committee that it was he who has gotten the "broadcasters" and the Commission to think along parallel lines.

Moreover, if the Commission doesn't want to accept responsibility for the granting of licenses equitably over the entire country, then certainly it is scarcely qualified to review the operation of a station at the time of the renewal of its license. One responsibility goes with the other.

The American people are interested in receiving "GOOD RADIO"; it is up to the Commission, directed by Congress, to see that they get it. This means good radio from an electrical standpoint *and* from an over-all program standpoint. It means "good radio" in all parts of the country. "Good radio" is the *duty* of the licensee to the listener; "good radio" is the *responsibility* of Congress to the people. This is a responsibility you have imposed upon the Commission. It is the responsibility which goes with judging what is in the "public interest, convenience and necessity." It is well that Congress should constantly reiterate this duty to the industry and the Commission.

## Section 14

In introducing Section 14 of the bill, Senator White said: "It is believed that some method short of absolute revocation should be provided for lesser violations and at the same time make the section effective to deal with violations of all types. . . . The Commission may undertake cease-and-desist procedures, carefully spelled out, and subsequent violation of such a cease-and-desist order is cause for revocation."

I agree with the purpose of this section simply because it clarified the entire revocation procedure. It gives the Commission an opportunity to actually enforce the law in cases where it might now be reluctant to act

because it hesitates to take away a license. From the licensee's standpoint it provides a procedure which gives him a second chance when there may have been an unintentional violation of the Act.

## Section 15

Now we come to Section 15. The testimony before this Committee makes clear that this is controversial. I agree that it may not be perfect but I most earnestly believe it is a definite improvement over the vague, indefinite and ambiguous language of the present Act. In my 25 years of station operation I have had a great deal of experience with political broadcasting and I cannot understand why broadcasters would not prefer definite language, in law, which establishes responsibility, to the present procedure which makes the licensee subject to the whim or judgment of seven men in Washington, whose opinions may often be colored by their own political convictions or obligations.

I am aware of most of the objections that have been made to this section and, as a practical broadcaster, I would like to comment on them.

First, the section takes the Commission out of the picture in political broadcasts. For this, licensees should raise their hands in thanksgiving. No longer would a licensee be hauled before the Commission to explain why he did not sell time to someone who *they* thought should have time. A licensee would have to look only to the law. No longer would a licensee receive telegrams or personal calls from the Commission for copies of political speeches.

Subsection (a) provides a definite formula for equitable distribution of time in election campaigns. From a public interest standpoint, it is a distinct improvement over the present situation where a licensee can, if he desires, play politics himself for his friends and against his enemies. Every candidate and every party would have definite, fixed rights and exactly equal opportunities.

Subsection (b) broadens equal opportunities to make clear that all parties are treated equally. I definitely disagree with Chairman Denny, for example, who told you that a third party "trying to get on the ballot" would have no rights. I don't know what he means. This section covers only political campaigns; if the third party is not on the ballot, or if some of its candidates are not on the ballot, of course, it wouldn't want to buy time. But if it is trying to get organized or get on the ballot, it has rights under Section 17 never before granted by radio to such minority groups. This Section 15 should not be considered in a vacuum; it should be read in connection with Section 17 dealing with discussion of public controversial

questions. But if the third party is organized — and I certainly do not interpret the words “regularly organized” to mean that only the Republican and Democratic parties are regularly organized, and I assume that Senator White did not intend the language to apply only to the two parties — that third party has equal rights and equal opportunities with all others and so do its candidates.

Objections have been raised to subsection (c). Some witnesses and some groups who appear to talk before they think contend that this subsection invades free speech because it limits those who may use the radio in political campaigns. Over the years I am getting a little fed up with this mantle of free speech that is thrown around everything whenever it is proposed that some action be taken in the public interest. The only invasions of free speech I have experienced have been the limitations imposed by those who own or control the media of mass communications. I can't help wondering about the sudden concern expressed by Federal officials about limitations of free speech. One criticism of this subsection is that every group or individual who wants to be heard will be denied access to the air. What rights do all these people have now under the present law? Can everyone get time who wants time? In one city where I operate a station, the night before an election everything on the air is politics from 6 p.m. to midnight. Practically every announcement for a week before election is a political announcement. It is physically impossible to make time available to everyone who wants to be heard; there isn't that much time on the air under the present system. How can there be a fair balance of time for or against a particular candidate or a party under this present system? This bill would help meet that situation by making mandatory a fair, impartial balance of time. As for the legalistic objection that non-political groups such as women's voters, unions, social or fraternal organizations who may want to support or oppose a candidate or a party would not get time, I say, baloney! They would have more rights than they now have. Now, they are subject to the whim of the licensee. Under the bill, they have rights — the rights granted the candidate or the party. What candidate or party is going to deny such a group radio time to support him or their candidates? Are you Senators going to refuse to allow a spokesman for a labor union or a league of women's voters to speak in your behalf? Is your opponent or his party going to deny them time to speak against you? These are the practical, common-sense facts and the bill recognizes them.

It has been suggested that if a candidate is not on the ballot, he or his supporters cannot get radio time. I do not agree. All the bill requires is that any candidate be legally qualified. Even a write-in candidate is legally

qualified. And since he is, he has the same rights under Section 315 as has every candidate.

Finally Chairman Denny made two other objections. One was that he doubted that a speaker could endorse all the candidates without securing the permission of all the candidates individually. I believe the section couldn't be stretched to mean that — even by some of the Commission's best legal minds. It must be obvious if the speaker is qualified to speak in a political campaign he can say what he wants about whom he wants without let or hindrance from anyone, including the licensee. His second objection was that commentators would be prevented from discussing the campaign, the candidates or the issues. I think we should give this point serious consideration.

I believe that the content of this entire section is fairness and equality. And that is the reason I am so strongly in favor of it. Let us be fair to the commentator — but let us also be fair to the listener and, most of all, to those whom he speaks against. Therefore, I suggest that you amend the section by exempting recognized, regular commentators from its provisions, but add a proviso that such commentator must make his time available to the candidate or party he opposes, so that his contention can be fairly answered to his own audience.

The proposed “cooling-off period” of 24 hours is good. It is the Canadian system. It will give time for the public mind to digest the mass of material heard. It will give time to let a lie be found out.

## Section 16

Section 16 which alters Section 326 of the present Act is a definite improvement. I compliment Senator White on what he said in introducing this section. It is the best guarantee of proper governmental supervision of an uncensored and independent radio we can have. These are the words to which I refer: “The proposed language of this section does not take away the Commission's authority to make a finding whether or not a licensee has operated in the public interest; it is, in fact, affirmed. But it also makes clear that the Commission does not have the authority to tell a licensee, directly or indirectly, what he can broadcast or cannot broadcast, or how he should run his day-by-day business.”

In other words if a broadcaster does an over-all “good job” of broadcasting he need have no fear that his license will not be renewed. As I view this language the Commission has no authority to single out any one particular program and go after a licensee about it. They simply can't do it — they have no power to say: take this off the air — put that on the air.



I think I should add here that I do not like government regulation any more than anyone else. In fact, I like it less. I subscribe to the philosophy expressed by Jefferson when he said, "That nation is best governed which is least governed." In radio we have a practical situation which I prefer to face in a practical common-sense way. The people, acting through its government, has granted me a license. Without that license I cannot be in business; with it I have a valuable enterprise. Just ask some of these broadcasters for what they are being paid a quarter of a million, or half a million or a million or more dollars. Is it for the buildings and the transmitters, or even for the "goodwill," or is it really the license? Oh, I know that licenses are not supposed to be sold, but you gentlemen aren't living in a make-believe world, even if some people would like to have you there. Some licenses are worth money — a lot of money — and I believe that certain conditions attach to the grant of that license. I most emphatically do not agree with Judge Miller when he asserts that radio broadcasting should be as free of government control as are newspapers. The Judge is living in a make-believe world he has created and he wants you to follow him there, while the industry remains here in this hard-fisted, practical world, running this important media of mass communications as it will. I believe that, if Congress were to modify this section as Judge Miller suggests, just as surely as that is done we will end up with government ownership, or at least control. The excesses of the few will condemn all of us. Why, we are suffering from that today. It is only a few broadcasters that make trouble for the many; those few whose eyes are always first on the dollar and second on public service. If those excesses, under a system of regulation, already have us in difficulty, what do you suppose is going to happen when all the bars are down? I say that will bring the end of what is so fondly advertised now as the American system of radio. In my opinion, you have gone a long way to remove broadcasters from the shackles of bureaucracy by spelling out the limits of the Commission's power. No longer will a broadcaster in fear and trembling be told by some minor employee that he doubts that a particular program is proper; no longer will he be asked pointed questions which convince him he should drop a particular program. Let the Commission do the job as it is spelled out — a determination whether the licensee has done a job in the public interest or not — and if not, *why not* in specific detail. And, the "why not" will have to be proved in court.

## Section 17

In Section 17 the bill endeavors to insure a balance in the discussion of political and public questions outside of a political campaign. I am most

happy to see this because I do not feel that public discussion outside of political campaigns has been handled at all well. This is particularly true of discussion on a national basis. It appears to me that an additional paragraph is needed analogous to the one in Section 15 assuring an answer over an "identical" group of stations for simultaneous broadcast or recorded re-broadcast.

The paragraph pertaining to identifying speakers so the listener knows whose axe is being ground is only fair to the listener and will work no hardship on either speaker or stations. Frankly I have never sold time for public discussion outside of a political campaign. I have felt this is a service a licensee owed its listeners, and I know of no way to balance time between those with money and those without funds. This section provides for the sale of such time but also allows for it to be given, which I will probably continue to do.

Concerning the liability of the station for libel under this section, it seems to me that the same waiver of liability carried in Section 315 for political speeches should be carried in this section even though I agree that a Federal waiver may have little effect on state libel laws but such a provision may eventually result in a series of decisions clarifying the law. In Montana a law was enacted in 1939 pertaining to "radio libel." This law makes the speaker responsible for the libel and relieves the station of liability for statements over which it has no control. It may be that the broadcasters of other states will get busy and have similar laws passed.

## Section 18

This is another section over which there is disagreement. It merely requires that broadcasters let the public know whether they are broadcasting factual information, someone's ideas or something entirely fictitious. I don't see how anyone who wants to be honest with the public could ever object to this. Of course, there are many who want to hoodwink the public, who don't like it. Do you remember the Orson Welles mythical broadcast of an invasion from Mars? If you do, you will realize how unsuspecting — how believing radio listeners really are. If you worked day after day at a bench, came in contact with few people, read very little and listened several hours a day to your radio, as many people do, you would soon come to accept as gospel truths the things you hear from this or that particular speaker. You would feel that if it wasn't the truth "they couldn't broadcast it." I believe it is an excellent idea to honestly label for the listener exactly what he is getting over his loud-speaker. This is the only way a listener

may intelligently evaluate what he hears.

My judgment is that the requirement for this identification is neither onerous nor burdensome, nor will it impede a program. I assume that all that is required is a simple announcement that the news is assembled from the reports of the press services, or the special correspondents of the station. I agree that it will make it difficult for a commentator to shout "flash, Tokyo," or London, or the White House, when, in fact, the news being reported actually may have originated at the Stork Club. After all — it is the listener who is the sovereign in these United States — it is he who rules — he *must* be the best-informed citizen in the world to intelligently cope with the problems in today's world.

I discussed Section 19 which governs network and stations relations and limitation of station ownership when I discussed Section 7.

Section 20 is a redraft of existing provisions in the law prohibiting profane and indecent language but adds a prohibition against a person knowingly broadcasting false accusations or charges against any person. Few people know the great difficulty anyone has today in securing redress through the courts against those who make false accusations on the radio. It has been suggested that this prohibition will tend to prevent free speech over the air. I disagree. I do not believe that the radio should be a refuge for malicious gossip which may permanently damage a person's reputation. I do not believe that the radio should be used to suggest that a man and wife are getting a divorce, for example, when they are happily married. I believe this section is an addition that has long been needed and one to which no fair-minded person can object. Freedom of speech does not grant a license to slander.

## Section 25

I again wish to compliment the author of this bill for including Section 25. This section prohibits discrimination between applicants because of race, religion, political affiliation, lawful occupation or business association. It would prevent the Commission exercising its own judgment about an applicant merely because he may have been or is in some particular kind of business. It fills a long-needed want in further freeing radio from unnecessary and unwise shackles. It is the last section of the bill and well illustrates the clear thinking and desire to better serve all of the public that has gone into the drafting of this measure.

# Bernard K. Johnpoll

Radio Station WYOS, Liberty, New York

I SHOULD like to first stress the point that censoring of radio programs is a threat to the freedom of speech of this country. This point, I think, will be contested by no one, least of all the Federal Communications Commission and its members. But I believe that censorship of economic, political or social theories by operators of radio stations is as much a threat to that freedom as censorship by the Federal Communications Commission.

As I understand this bill, it simply — in the case of political censorship — lays down a policy that all sides to all political questions should be heard equally. Unless my years as a Washington reporter went to waste I think I can do a pretty good job of analyzing bills that are before Congressional committees.

I feel this is a necessary and just regulation. I can cite several cases where such a regulation would be of great use. Particularly so in the case of smaller stations. I know of one case — which I cannot discuss except if the names are deleted — where a local politician received a grant for a radio station in up-state New York and proceeded to blithely ignore his opponents' pleas for time. His answer to all requests for time were simply that there was none available on the day sought. When he finally yielded he gave time which gave him a definite advantage.

I feel that this segment of the proposed law should, if anything, be strengthened. It should assure each political candidate equal time on the

air, with the provision that failure by a station operator or of a network to grant such time be considered grounds for revocation of license.

I also feel that news commentators should be forced, during election campaigns, to yield as much time to rebuttal as they may take themselves during the candidacy of a particular man or party.

There is another provision of this bill which I think merits the approval and perhaps even the acclaim of all those interested in the radio industry. I speak of that portion of the bill which divides the FCC's activities into two separate portions. One of these is to be specifically limited to broadcasting problems, the other limited to communications.

With that in mind I should like to propose some simple additions to the bill which would better effectuate a program of freedom of speech and press and more adequately meet the nation's needs in the field of radio and communications.

First, I feel that facsimile transmission should be put under communications instead of broadcast. As a public carrier, censorship would be impossible and all newspapers would have equal access to the benefits of the modern developments. Now these improvements are available only to the larger, wealthier ones.

Secondly, I believe that a specific provision barring the limitation on the use of any one frequency for one station should be included to do away with the highly unfair clear-channel situation which makes it impossible for many parts of the country to have radio service of a local character.

Thirdly, I suggest that the bill specifically order the FCC to increase the band spread from 540 kc. to 1650 kc., with the provision that only stations of 250 or less watts in power may be constructed on these frequencies.

This is a very short presentation. I hope your questioning will bring out more detailed proposals, which I hope you will consider.

Generally, I favor this bill and all of its provisions. I feel most broadcasters would agree if they saw a complete picture of the work your committee has before it with regard to radio.

# I. R. Lounsberry

Station WGR, Buffalo, New York  
Chairman of Columbia Affiliates Advisory Board

I AM the president and a substantial stockholder of WGR Broadcasting Corporation, the licensee of Station WGR in Buffalo, New York. I have been engaged in radio broadcasting since 1922, and was associated with a station in Buffalo, New York, when it became one of the original sixteen stations comprising the Columbia network and have, without interruption, been a Columbia affiliate since its first day of operation.

From 1928 to 1946 I was the General Manager of stations WKBW and WGR in Buffalo, New York. During the many years of my activity in radio broadcasting, I have served at various times as a member of the Board of Directors of the National Association of Broadcasters, various industry committees, and as a member of and chairman of the Columbia Affiliates Advisory Board.

## Columbia Affiliates Advisory Board

This Board was organized in the early part of 1943 and is composed of representatives of the independently owned radio stations affiliated with the Columbia network. The members of the Board are elected by the independently owned affiliated stations in each of nine geographical regions, and meet three or four times a year separately and with representatives of the Columbia network to discuss mutual problems of affiliated stations and the network.

I have been a member of the Board since its inception, and have been Chairman of the Board since 1945.

Based upon my experience and association with station managers and others throughout the radio industry, I believe that my testimony herein is representative of the views of a substantial proportion of broadcast operators. However, it should be pointed out that this testimony represents my own views only, and I do not purport to speak for any other individual or group.

## Operation under the Network Rules of the FCC

In 1943, following the decision of the United States Supreme Court, the network rules were put into effect and since that time have been incorporated in substance in the contracts between the Columbia network and affiliated stations. At the present time, the relations between networks and affiliated stations, I am advised, conform to the FCC network rules.

## Comparison of the FCC Network Rules and Sec. 19 of S. 1333

The FCC network rules, insofar as the relation between networks and affiliated stations is concerned, are Sections 3.101, 3.102, 3.103, 3.104, 3.105 and 3.108. These correspond roughly with the subparagraphs of the proposed new Section 333 (a) of the Communications Act as set forth in Section 19 of S.1333. For the convenience of the Committee, the relevant provisions of the FCC rules and of S.1333 are set out fully in parallel columns.

### FCC RULES

Sec. 3.101. *Exclusive affiliation of station.* No license shall be granted to a standard broadcast station having any contract, arrangement, or understanding, express or implied, with a network organization<sup>1</sup> under which the station is prevented or hindered from, or penalized for, broadcasting the programs of any other network organization.

1. The term "network organization" as used herein includes national and regional network organizations.

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Sec. 333. (a) No radio broadcast station shall enter into any contract, arrangement, or understanding, express or implied, with a network organization —

(1) under which the station is prevented or hindered from, or penalized for, broadcasting the program of any other network organization on time otherwise available for that purpose (including time optioned but upon which no notice of exercise has been given); or



## FCC RULES

### Sec. 3.102. *Territorial exclusivity.*

—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.

### Sec. 3.103. *Term of affiliation.*—

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: *Provided*, That a contract, arrangement, or understanding for a period up to two years, may be entered into within 6 months prior to the commencement of such period.

## S. 1333

(2) which prevents or hinders another station serving the same or 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; or

(3) 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

Sec. 3.104. *Option time.*—No license shall be granted to a standard broadcast station which options<sup>2</sup> for network programs any time subject to call on less than 56 days' notice, or more time than a total of three hours<sup>3</sup> within each of four segments of the broadcast day, as herein described. The broadcast day is divided into four 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.<sup>4</sup>

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.

(4) which gives any network organization an option upon periods of time which are unspecified or which gives one or more network organizations options upon specified periods of time totaling more than 50 per centum of the total number of hours for which the station is licensed to operate or upon a total of more than two hours in any consecutive three-hour period or options which can be exercised upon notice to the station of less than fifty-six days; or

2. As used in this section, an option is any contract, arrangement, or understanding, express or implied, between a station and a network organization which prevents or hinders the station from scheduling programs before the network agrees to utilize the time during which such programs are scheduled, or which requires the station to clear time already scheduled when the network organization seeks to utilize the time.

3. All time options permitted under this section must be for specified clock hours, expressed in terms of any time system set forth in the contract agreed upon by the station and network organization. Shifts from daylight saving to standard time or vice versa may or may not shift the specified hours correspondingly as agreed by the station and network organization.

4. These segments are to be determined for each station in terms of local time at the location of the station but may remain constant throughout the year regardless of shifts from standard to daylight saving time or vice versa.

Sec. 3.105. *Right to reject 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.

Sec. 3.108. *Control by networks of station rates.* — 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.

(5) 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 a program of outstanding local or national importance for any offered by the network; or

(6) under which the network fixes or attempts to fix or control the rates charged by the station for the sale of broadcast time for other than the network's programs.

It will be noted that there are only two significant differences between the provisions of the FCC network rules and the provisions of S. 1333 — namely, the provisions relating to the term of affiliation contracts and the provisions relating to option time.

## Term of Affiliation Contracts

The FCC rules limit the term of affiliation contracts to two years. S. 1333 would expand this to three years. While I believe that S. 1333 is a step in the right direction, it does not by any manner of means go far enough. I believe that there should be no limitation, either in the statute or in the rules of the Commission or otherwise, which places an arbitrary limit on the term of the contracts between networks and stations. It is my belief that the very great majority of station managers agree.

At the meeting of the Columbia Affiliates Advisory Board held January 23-24, 1947, the following resolution was unanimously adopted by the members of the Board:

“RESOLVED that the members of the Columbia Affiliates Advisory Board, representing 151 independently owned radio stations in the United States, having found that Section 3.103 of the Rules and Regulations of the Federal Communications Commission limiting the term of affiliation for standard broadcast stations to a period of no longer than two years, has created unnecessary uncertainties in station operation, including unnecessary uncertainties in the assumption of capital commitments for improvement of stations, and has impaired the efficient conduct of stations by restricting them to a transient contract basis, with frequent renegotiations of affiliation agreement which drain energies better devoted to broadcasting service, all without demonstrable compensation advantages to the public, hereby request the Federal Communications Commission to rescind this provision of its rules and regulations and permit stations to agree to such periods of affiliation as they may negotiate freely.”

This resolution was transmitted to the Federal Communications Commission with the request for the rescinding of its Rule 3.103, and that request was denied by the Commission on April 7, 1947.

I urge that the Congress take appropriate steps to remove any governmental limitation upon the term of contracts between networks and stations, so that stations will be able to bargain freely with networks in this respect.

## Option Time

The network rules allow options to be given for three hours in each of four designated time periods of the day as set forth in Rule 3.104 above. Actually, the time period between 11:00 p.m. and 8:00 a.m. is not practicable for net-

work broadcasting and the contracts between stations and the Columbia network do not even provide for option time in this segment of the day.

At the present time the contract between Station WGR and the Columbia network provides that the following hours on weekdays shall be subject to network option:

9:45 a.m. to 12:45 p.m.

1:00 p.m. to 3:00 p.m.

5:00 p.m. to 6:00 p.m.

7:00 p.m. to 10:00 p.m.

The most important time, from the standpoint of listeners, is, of course, the evening hours, and during the evening, the three hours between 7:00 and 10:00 are subject to option. While time after 10:00 p.m. has been sold to network commercial advertisers on the basis of voluntary acceptance by stations, the three hours between 7:00 p.m. and 10:00 p.m. represent the core of the evening.

Under the provisions of S. 1333, this three-hour core would necessarily be reduced to two hours.

I am not aware of any substantial desire by stations generally for a reduction in the number of option hours. The change proposed by S. 1333 would, in my opinion, make more difficult the sale of network commercial programs, and would be contrary to the interests of the great majority of station affiliates.

## Conclusion

In general, it is my belief, and always has been my belief, that the relations between a network and stations should not be controlled by special governmental rules, either rules of the Commission or rules spelled out in a statute. The success of affiliated stations depends in large measure upon the success of the network as a whole — the network being composed of independently-owned affiliated stations and the central network organization, engaged in a cooperative enterprise. It is my belief that it is not humanly possible to devise rules in advance which represent the best practice under all future conditions. Rather, these conditions can best be met by an unfettered negotiation between stations and networks. For example, it is not possible to foretell at this time the problems which will be encountered in connection with full-scale operation in FM and television. Rules which might be workable when applied to standard broadcast stations and networks might well prove insurmountable obstacles in the development of FM and television networks.

As a station operator with long experience in the field, I do not desire to have my business operations circumscribed by governmental rules. In my dealings with the network, I prefer to rely upon individual free negotiation, rather than conform to general rules which necessarily hinder the fullest development of a worthwhile broadcasting service. It is my belief that most station managers share my views.

# Mark Woods

President, American Broadcasting Company, Inc.

**W**E are, of course, vitally and directly interested in the Communications Act and in any plans to amend it. I therefore take this opportunity, with a great deal of interest, to appear before this Committee to discuss S. 1333, which was introduced in the Senate by the Honorable Wallace White on May 23, 1947. I am sure we all desire to remedy any defects or inadequacies which may exist in the present law and to improve it wherever possible. I am certain that Senator White, in drafting the bill, had that uppermost in his mind.

It seems to me, however, that we must carefully consider the practical effect of certain of the changes which introduce additional restrictions on the broadcasting industry which are undesirable particularly at a time like this. I do not have in mind the economic conditions confronting broadcasters at this time because I realize that, while extremely important to the individual licensees of broadcasting stations, the economic problems of the industry are only a part of the picture from the standpoint of over-all legislative policy. What I am referring to is the fact that now there are more broadcasting stations in operation in this country than ever before, with the certainty that in the near future this number will be greatly increased. That increase in number has a very important bearing, I think, on the whole philosophy underlying the regulation of radio broadcasting. Please do not misunderstand me — I am not here to talk philosophy, but I am appearing as a practical broadcaster, one who has spent 25 years in the business, and who grew up with the industry; and I intend to deal with the practical effect of the



proposed changes rather than the legal or technical aspects.

One thing we should all bear in mind in the drafting and discussion of this legislation is that the broadcasting industry has developed certain practices and policies during the 25-year period of its existence. Those practices and policies should be given due weight, not as standards to be incorporated in a statute, but as substantial assurance that the industry will continue to conduct itself in accordance with those policies without being required by statute to do so.

I realize that very elaborate and involved arguments can be made and have been made on both sides of the legal question: To what extent does the First Amendment to the Constitution apply to broadcast licensees? In addition, I realize that if the First Amendment does apply to broadcasters with the same force and effect as it applies to other media, neither the Congress nor the administrative body created by it has the power lawfully to adopt regulations affecting anything more than the technical aspects of the operations of radio stations, and that any restriction on the dissemination of information or intelligence constituting censorship would be unconstitutional.

It is my view that whatever the result of those legal arguments, the Congress should not, as a matter of policy, establish detailed rules governing the business conduct of licensees or the programs broadcast by them. There is no reason which I can see, particularly in view of the rapid growth in the number of broadcasting stations in operation, and soon to go into operation — and especially in the light of the possibilities in the field of frequency modulation and television — why the Congress should place any additional restrictions on broadcast licensees, which already go far beyond those which are applicable to publishers of newspapers or magazines and other media of expression. The newspapers and the radio stations in each community discharge essentially the same functions in many ways. They are in direct competition for the attention of that public and for the advertiser's dollar. It seems to me, therefore, that insofar as it is possible they should be equally free in their business operations and in their programming.

Freedom of programming involves freedom to obtain programs from various sources as well as freedom with respect to the actual content of the programs themselves. With respect to freedom of speech, there is a difference of degree only between censorship which entails combing over every word that is broadcast and censorship which consists of telling a broadcaster that he may obtain program material from certain persons only, or that he may not obtain program materials from others. I doubt that Congress would seriously consider passing a law which would define the sources from which a newspaper might obtain material for publication any more than it would pass

a law under which censorship in detail of the material published would be practiced. Assuming that there may still be some important distinctions between newspaper publishing and broadcasting, my view is that our common goal should be the maximum possible equality of opportunity to serve the public in both these media.

As a practical matter, we are entitled to raise, and we must raise, our sights over those of 1927 and 1934 in considering this legislation. In 1927 there were only 681 radio stations in operation in the continental United States. By 1934, this number had decreased to 593 radio stations. Now, however, in 1947 we have 1751 AM stations and 854 FM stations, with 678 AM and 192 FM applications pending, and the probability is that within a few years there will be as many as 5000 AM and FM stations on the air in this country. Therefore, the scarcity-of-wavelengths doctrine which underlay the original radio legislation of the United States has, through technical advances, lost much, if not all, of its validity. In 1927 there were 2280 daily newspapers in the United States but today there are only 1720. These figures give a very important indication of the relative freedom a man has in this country, as a practical matter, to engage in the business of disseminating information to the public in the newspaper field and in the broadcasting field respectively. The argument is often heard that anybody who wants to start a daily newspaper may do so. Apparently, there are some important practical reasons why no more than 1720 publishers see fit to do so. Right now — today — there are more broadcasting stations in operation in this country than there are daily newspapers, and there soon will be twice as many broadcasting stations as there are daily newspapers.

In the light of these figures, the need for special controls over the business practices and the program policies of broadcasters is obviously much less than it used to be. Even proponents of the scarcity theory would have to agree, it seems to me, that if the opportunity to engage in broadcasting were unlimited, there should be no restrictions whatever applicable to broadcast licensees beyond those which apply to newspaper publishers. Therefore, I feel our whole approach at this time should be not to introduce further restrictions on broadcasters but actually to re-examine the restrictions which are already on the books to determine which of them are still necessary.

Some of the suggestions I am about to make involve not only the change or deletion of some of the provisions of S. 1333, but also the change of certain provisions of the Communications Act. I shall take up the various sections on which I have comments in the order in which they appear in the bill and in the Act.

Section 2 of S. 1333 would remove from the definition of "broadcasting" in Section 3(o) the phrase "or by the intermediary of relay stations" and it would, by the transposition of the word "directly," limit "broadcasting" to the dissemination of radio communications intended to be received *directly* by the public. Current broadcast operations involve from time to time the use of relay stations. Relay stations are broadcasting stations which are used to transmit broadcast material not intended for reception directly by the public but as a stage or stages in the broadcasting of material intended for ultimate reception by the public. Such relay stations may be used between the originating point of the program and the main transmitter, as well as between the main transmitter and other transmitters. In the latter respect they will be quite widely used in frequency modulation and television.

In the first place, no reason is apparent for the exclusion from "broadcasting" of a transmission or operation which would be broadcasting but for the fact that it involves the use of one or more relay stations. The whole basis for Title III of the Communications Act is that a broadcaster is not a common carrier and therefore Section 3(o) should not be amended as provided in Section 2 of S. 1333.

In the second place, another interpretation of the proposed amendment might be that it automatically and completely effected a transfer of the operation of relay stations in every case from the category of radio broadcasting to the common-carrier field as those terms are distinguished in Section 3(h) of the Act. I believe the status of relay stations should be clarified and that it should be specifically stated in 3(h) that the operation of a relay station may be classified as broadcasting or as the operation of a common carrier depending upon the use to which the relay station is to be put. I think it desirable to add at the end of Section 3(h) of the Act the following language:

"except that relay stations may be licensed either as common carriers or as broadcasting stations depending upon the use to which they are to be put."

Section 2 of the bill would also amend Section 3(p) of the Act to define "network broadcasting" or "chain broadcasting" as the simultaneous or delayed broadcasting of identical programs by two or more stations however connected. Under this definition a licensee having a standard-band station and an FM station in the same market broadcasting the same program would be a network. It is recommended that the last two lines of this section of the bill be changed to read:

"means the simultaneous or delayed broadcasting of identical

programs by two or more stations *in the same broadcast band* however connected."

Sections 4 and 5 of the bill, insofar as they make mandatory the creation of two separate divisions — a common carrier division and a broadcast division — are undesirable. It seems to me that it would be preferable to allow the Commissioners freedom to allocate their work and to create separate divisions in accordance with their own judgment of the most efficient way in which to operate, as they are now free to do under the Act. Under Section 5(c) of the bill, the Chairman's duties are defined so as to exclude his participation in many of the activities of each of the two divisions. It is provided that he may serve in one of the divisions in the case of a vacancy or the absence or inability of a commissioner to serve. This would make him, it seems to me, a mere administrative officer or substitute commissioner. I do not think this is an efficient organization plan for the Commission and, in particular, I cannot imagine the present active and capable Chairman being relegated to such a supervisory and administrative job. I recommend, therefore, that Sections 4 and 5 of the bill not be enacted.

Section 6 would amend Section 4(k) of the Act to make more clear and definite what is to be contained in the annual reports to Congress by the Commission.

Paragraph I of the new Section 4(k) is the same as the corresponding language of present Section 4(k), namely, that such reports shall contain "such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of interstate and foreign wire and radio communication and radio transmission of energy." I think it would be desirable to clarify this language at this time by having it read as follows: "Such report shall contain — (1) Such *of the* information and data collected by the Commission *under Section 303(j)* as may be considered of value in the determination of questions connected with the regulation of interstate and foreign wire and radio communication and radio transmission of energy."

Section 8 would amend Section 303(j), which is the section giving the Commission power to require the keeping and production of data and reports. At the present time the Commission requires financial reports to be kept and filed by licensees without any express authority to do so in the Act. The new subsection would clearly authorize the Commission to require financial reports. I believe that Section 8, in amending subsection (j) of Section 303, should expressly negative any right on the part of the Commission to require the filing of financial reports by licensees except in connection with applications for instruments of authorization. Otherwise, there might

be some base for the Commission to move toward rate regulation in broadcasting, which, of course, would be contrary to the whole basis for the distinction between Title II and Title III of the Act. If an applicant has been found financially responsible and a license has been granted to him, I see no reason for requiring him to file financial reports if the legislative intent is not ultimately to regulate rates. This is a respect in which I believe improvement should be made at this time. I recommend that Section 8 be revised so as to amend Section 303(j) to read as follows:

“Have authority to make general rules and regulations requiring stations to keep such records of programs, transmissions, and energy, communications, or signals, as are necessary to enable the Commission to determine that the licensee is operating in accordance with the terms of the license, but the Commission shall not be authorized to prescribe uniform systems of financial reports except in connection with applications for instruments of authorization. All such records so filed shall be kept confidential by the Commission except that they shall be available, upon request, for the information of any committee of the Congress, or for use upon order of the Commission, in any proceeding before the Commission.”

Section 9 of the bill would amend Section 307(b) of the Act, which deals with the distribution by the Commission of licenses fairly and equitably among the several States and communities. As modified, the phrase “when and insofar as there is a demand for the same” would be eliminated and the following phrase would be added at the end of the subsection: “Giving effect in each such instance to the needs and requirements thereof.” I believe that this revision of 307(b) would seem to put the Commission in the position of passing on business practices, business conduct and potential profits of licensees and applicants. This incorporates an added element of regulation which I believe is undesirable. I believe that the distribution of facilities should be among actual applicants therefore, and that no application should be denied on the ground that existing licensees would be subject to greater competition or on the ground that somebody else might apply for such facility at some later time in the same or some other community.

The amendment proposed in Section 309(b) by Section 12 of the bill includes among those persons who are parties in interest those who would be adversely affected economically as well as those who would be affected by electrical interference. It is my opinion that to introduce this element of economic status and competition, particularly when coupled with the proposed change in Section 307(b) on which I have just commented, might result in the Commission’s further encroachment on business operations of

licensees contrary to the general basis for the bill as expressed in Section 16 amending Section 326.

I would like to point out that Sections 311 and 313 of the Communications Act put licensees in a separate class from other businessmen with respect to the anti-trust laws. If a book publisher, for example, is found guilty of a violation of the Federal Trade Commission Act or the Sherman Act, his liability is limited to injunction, fine, or possible imprisonment. There is no provision for taking his book publishing business away. As I see it, that is the effect of Sections 311 and 313. A licensee might be put out of business following a violation of the law, however minor the infraction might be. This is a matter which I think should be considered by Congress in amending the Communications Act, with a view to putting broadcasters on the same footing as other businesses in this respect.

Section 15 of the bill would substantially amend Section 315 of the Act, which, in general terms, requires that a licensee who permits any person who is a legally qualified candidate for public office to use his broadcasting station shall afford equal opportunity to all other such candidates for that office. This is a subject with many ramifications. It is one which must be honored in the full spirit of equal treatment and, in my opinion, it is unwise to attempt to spell out in detail the exact treatment which shall be accorded in various instances. It seems to me that a licensee intent on unfair treatment can more readily find a loophole in a detailed and specific provision, that cannot possibly anticipate all the situations that may arise, than a provision which is general and all-inclusive in its terms. A highly commendable degree of impartiality in the treatment of political candidates has been maintained by broadcasters under the present Act, and I see no reason for making the section complex in endeavoring to anticipate every type of situation which might arise in a campaign.

I do think, however, that it would be desirable to incorporate subsection (f), as set forth in Section 15 of the bill, in Section 315 of the Act, so that the present provision — that neither the licensee nor the Commission shall have power of censorship over the material broadcast under this section — is retained and so that it is clearly provided that the licensee shall not be liable for any libel, slander, invasion of right of privacy, or any similar liability for any statement made in any such broadcast, except with respect to statements made by the licensee or by persons under his control. My only reservation is that I think that instead of referring to "persons under his control," it would be preferable to use the phrase "his agents or employees."

Section 16 of the bill amends Section 326 by amplifying it, but in so doing omits a phrase which I consider all-important. The present 326 states



that no regulation shall be promulgated by the Commission which "shall interfere with the right of free speech by means of radio communication." It may be argued that the language in proposed Section 326(b) is intended to be the equivalent of the present reference to the right of free speech. However, I strongly recommend that such an important expression be allowed to remain in the section. The failure to continue to use it might well be misconstrued.

Section 17 of the bill proposes two new sections to be added to the Communications Act. The first, Section 330, deals with discussions of public or political questions other than those by political candidates which are covered by Section 315.

Section 330 would provide for equal opportunities for the expression of different viewpoints on political or public questions, with detailed provision for the time to be allowed for different views. Under Section 330, to take a hypothetical case, any time a licensee allowed an individual or group to express an opinion on a public question on a half-hour program, he would be required to permit those holding different views to use the station's facilities but not for more than a total of one hour. Now it is entirely possible that during the one hour devoted to the broadcast of views different from those expressed on the original half-hour program, new issues might be raised. In that event, Section 330 would seem to require the licensee to allow the holders of other opinions on such matters to use the station to express themselves, and those persons would have to be accommodated up to a maximum of two hours. These additional persons might or might not include the individual or group which made the original broadcast. In some cases they would be clearly entitled to reply. Actually the presentation of new and different views might involve only a fractional part of the entire broadcast time used, and it seems to me unrealistic to have a limit fixed which is related to the over-all length of the program. In my opinion, it is not possible to legislate fair treatment of controversial issues, and this is as good an example of that as the proposed new broadcast section (315). The industry has set an outstanding record of fairness in its allocation of time for the presentation of all sides of controversial questions without being required to do so by statute otherwise than by the test of public interest. In the light of its record, I see no practical reason for incorporating this new section in the Act. As a matter of fact, the adoption of such a section might defeat its own purpose, because obviously one simple effective way in which a licensee might avoid the complexities involved in the section would be to schedule fewer programs raising controversial public questions.

Section 331 sets forth in great detail the procedures which would have to be followed by the broadcast licensee in connection with each use of his

station for the discussion of any public or political questions under Section 315 or 330.

The industry has been following in practice substantially the procedures in the case of political broadcasts which are set forth in Section 331, and if you decide that there is to be the counterpart of this Section 331 in the Act, I most strongly recommend that it be limited in its operation to political broadcasts under Section 315 and that all reference to other public or controversial questions be eliminated from Section 331.

Section 18 of the bill would add Section 332 to the Act, which prescribes the manner in which the source of news items and the source and "responsibility" for editorial and interpretative comment are to be identified. The first two sentences state that:

"All news items or the discussion of current events broadcast by any broadcast station shall be identified generally as to source, and all editorial or interpretative comment, if any, concerning such items or events, shall be identified as such and as to source and responsibility. It shall be the duty of the licensee of any radio broadcast station used for such purpose to cause an appropriate announcement to be made both at the beginning and at the end of any such broadcast in sufficient detail to inform the audience concerning the origin of the material being broadcast and whose editorial and other comment, if any, is being expressed."

To begin with, the dividing line between discussion of current events and editorial or interpretative comment is difficult if not impossible to place. Assuming that a program consists of current events alone, the various items may have come from many sources, and the identification of all of the sources would be annoying to the listeners, bad as a matter of program policy, and would not reach the goal of fairness which is undoubtedly the end to which the section is directed. Imagine the stiffness and formality and repetition which would be involved in a news program which complied with the provisions of Section 332. It would sound more like a treasurer's report or a manufacturer's bill of materials. I firmly believe that the overall result would be confusing to the public, and that it would drive listeners away from the radio and at the same time accomplish no good whatever. As a matter of fact, good broadcasting practice in the preparation of news material gives the source of a report where the source is significant. If it were required that the sources of all items are to be given, the specification of the important and significant sources would be completely submerged in the welter of source identifications included in the program. As a listener, as well as a broadcaster, I think it would be one of the worst possible



developments that could occur, and I am heartily opposed to the imposition of such detailed specifications with respect to the composition and editing of broadcast material, particularly material consisting of news.

With respect to editorial or interpretative comment, in addition to identifying the source of the comment, it would have to be identified as comment and the "responsibility" for the comment would have to be announced. Just what "responsibility" involves is a nice question in itself. I think that our news broadcasts and our commentary programs would be hopelessly bogged down if this procedure had to be followed. I don't believe that fairness and morality in the handling of news and information can be legislated. It is my belief that as a matter of practice, a licensee who is not fair in his presentation of news and news comment will soon be detected by his listening audience, recognized for what he is, and his statements will be properly discounted.

Section 19 of the bill would incorporate in the Act, as Section 333, counterparts of all of the network regulations which now are in the FCC rules as Section 3.101 to 3.108. (Sections 3.231 to 3.238 in the FM field, and Sections 3.631 to 3.638 in the television field.) The regulations were adopted by the Commission in 1941, following the hearings which began in 1938 on the whole subject of network affiliation. It seems to me that conditions have changed sufficiently since 1941, particularly due to the growth in the number of stations in operation, so that no additional regulations are necessary. The regulations are referred to as "network" regulations but actually each one of them applies to individual licensees rather than to the networks as such. These rules are restrictive of the conduct of individual licensees as well as that of network organizations. I stress this because I want to be sure that you do not get the impression that I am urging the removal of these provisions from the bill in the interest of the networks and contrary to the interests of affiliates of the networks or the general public. As I see it, the interests of both the networks and their affiliates are the same. They are entitled to freedom from undue restraint in their business practices. Any regulation of network affiliation, in the interest of flexibility, should be carried out by the Commission in the light of actual conditions as they exist from time to time in the respective broadcast bands.

Section 333(b) states that no person shall own more than one network in a single broadcast band. This section is the counterpart of FCC rule 3.107, but it brings a new concept into the Act which I think is unwise. Rule 3.107 has been complied with and is of no present practical significance to us. It is important to note that the FCC rule, like the other network regulations, applies to licensees directly and only indirectly to a person engaged in operating more than one network. Section 333(b) undertakes to go beyond

the treatment of licensees and applicants for licenses and would introduce into the Act for the first time an additional area of regulation over network organizations which are not necessarily licensees. In my opinion, it is unnecessary for this additional step to be taken and I see no reason for enlarging the scope of the Act in this respect.

Section 333(c) (1) provides that no person shall own or control more than one broadcast station in any single band when such stations cover the same or substantially the same area. No test is provided of the terms "substantially the same area," and it would seem to be preferable to allow the Commission to make its own determination in each case as to what conforms to the public interest. This would avoid the possible result of automatically eliminating a grant of a license in a case where the public interest would be served and the only objection to the grant was that the area served would be substantially the same as an area already served by the applicant.

Section 333(c) (2), insofar as it provides that the Commission shall make no rule fixing the maximum number of stations which may be licensed to any person, is good, but I see no foundation whatever for a limitation based on the number of people served in the continental United States. I think it is undesirable to make such an arbitrary distinction. The proposed limitation of 25% of the population would make it possible for one licensee to have a large number of stations in the smaller markets of the country, whereas those serving large metropolitan markets would be seriously limited. For example, it would be possible for one licensee under this proposed 25% limitation to have a large number of stations covering as many as 28 states. As you gentlemen well know, population is not the only thing that counts in government — geographical areas are important too and they have been since the beginning of this country. The states which might be served by one licensee, in accordance with this provision — the population of which would be less than 25% of that of the United States — would represent more than half of the votes in the Senate. Therefore, if it is control of thought that is feared, or control of political opinion, it cannot be eliminated, in my opinion, on any arithmetical basis. My recommendation is that no limit as to the number of stations be specified in the Act and that the Commission fix no limit which would prevent it from deciding each application on its own merits in the public interest.

Section 20 of the bill would add a new Section 334 prohibiting the utterance of any obscene, indecent or profane language and the making of any false accusation or charge. Insofar as obscenity, indecency or profanity are concerned, there is, of course, no room for doubt. Such material is prohibited by the present Act in Section 326 and such prohibition should remain.

However, the inclusion of a prohibition against the making of any false accusation or charge does not seem to me to be the proper approach to this problem. To make it a crime would place a licensee in jeopardy to such an extent that he would have to be unduly cautious in permitting the use of his facilities, particularly for discussions of controversial, public and political questions. Severe as the penalty is, the crime is indefinitely described in the bill merely as a "false accusation or charge." It might be desirable to have a uniform standard of civil liability for damages in connection with defamation by radio. However, the matter of criminal prosecution ought to be left to local enforcement, in my opinion, and thereby avoid the possibility that Federal authorities might inject themselves, to punitive ends, into local matters and sectional disagreements.

# Frank Stanton

President, Columbia Broadcasting System, Inc.

**D**URING the past several years we have actively participated with other members of the industry in discussions and hearings looking forward to a modernization of the radio law. We welcome the introduction of S. 1333, as calling attention to the need for changes in the law, and I appreciate this opportunity to express my views upon the proposed amendments to the Communications Act of 1934.

## Freedom of the Air Is Essential

Representatives of the Columbia Broadcasting System who have appeared in the past regarding broadcasting laws have emphasized one central theme in their testimony: *the necessity for a free and democratic radio in the United States*. William S. Paley, then President of CBS and now Chairman of the Board, stated in 1942 before the House Committee on Interstate and Foreign Commerce that:

“... the first and fundamental requirement for radio broadcasting is that it should be kept completely free . . . freedom of the air is at least as important to the American people as freedom of the press.”

Again in 1943, testifying before the Interstate Commerce Committee of the Senate, Mr. Paley said:

“The one fundamental safeguard which is paramount if we are to avoid complete government control of radio is a straight-

forward prohibition against the Commission concerning itself with the program policies or business practices of radio stations.”

There is no question in my mind that broadcasting must be freed from government interference or control if it is to serve its democratic function in our nation.

Unfortunately, broadcasting today is only half free. It has been singled out among all the media of communication of thought for government regulation. Although originally conceived in order to prevent technical interference among radio stations, the role of government has continued to expand with respect to broadcasting until today there are regulations for business practices and, recently, for program content. This inching-up process by government, if continued, will become a regimental march. This is not unusual — it is the normal concomitant of government regulation, and is generally accompanied by the highest motives on the part of the men in government who do the regulating.

## Radio Should Be as Free as the Press

It has been universally agreed that broadcasting is not a common carrier nor a public utility. Nor is broadcasting like the ordinary manufacturing and distributing industries. It is rather an integral part of our great modern media of communication. Radio addresses the mind through the ear, the newspapers and magazines through the eye, but both communicate information and entertainment to the minds of the people. With the dissemination of news by facsimile broadcasting, even this difference will disappear. There is no doubt today that a free radio is as vital to a free press as the newspapers and magazines. Having gone through its birth and adolescence these past few decades, radio is ready to claim its majority — equal rights with the press under the law.

To be as free as the press, radio must be equally free from government controls of programs and business. As long as necessary, the government should allocate frequencies and grant licenses to broadcast, just as the government allocated scarce newsprint supplies to the printed press while necessary. Anything more is contrary to the public interest in furthering the free expression of ideas, free from governmental interference.

I say radio should be as free as the press despite obsolete but lingering theories that radio is a field of scarcity and natural monopoly, while the printed press is unlimited and democratic. History has caught up with these theories. During this year there are in operation or on their way more than 2,500 radio stations, and there will be still more. There are only 1,700 English-language daily newspapers in the United States. Theoretical scarci-

ties in broadcasting have expanded into practical plenty; theoretical plenty in the newspaper world has been contracting into practical scarcity. If in past years the scarcity theory had any validity as an excuse for government intrusion into business practices or program policies of broadcasting, it is certainly not valid today.

Technical engineering considerations involving frequency allocations, station licenses and station broadcast apparatus should not stultify the basic traditions of free press and free speech which are applicable to radio. Radio, although as unknown to our founding fathers as our great modern newspapers, is just as much a part of our precious heritage of free speech and free press.

Thus, I believe that the present Act, as well as the proposed legislation, should be measured by the same standard as the press. That calls for a new approach to the Communications Act—certainly as the Act has been recently interpreted and administered by the Federal Communications Commission. All provisions other than those relating strictly to the allocation of frequencies, the granting of licenses, and the technical operation of broadcasting apparatus seem to me inappropriate in the Communications Act.

I am not asking that radio broadcasting be placed above the law. Broadcasting is and should be subject to applicable general laws, just as are newspapers, magazines, and other businesses. There is no reason why broadcasting, which is not a common carrier or a public utility, should be subject to additional burdens from government interference.

I want to urge as strongly as I can that anything short of a full recognition of radio's right of free speech is bound to result in compromises and uncertainties and increasing government control. Nevertheless, since S. 1333 presents specific practical problems, I would like to comment briefly on some provisions which require special mention.

## Radio Programs Must Be Free from Government Interference

The proposed Section 326(b) should be the cornerstone for the foundation of a free radio. The cornerstone as it is now proposed, however, has a fundamental flaw. After providing that the Commission shall have no power to affect or control material to be broadcast, the section concludes with this proviso:

“that nothing herein contained shall be construed to limit the authority of the Commission in its consideration of applications for renewal of licenses to determine whether or not the licensee has operated in the public interest.”

It seems clear that the rights sought to be conferred in the first part of the section are completely taken away by the proviso. Further, the proviso may well be construed as sweeping statutory authority for the Commission to inject itself even more deeply into the program policies of stations. It is my fear that if such a proviso were enacted into law the program schedules of broadcasters would be even more directly influenced by what a governmental agency conceived to be "in the public interest." In that event, a broadcaster who desired to continue in business would conform his programs to the desires of this governmental agency, rather than to the desires of his listeners.

The difference has sometimes been drawn between over-all program review by the FCC and specific program review. In the field of thought, this is a distinction without an ultimate difference. I ask you to consider whether you would be willing to authorize any government agency to review the over-all content of newspapers as a prerequisite to continued publication. Over-all program regulation by a government agency which has a life-and-death licensing power must ultimately seep down into specific programs. As a matter of fact, over-all program review by a government agency can be more dangerous than supervision of specific programs because it is less susceptible to the test of public opinion.

Further, I do not believe for an instant that any small group of men in a regulatory body can have an adequate contact with the needs and desires of listeners throughout the country. In other words, the thousands of station managers and program directors throughout the country, because of their daily occupation in serving their listeners, are much better qualified as practical judges of what is in the public interest than any Commission sitting in Washington.

I strongly recommend that the proposed Section 326(b) be changed by eliminating the proviso and by including appropriate additional language to make certain, beyond the peradventure of a doubt, that there shall be no governmental interference with program content. Accordingly, I suggest that the language of Section 326(b) should be amended along the following lines:

"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 or in any way to interfere with the right of free speech by means of radio communication, and no regulation, condition or requirement shall be promulgated, fixed, or imposed by the Commission relating to, and no license or construction permit shall be issued, denied, or revoked because of, programs or program material of radio stations."



## Fairness Cannot Be Legislated

Section 15 of S. 1333 proposes to amend Section 15 of the Act by a more precise definition of the fairness rules applicable to broadcasts during political campaigns. Just as there are no Congressional rules regulating the publication of newspapers and magazines during political campaigns, such regulations with respect to broadcasting are inappropriate. Moreover, I am not aware of such malpractice in the maintenance of fairness by broadcasters during political campaigns that such legislation is required.

It is impossible to legislate fairness. I am convinced that no mathematical formula, no matter how detailed, will insure that result. Because of a multitude of uncontrollable factors, available listeners and actual listeners vary from hour to hour, day to day, and week to week. So, also, are there differences in delivery, content and personality among speakers.

In an effort to plug all possible loopholes, the detailed provisions of the proposed Section 315 might well have the effect of inducing a large number of stations to refuse to carry political broadcasting at all. The minutiae of the proposed regulations are such as to cause any broadcaster to wonder whether it is possible in the course of a political campaign to avoid unintentional violation of some prohibition. Without going into detail, I can tell you that even with the resources for checking and cross-checking which the Columbia network possesses, and which are obviously much greater than those possessed by the ordinary station, I am not at all sure that we could go through a presidential campaign free of violation under the proposed section. I recommend that Section 315 of the Act, as well as of the bill, be eliminated because it is unworkable as a practical matter and similar provisions are not applicable to newspapers and magazines.

I have the same general comments to make about Section 17 of the bill, which proposes additional provisions in the law with respect to the discussion of public or political questions. Broadcasters have made an enviable record in this field of broadcasting. In a recent national independent survey, 91 per cent of the respondents with opinions stated that radio stations are generally fair in giving both sides of an argument — a substantially higher score than that made by either magazines or newspapers.

I should like to comment just briefly, also, on the provision of the proposed Section 330 which would require a radio station to provide time in reply to a speaker on a political or public question to the extent of twice the amount available to the original user. As we all know, a speaker in reply seldom limits himself to exactly the same points made by the original speaker. If broadcasters attempted to confine a speaker in reply to the points raised by the original speaker, we would soon hear the cry of censorship.

If broadcasters do not attempt this kind of control — and I do not for a moment think they should — then, if A speaks upon a question and time is given to B and C to reply, both B and C may make new points which would require replies from D and E and from F and G. The requirement for twice the number of replies results in a geometric progression which could, conceivably, exhaust the entire broadcast schedule of a station.

Section 18 of S. 1333, regarding identification of news sources, is another example of the impracticability of laying down specific operating rules in a statute. While responsible broadcasters will agree with the purpose of the section, we believe that the purpose is best accomplished by voluntary adherence to a high professional standard in the field of news and news analysis just as in the newspaper field.

## Radio Should Have Equa' Business Rights

The FCC in recent years has concerned itself more and more with the business practices of broadcasters. This is evidenced in a number of ways: the requirement that broadcasters file voluminous financial and operating reports and the emphasis which the FCC has placed on operating practices in its consideration of license applications and in some of its reports. This line is being followed, without apparent abatement, in spite of the clear distinction made in the Act between common carriers and radio broadcasters.

It is encouraging to us to note that Senator White has taken cognizance of this situation and in his remarks accompanying S. 1333 points out that the proposed Section 326(a) specifically states that “the Commission is to have no power to regulate the business of the licensee of any radio broadcast station, except where that power is specifically conferred by the act itself.”

All broadcasters will, I am sure, agree with the purpose of this amendment. However, I think it is desirable to make the language of Section 326(a) even more specific. The denial of the power of the Commission to “*regulate*” may be construed as permitting the Commission to concern itself with business practices so long as such concern falls short of a technical *regulation* of the business of the broadcasters. Accordingly, I suggest that the language be clarified along the following lines:

“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, anything in this Act to the contrary notwithstanding, no regulation, condition or requirement shall be promulgated, fixed or imposed by the Commission relating to, and no license or construction permit shall be issued, denied or

revoked, because of, the business arrangements, contracts or management, or the business policies of the station.”

In that connection, it should be pointed out that the requirement of the proposed Section 303(j), to the effect that the Commission may prescribe uniform systems of financial reports which may be required to be filed by radio stations, is inconsistent with the purpose of Section 326(a). For this reason, Section 303(j) as set forth in the bill should be revised so that the reports required of stations are confined to such technical matters as may enable the Commission to determine that the technical operation of the broadcasting apparatus is in accordance with the license.

## Principle of Non-Discrimination is Endorsed

At this point, I wish to endorse the provisions of Section 25 of the bill, which would add a new section to the Act debarring the Commission from discriminating between persons on account of race, religion, politics or lawful occupation or business association.

## Special Rules are not Required for Network Broadcasting

Section 19 of S. 1333 would incorporate, with modifications, the so-called network rules heretofore adopted by the FCC. To my knowledge, the Congress has not seen fit to adopt any similar government regulation of business practices in the press. I see no valid reason for singling out broadcasting. Accordingly, I believe that no statute should attempt to impose such restrictions, and that no administrative agency of government should have that power.

We agree with Senator White's purpose that the Commission shall have no power over the contractual relationship between stations and networks. It should be pointed out, also, that the anti-trust laws and other general business laws are fully applicable to stations and networks, and are fully effective to restrain unlawful or monopolistic practices in this field. We believe that these general restraints provided by existing statutory law are adequate. If, however, the Committee decides that special business rules are necessary for radio, I wish to make clear that we would prefer that the limits of any such rules should be set by the Congress, rather than left to the discretion of the FCC. In that way, we at least will have the benefit of adequate discussion of specific rules before they are adopted and will not be subject to sudden and unexpected changes from time to time.

We, of course, hope that the Committee will agree with our strong belief that special regulation of the business practices of broadcasting is unneces-

sary and undesirable. In particular, however, I would like to comment on one provision of the bill's network rules. This is the proposed Section 333(a) (4), which would prohibit affiliation contracts in which so-called option periods of the stations given to the networks total "more than two hours in any consecutive three-hour period." This provision is more restrictive than the existing FCC rules on the subject. To my knowledge, there has been no demand for this change from independently-owned affiliated stations. In fact, in 1943, during the consideration of an amendment to S. 814 incorporating such a change, a committee of the National Association of Broadcasters, representing the individual independent and affiliated stations in the United States, registered its opposition to such a provision. The most obvious and substantial effect of such a two-out-of-three hour rule would be the difficulties imposed on the sale of more than two hours of prime evening time to network advertisers. A strong and adequate schedule of popular network commercial programs is not only advantageous to affiliated stations in producing substantial revenue, but also contributes to the over-all popularity of the station because of the strong listener appeal which such programs command. In addition, of course, this restriction would tend to impair the financial strength of networks, with a consequent general impairment in the quality of nationwide broadcasting.

## Station Ownership Should not be Arbitrarily Restricted

The proposed new Section 333(c) (2) purports to limit the number of broadcast stations owned or controlled by a single licensee to a number which would provide primary service to no more than 25 per cent of the population of the continental United States. This is a unique attempt to limit the expansion of broadcasters in the broadcasting field. In my opinion, it is unwise and detrimental to the welfare of broadcasting.

As Senator White has pointed out, present rules of the FCC have arbitrarily limited the number of FM and television stations which may be owned by a single licensee. In FM, the limit is set at six stations, and in television the limit is set at five. Further, the FCC has, as a practical matter, frozen the number of standard broadcast stations which may be owned by the larger broadcast companies.

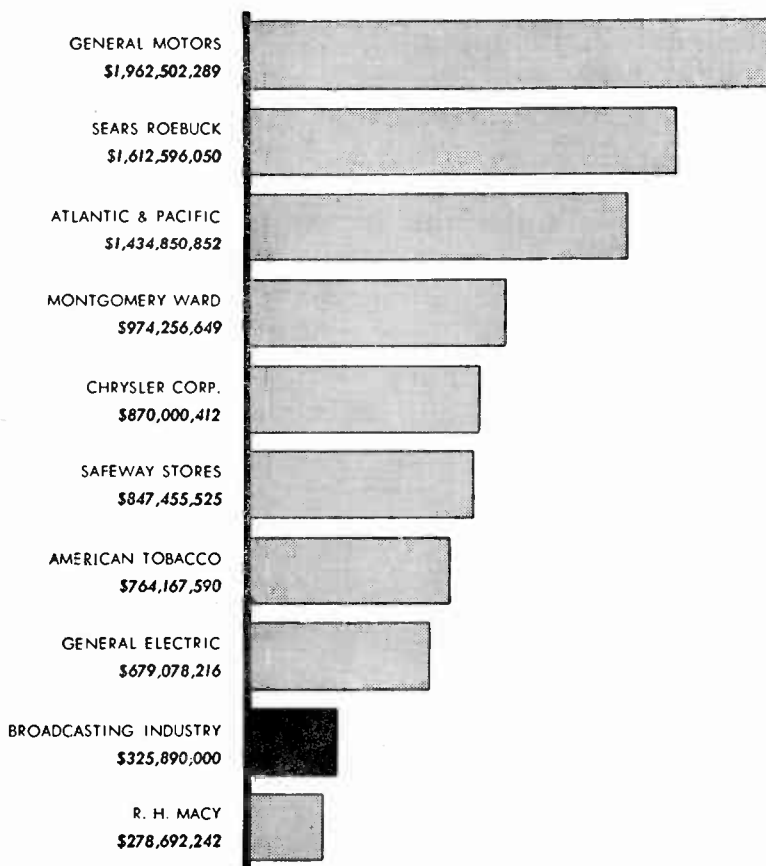
There is no other field — industrial, utility, or otherwise — that I know of in which the government has set a fixed ceiling on the size of an enterprise. Even the Public Utility Holding Company Act, providing specific anti-trust legislation in the utility field, does not set arbitrary limits in terms of units, size or population. In the newspaper and magazine field there has been no attempt by Congress or any government agency to restrict growth

by an arbitrary standard. It is difficult to understand why broadcasting should be singled out for special legislation of this unique type.

We agree with Senator White that so important a matter should not be left to decisions made by administrative edict. However, the proposed new Section 333(c) (2), which, instead of placing a ceiling in terms of number of units, purports to limit the number of broadcast stations owned or controlled by a single licensee, is equally arbitrary.

If broadcasting were monopoly-ridden, presumably there would be a host of accompanying evils which would invite special attention by Congress.

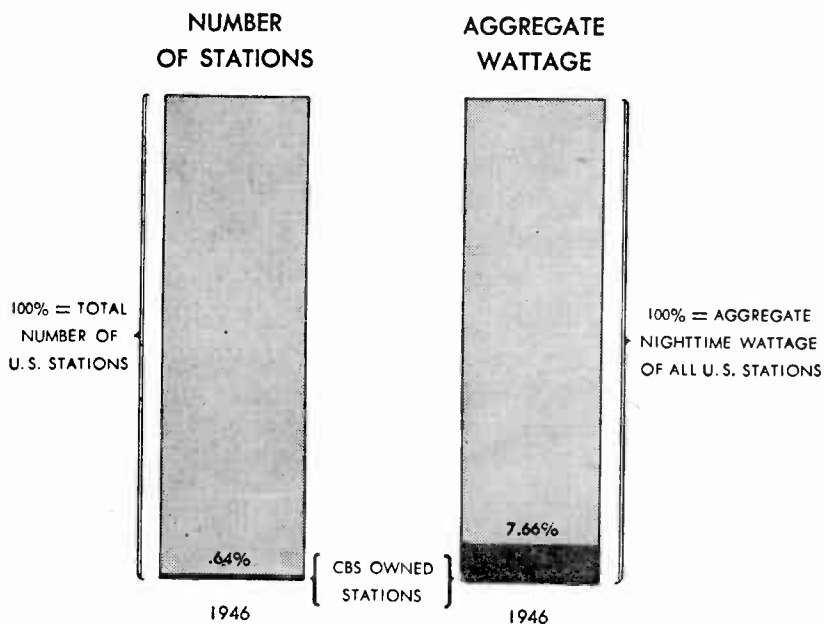
**Chart I: Volume of Sales—Entire Broadcasting Industry  
and Individual Companies in Other Fields**



To my knowledge, there is no bill of particulars of monopoly evils in broadcasting for the simple reason that there is no monopoly.

In order to get a fuller perspective, it is appropriate to compare broadcasting with some of the other American industries. Immediately, it becomes apparent that broadcasting is not "big business." For example, the entire broadcasting industry's volume in 1946 was substantially less than that of some single companies in other fields, a few of which are shown in Chart 1. Just as the broadcasting industry is not big business compared with other industries, the individual broadcasting companies are small in relation to the industry as a whole. The stations owned by CBS are: WCBS, New York; WEEI, Boston; WBBM, Chicago; KNX, Los Angeles; WCCO, Minneapolis; KMOX, St. Louis; and WTOP, Washington. These stations constituted .64 per cent of the total number of stations in the industry as of December 31, 1946, and accounted for 7.66 per cent of the aggregate nighttime wattage. The relative position of CBS-owned stations — expressed both in terms of number of stations and in aggregate station nighttime wattage — is shown in the following chart.

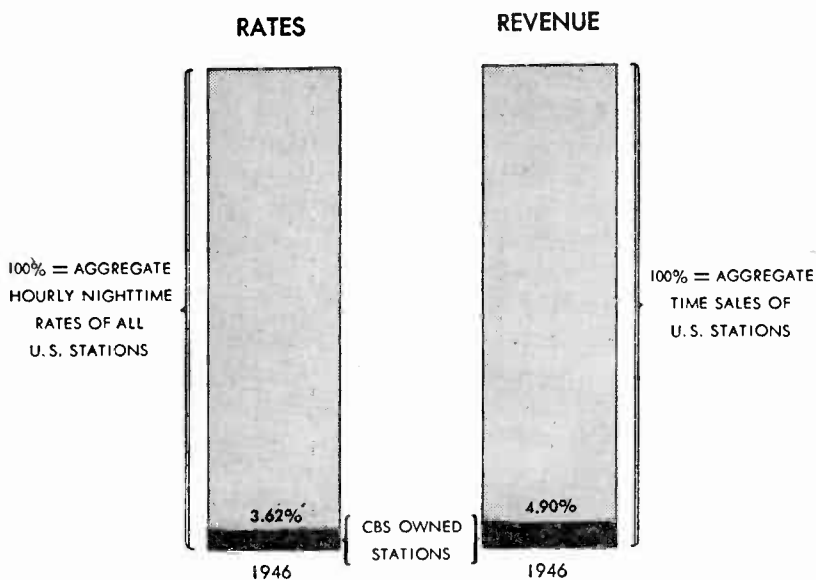
**Chart 2: CBS-Owned Stations Compared with All US Standard Broadcast Stations—Number & Wattage**



It may be noted here that the number of newspapers owned by the largest chain is nearly three times the number of radio stations owned by any network, both in number of units and in proportion to the entire units in the industry.

Other measures of the relative position of the CBS-owned stations are a comparison of the rates which they charge and the revenues which they derive, compared with the rates and revenues of the broadcasting industry as a whole. In 1946 the nighttime hourly rate for the Columbia-owned stations represented 3.62 per cent of the aggregate nighttime hourly rate of the industry, and CBS-owned stations accounted for 4.90 per cent of the aggregate time sales of all stations for the same year. The CBS position in respect to rates and revenues is shown in the following chart.

**Chart 3: CBS-Owned Stations Compared with All US Standard Broadcast Stations—Rates & Revenue**



It is interesting to compare the relative position of the Columbia Broadcasting System in the broadcasting industry with that of single companies in other industries. While the CBS share of station revenue, as shown on the foregoing chart, is only 4.90 per cent, the addition of network revenue (less



payments to affiliated stations), results in a CBS share of total broadcasting revenue of only 10.7 per cent. According to a staff report in connection with H. Res. 64 of the 79th Congress, relating to Small Business, in some industries a single company accounts for as much as 85 per cent of the total industry product. Appendix B is a copy of a compilation taken from the report, indicating a selection of fifty-nine industries where the proportion accounted for by a single company ranged from 5 per cent to 85 per cent.

Section 333(c) (2) would, if enacted, preclude any expansion of CBS operation of standard broadcast stations, and would even seriously jeopardize present operations.

This section of the bill would limit the size of broadcasting licensees by a new measurement device keyed to population. This is the exact opposite of Congressional action in the field of the press. In fact, Congress has encouraged the expansion of magazine and newspaper circulation by providing special mailing privileges. The most unusual feature, however, of Section 333(c) (2) is that the 25 per cent limitation applies to *potential* rather than *actual* listeners. Thus, while any national magazine, for example, has a potential circulation among all the people in the nation — a *100 per cent potential* — the radio stations owned by any single company would be limited to a *25 per cent potential*.

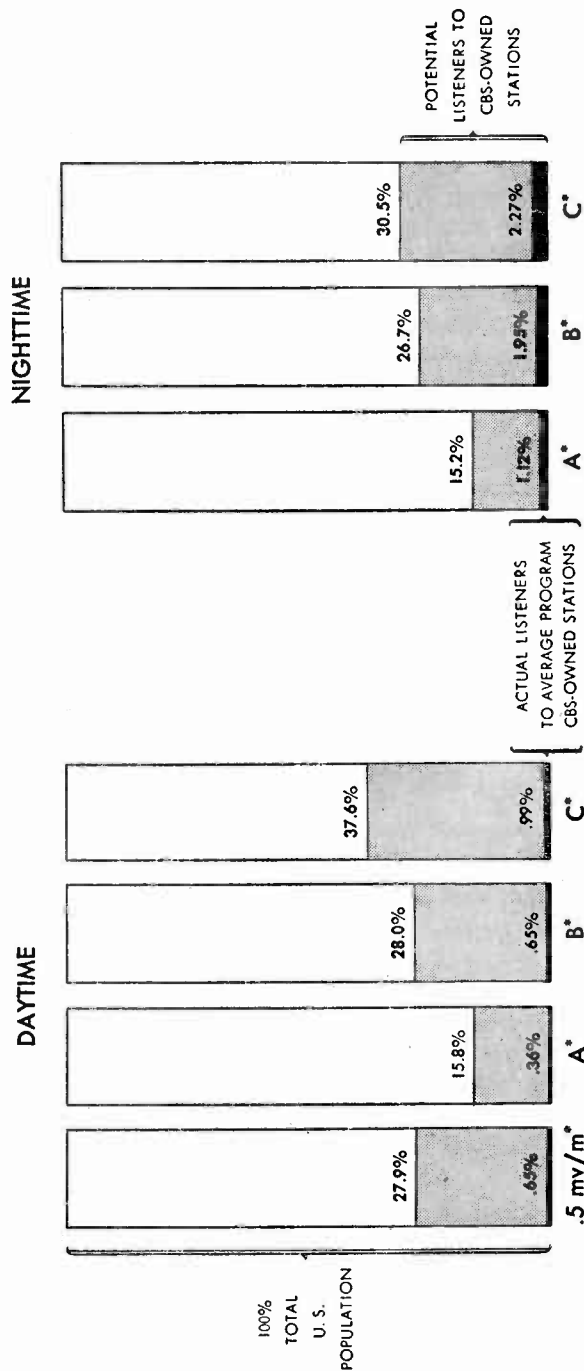
This curious concept results in some interesting comparisons when the figures of actual audiences to CBS-owned stations are projected to areas which could be considered as having “primary service” under various alternatives.\* Chart 4 reflects the population figures under various possible definitions of “primary service” and the number of potential listeners to the CBS-owned stations compared with those who actually listen to the average program broadcast by these stations.

It will be noted that the potential listening population for CBS-owned stations varies from 15.8 per cent to 37.6 per cent under various engineering definitions, while the actual listening to the average program broadcast by these stations varies from .36 per cent to 2.27 per cent of the total U.S. population. Thus, there is a vast discrepancy between *actual* and *potential* listeners. Competition among stations for listeners is the essence of broadcasting. No station reaches the entire population within hearing distance. Within the leading metropolitan markets in which the CBS-owned stations are located, a large number of stations compete for listeners. For example, there are 23 competing stations in the New York metropolitan district alone,

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\*The FCC has not adopted a final definition of what constitutes “primary service.” Heretofore the “ $\frac{1}{2}$  millivolt contour” has been generally accepted as the standard for daytime primary service, but fluctuations in nighttime service make signal strength alone unacceptable as a standard. In a recent hearing before the FCC, new standards of measurement, referring to A, B, and C service, have been proposed. At the present time, none of these proposals, however, has been officially adopted as the definition of “primary service.”

**Chart 4: Population within Service Areas of CBS-Owned Stations and Actual Listeners to Average Program, Expressed as Percent of Total US Population**



★ VARIOUS ENGINEERING STANDARDS

and there are an aggregate of 71 competing stations in the remaining six metropolitan districts where CBS owns stations.

No business operation can remain healthy and dynamic if it is prevented from growing. The anti-trust laws are fully applicable to broadcasting and should govern in this field as in others in the determination of what constitutes over-size or restraint of trade. Certainly there is no reason why Congress or any governmental agency should act with respect to the broadcasting field without considering similar industries. The newspapers, magazines and broadcasters are all competitors for audience and advertising revenue, and any governmental action which limits broadcasters' ability to compete with other media is unfair class legislation.

Further, as indicated above, the provision of S. 1333 is too uncertain to enable broadcasters to determine what their position would be under such a law. Engineering standards are not fixed, and can be changed from time to time. In fact, we may expect new standards to be devised in the future as they have been in the past. Fluctuating standards, whether they apply to daytime service or nighttime service, would leave broadcasters without any assurance of the validity of their operations.

I submit that no arbitrary limit should be placed upon growth of broadcasting companies, either by the FCC or by Congressional action. It is better to leave this to the determination of the courts as is done in other private enterprises. In any event, if the Congress shall decide that a statutory standard should be applied to radio broadcasting, then any percentage standard which is fixed

- (a) should relate to a percentage of determinable factors, such as number of total units in the industry, total business of the industry, total power of all stations, or the like, and
- (b) should relate to *actualities*, not *potentialities*, and
- (c) should not be less in percentage size than accepted lawful practice in other industries.

In conclusion, therefore, I urge this committee to turn radio back to the broadcasters and the public and to minimize the legitimate role of government in this field. No governmental rules can accomplish improvement in the industry as effectively as broadcasters themselves. The broadcasting industry, through the National Association of Broadcasters, is now working out up-to-date standards of practice. These efforts at industry self-help are the democratic way to correct industry abuses and elevate its standards.

Broadcasting is a comparatively young industry, and I urge you to give it full opportunity to develop itself as an outstanding medium of information and entertainment, just as you have the printed press of the country.

# Joseph H. Ream

Executive Vice-President  
Columbia Broadcasting System, Inc.

**T**HE comments which I have respecting the bill are supplemental to the statement of Mr. Frank Stanton. It is our position that radio should be treated on an equal footing with the press, and that any provisions in the Act or in S. 1333 which are inconsistent with such equality should be eliminated or revised. My statement should be considered in that light. I will comment only on certain sections not specifically referred to by Mr. Stanton, which seem to me to require special comment.

## Procedural Amendments

We wish to endorse the provisions of S. 1333 relating to matters of procedure insofar as those provisions do not detract from the rights of parties conferred by the Administrative Procedure Act of 1946. We agree with the purposes of the procedural amendments as outlined by Senator White on introduction of the bill. However, I have not as yet made a sufficiently detailed comparison of the provisions of S. 1333 with the provisions of the Administrative Procedure Act to determine, to my own satisfaction, the interpretation to be applied to differing provisions of S. 1333 and the Administrative Procedure Act which relate to the same subject matters.

It should be pointed out that Section 12 of the Administrative Procedure Act provides, in part:

"No subsequent legislation shall be held to supersede or modify the provisions of this Act except to the extent that such legislation shall do so expressly."

Until there is some clear judicial determination of the effect of subsequent legislation differing from that Act, but not stating in so many words that the Act is superseded or modified, I would prefer to avoid the difficult problems of interpretation which might arise under S. 1333 if it should be contended that the rights of parties under the bill would be less than under the Administrative Procedure Act.

## Changes in Accepted Concepts Should Not Be Made by Amending Definitions

### "BROADCASTING"

Section 2 of the bill would amend subsection (o) of Section 3 of the Act by limiting the scope of the term "broadcasting." The present definition in the Act is:

"(o) 'Broadcasting' means the dissemination of radio communications intended to be received by the public, directly or by the intermediary of relay stations."

S. 1333 would revise this definition to read:

"(o) 'Broadcasting means the dissemination of radio communications intended to be received directly by the public."

So far as I am aware, no question has been raised concerning the meaning and operation of the definition of "broadcasting" as it exists in the present Act. The purpose of the amendment, accordingly, is unclear, and may lead to administrative and judicial interpretations not presently foreseeable. The restricted meaning which S. 1333 would give to the term "broadcasting" may in practice be most undesirable.

As a single example, many operators of stations also operate small mobile units or relay stations which are used in the pick-up of special events in the absence of telephone lines. While these mobile or relay stations directly operated by broadcasters are not themselves broadcast stations, they are operated directly in combination with the station which transmits the program to the receivers in the homes of the public. Thus, such an operation is an integral part of "broadcasting."

As a further example: in a sense network broadcasting is accomplished through the intermediary of relay stations — that is, the affiliated stations which comprise the network. It might even be contended, under the proposed definition, that network broadcasting was not "broadcasting."

I am sure it was not intended by the proposed change in this definition to exclude mobile stations or network operations from the general classi-

fication of "broadcasting" administered under Title III of the Act, and to throw them under Title II and thus make them subject to rules applicable to common carriers. However, if the change in the law were made as proposed, an interpretation along this line might well be advanced.

Accordingly, I suggest that because there is no substantial dissatisfaction with the operation of the definition of "broadcasting" as presently set forth in the Act, no change should be made in the definition which might raise doubts as to the status of operations heretofore considered an integral part of "broadcasting."

#### "NETWORK BROADCASTING"

If radio broadcasting's equal status with the press is to be given statutory recognition, it becomes inappropriate to attempt to provide special rules for network broadcasting in the statute. In this event, and if Section 303 (i) is deleted as hereinafter suggested, it serves no useful purpose to include a definition of "network broadcasting," and Section 3 (p) should be deleted from the Act.

However, if such a definition is included, any implication that network broadcasting, as such, might be construed as a common-carrier activity should be negated. Section 3 (h) negatives such an implication insofar as broadcasting alone is concerned. Accordingly, there should be added the following sentence to Section 3 (p) :

"A person engaged in network or chain broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier."

#### Division of the Commission is Desirable

The broadcasting industry has, in general, recorded its endorsement of the division of the Commission into a common-carrier division and a broadcasting division. A similar provision contained in S. 814 was endorsed by a committee of the National Association of Broadcasters in 1943. We consider that the considerations outlined by Senator White in his remarks accompanying the introduction of S. 1333 clearly reflect the need for broadcasting to be freed from the influence of public utility concepts.

While endorsing the provisions of Section 5 of the bill, which would accomplish this separation, it is perhaps appropriate to make three comments:

First, in subsection (d) the provision which would empower the whole Commission to adopt and promulgate "all rules and regulations of gen-

eral application authorized by this Act, including procedural rules and regulations for the Commission and the Divisions thereof," may, in practice, substantially vitiate the beneficial effects expected from a separation of functions. Much of the action of the Commission which broadcasters have felt has been undesirable has been accomplished by the promulgation of rules and regulations "of general application." The application of such rules or regulations has been "general" in the sense that they have applied to all situations within a given category, even though that category was confined to broadcasting or even to a specified class of stations in one of the broadcasting bands. That part of subsection (d) could be improved, in my opinion, if it read:

"Each Division shall adopt and promulgate all rules and regulations of general application relating to questions of substance within the jurisdiction of such Division. The whole Commission shall have and exercise jurisdiction over the adoption and promulgation of procedural rules and regulations of the Commission and the Divisions thereof."

Second, subsection (a) would be improved if it were revised to provide that each member of the Commission, during his term of office, remain a member of the Division to which he is originally assigned.

Third, it may be inappropriate to confine the duties of the Chairman of the Commission to those merely of an executive officer. Such housekeeping functions might better be performed by an employee of the Commission. In such event, the Chairman of the whole Commission, during his term of chairmanship, could serve as a member of one of the divisions, and the number of commissioners should then be reduced from seven to six.

## No Special Authority is Appropriate for Rules Relating to Chain Broadcasting

The proposed revision of subsection (i) of Section 303 is most desirable in making it plain that the Commission is without statutory power to make rules and regulations covering business practices or program policies of stations engaged in chain broadcasting. The proposed revision that special regulations of stations engaged in chain broadcasting be limited to technical apparatus and technical operations is entirely consistent with Section 19 of the bill and Senator White's remarks on introduction of the bill.

However, it should be pointed out that the provisions of present subsections (b), (c), (d), (e) and (f) of Section 303, which apply to all



radio stations, whether engaged in chain broadcasting or not, are sufficiently broad to cover the technical matters provided for in the proposed subsection (i), and, as a matter of statutory construction, its inclusion might prove confusing. Accordingly, it would seem preferable to accomplish the desired result by deleting the existing subsection (i) instead of amending it as proposed.

## Amended Provision for Transfer of Licenses

Section 13 of the bill would amend subsection (b) of Section 310 of the Act, relating to transfers of licenses. Heretofore the Commission was required to find that the transfer is in the public interest, while the proposed amendment requires a finding that the "proposed transferee or assignee possesses the qualifications required of an original permittee or licensee." In actual practice, the Commission has tended to inject the elements of a competitive hearing in a proceeding in which both parties desire that a station license be granted to the transferee. In order to assure that the bill will cure this anomalous approach and put no greater burden upon a proposed transferee than upon an original applicant, it is suggested that Section 13 of the bill could be improved if the last sentence thereof were deleted and the following were substituted therefor:

"If upon examination of any application provided for in this section the Commission shall find that the proposed transferee or assignee possesses the qualifications required of an original permittee or licensee, the Commission shall authorize the transfer or assignments; otherwise the Commission shall set the application for hearing."

## Broadcasters Should Not be Subject to Special Jeopardy Under the Anti-Trust Laws

Broadcasters believe that they should be put on an equal footing with other business with respect to the anti-trust laws. At the present time, they are subject to a death sentence — in terms of loss of license — if a court should find that they have violated the anti-trust laws. This is a penalty which is not applied to any other business. We believe that broadcasters should be subject to the anti-trust laws to as full an extent as other businesses, including the same penalties of triple damages, fine, imprisonment and dissolution.

Under Section 313 a court is given specific authority, without any reference to the appropriateness of the penalty, to revoke the broadcasting

license of any licensee found guilty of the violation of the anti-trust laws. Section 311 specifically directs the Commission to refuse a license to any person whose license has been revoked by a court under Section 313 and specifically authorizes the Commission, without regard to any other factors, to refuse a license to any person found guilty of violating the anti-trust laws. Thus, the Commission may (and if a license is revoked by a court in the anti-trust proceedings, the Commission must) forever refuse a station license to a person who has been found by a court to have violated the anti-trust laws. This amounts to a permanent loss of the rights of citizenship insofar as engaging in radio broadcasting is concerned, and, so far as I know, is a penalty which does not apply to any other type of misconduct, including crimes for which capital punishment may be imposed.

It is submitted that these penalties are not only unique, but unduly onerous and discriminatory. Accordingly, Sections 311 and 313 should be amended by preserving the statutory declaration that the anti-trust laws are applicable to radio and that the granting of a license shall not stop anti-trust suits and prosecutions, and by deleting the special penalty provisions above mentioned. This can be accomplished by retaining the last sentence of Section 311 and the first sentence of 313, so that these sections would read as follows:

“Sec. 311. The granting of a license shall not estop the United States or any person aggrieved from proceeding against such person for violating the law against unfair methods of competition or for a violation of the law against unlawful restraints and monopolies and/or combinations, contracts, or agreements in restraint of trade, or from instituting proceedings for the dissolution of such corporation.”

“Sec. 313. All laws of the United States relating to unlawful restraints and monopolies and to combinations, contracts, or agreements in restraint of trade are hereby declared to be applicable to the manufacture and sale of and to trade in radio apparatus and devices entering into or affecting interstate or foreign commerce and to interstate or foreign radio communications.”

## Scope of FCC Inquiries Should be Limited

Section 308 (b) of the Act provides authority for the Commission to require information from applicants and licensees relating to

“citizenship, character, and financial, technical and other qualifications . . . and such other information as it [the FCC] may require.”

Under this authority the FCC has required broadcasters to submit detailed statements and schedules of business association, personal history, and — most significantly — extensive information respecting program schedules. The emphasis which the FCC has indicated it will place upon the programs of radio stations in considering applications is clearly reflected in the Blue Book and in subsequent demands for information.

This type of information — with its direct effect upon business practices and program operations — is inconsistent with equal treatment of broadcasting under the law. Accordingly, it is suggested that Section 308 (b) should be revised by eliminating any authority to require information concerning “character” or “other qualifications,” or “other information.” Information of this nature would be inappropriate if the FCC is to reassume its proper role of confining itself to technical matters, and is not to concern itself with the business practices and program policies of broadcasters.

In line with the foregoing, I suggest that Section 319 be revised to eliminate any authority of the Commission to require information concerning “character,” “other ability” or “such other information as the Commission may require.” In this connection, it should also be made clear that the facts concerning “the purpose for which the station is to be used” should be limited to the type of station for which a construction permit is desired — that is, whether the station is to be used for broadcasting, point-to-point or other form of communication. It would also seem desirable to revise this section so as to conform it to the proposed revisions of Sections 307, 308 and 309. One way of doing this might be to delete the second sentence of subsection (a) of Section 319 and to substitute in lieu thereof, “The procedure for handling such application shall be that provided in Section 309 hereof.” In addition, I suggest the deletion of the second sentence in subsection (b) Section 319 so as to avoid any inconsistency with Section 13 of the bill.

# Edgar Kobak

President, Mutual Broadcasting System, Inc.

I AM the President of Mutual Broadcasting System, Inc., which operates a national network of 432 stations, the Mutual Broadcasting System. Four hundred and thirteen of the stations are in operation and the balance are under construction.

My association with network broadcasting goes back to 1934, when I became Vice President and Sales Manager of the National Broadcasting Company. I was later the Executive Vice President and a Director of the Blue Network Company from 1942 to 1944, and have been the President and a Director of Mutual Broadcasting System, Inc. since 1944.

I have also had experience in three closely allied fields of electrical engineering, publishing and advertising, having served in editorial, circulation and sales capacities, and as Vice President and a Director of McGraw-Hill Publishing Company from 1916 to 1934, and as Vice President of the Lord and Thomas Advertising Agency from 1936 to 1940.

As a preface to my remarks concerning the White Bill, I think I should indicate that the Mutual Broadcasting System is in certain particulars rather differently constituted than the other three national networks. Mutual does not own its key originating stations as do National Broadcasting Company, Columbia Broadcasting System and American Broadcasting Company, but, on the contrary, is itself owned by certain of the licensees of radio stations which it serves. For your information I have attached a list of the shareholder stations showing the number of shares of stock held by each. (Appendix C.)

Our shareholders by and large represent some of the oldest and best established elements in American broadcasting. Mutual has also many other affiliated stations. Of our stations, 297 are 250-watt stations, 266 are the only stations located in communities which they serve, 119 are operating under licenses granted by the Commission within the last two years and 19 are not yet on the air. Mutual therefore represents a rather unique combination of stations, large and small, urban and rural, new and old. I have attempted in my study of the bill to consider it from the point of view of the varying components of our network, as well as with a view to our responsibility to the listener.

I should like to say that the industry as a whole appreciates the desire of Senator White to improve the present Communications Act. Our criticism of provisions of the proposed bill must not be understood as indicating any lack of appreciation on our part of this desire or as any evidence of hostility to this Committee or to the idea that the Communications Act should be improved.

Some of the provisions of the proposed bill look in the right direction. We have pointed these out in the section-by-section analysis which is a part of my statement. (Appendix D.) On the other hand, some of the provisions of the bill, or the interpretations that might be placed on them by the Commission or the courts, disturb us a great deal. Our criticism of these provisions, however, is intended to be constructive, not destructive. We want you to know exactly what our fears are, so that you can consider them in your legislative work.

My own interest in radio is far from an academic one. In my work with three national networks during the past several years, I have watched with keen interest the rapid growth of broadcasting. I hope my own efforts may have made some small contribution toward that growth. The job of running a radio station or a network is not an easy one. There are many questions of operation and of policy which make exacting demands upon intelligence and good conscience. Broadcasting is still suffering from growing pains. Broadcasting, as we know it today, may be technically out-moded within the next few years. If broadcasting is to realize its full potential, it needs room to grow, encouragement rather than restraint.

I regret to say that our examination of the White Bill does not reveal that it contains provisions adequately guaranteeing the freedom essential for the proper development of broadcasting. On the contrary we feel that the bill in certain sections ratifies and approves an unwarranted control by the Federal Communications Commission of programs broadcast by radio stations and of the business practices of the licensees. Moreover, in our

opinion, the bill saddles the industry with new, burdensome and unnecessary restrictions.

The bill contains two different types of provisions, namely, procedural provisions and substantive provisions. The procedural provisions embrace such subjects as organization of the Commission, reports of the Commission, hearings before the Commission, appeals from Commission action and the issuance of cease-and-desist orders. The substantive provisions cover such matters as control of program content, political broadcasts, broadcasts on public questions, etc.

The procedural sections of the bill, by and large, concern themselves with matters upon which lawyers and others schooled in administrative procedure are much better qualified than I to comment. Before passing to the substantive provisions, however, I should like to comment briefly upon Sec. 5 of the bill, dealing with the organization of the Commission.

## Organization of the Commission

The bill proposes to divide the Commission into two divisions of three members each, one division to render decisions in cases involving broadcasting stations and the other to render decisions in common-carrier cases.

Some persons seem to believe that this is a panacea for all ills at the Commission. In our opinion, this is a delusion. So far as I know, only one malpractice of the Commission could be ascribed to the influence of common-carrier philosophy. That is the requirement of the Commission that broadcast stations and networks furnish the Commission with elaborate and detailed financial reports and employment reports. That wholly unnecessary requirement seems to be approved by this bill.

In my opinion, none of the other excesses of the Commission stem from common-carrier concepts. Even if they did, however, this bill leaves jurisdiction over the most important and controversial problem of broadcasting, the making of general rules and regulations, in the full Commission. Under the plan in the bill, this would mean that the general rules and regulations governing broadcasting would be promulgated by a body of seven men, four of whom had no contact whatsoever with the day-by-day problems of the broadcasting industry.

We see no benefit whatever in a compulsory division of the Commission into two divisions and the proposed change in the status of the Chairman.

## Substantive Provisions

The substantive provisions of the White Bill can be roughly classified as technical, economic and program.

Everyone has conceded at all times that the Commission should have a very broad discretion with respect to technical matters, both in its regulation-making powers and in the rendering of decisions. No one has proposed any limitation on this power of the Commission or has proposed that Congress itself should attempt to invade this field. The problems with which we are concerned have to do entirely with what kind of power and how much power the Commission should have with respect to economic and program matters.

The fundamental problem has been the assumption by the Commission of the power to construe the term "public interest, convenience or necessity" as applying to economic or program matters, whereas it seems clear that the original intent was that it applied almost exclusively to technical and physical matters.

The economic field of the Commission's jurisdiction or assumed jurisdiction must be subdivided, since it really involves two distinct subjects. It is one thing for a governmental agency to make laws or regulations designed to promote competition and prevent monopoly. It is quite another thing to talk about regulating the economic aspects of an industry by requiring constant and elaborately detailed reports with respect to finances and labor, to take into account whether a particular city can or cannot support a certain number of stations, to consider regulation of rates and to proceed along other lines of regulation which are usually thought of as the common-carrier type of regulations. The bill proceeds to very considerable lengths in giving the Commission power over the economic aspects of the regulation. This I shall discuss separately.

When we come to the program aspects of the bill a further subdivision is in order. The practice of the Commission in considering program content on renewal applications is, in our opinion, quite a different thing than the imposition of definite obligations upon station licensees by provisions in the Communications Act itself, such as those requiring equal treatment of candidates for public office and those prohibiting obscene and indecent language.

An idea seems to prevail among members of the Commission and others that it is perfectly all right for the Commission to take the so-called "over-all performance" of a station into account in acting on a renewal application. Such a view overlooks the fact that in every decision the Commission must make written findings reciting in detail what the Commission believes to be wrong with the station's operations. If the Commission objects to the station's programming, this means that the Commission's decision will specify the particular programs or types of programs upon which the action is based. This in turn means setting up the equivalent of rules or regulations



that such programs or types of programs are henceforth illegal or at least will cause a licensee that broadcasts such programs to lose its license. The result, of course, is a type of control by indirection on the part of the Commission which is both insidious and effective in depriving the licensee of ultimate program control.

## Program Control

Before I get into a discussion of the provisions of the bill affecting program material, I should like to make some general comments on the subject of radio programs.

I have investigated many program complaints. I have discussed radio programs with countless civic, educational and religious leaders and organizations. Through the years I have followed broadcasts on political questions and public events with a deep and abiding interest in domestic and international affairs. I have followed educational programs and programs for children with the personal interest of a father and, more recently, a grandfather. I have followed all of the other aspects of radio programming with the interest of a listener as well as a broadcaster. I believe that I have the background to speak on the subject of programs.

I have a deep and abiding faith in the American people. I believe that they know what they want and that they will see that they get it. Two things constantly surprise me regarding many others who profess to hold the processes of a democracy in high veneration. First, is the impatience of some persons with the pace of action by the public. They cannot wait for the public to make its own decisions and enforce them, but they must secure immediate action. The results of such short cuts and such hurried extemporizings are inevitably the creation of situations which are not in the best interests of the public and which the public does not desire to prevail. Instead of accelerating the accomplishment of a proper solution, such methods almost inevitably delay or irreparably foreclose it.

Second, I am surprised at the assurance with which some people brush aside the known likes and desires of the listening public and arrogate to themselves the omniscient power to determine what the public should want.

Radio programs are constantly growing better and better and the broadcasting industry is making continual efforts to improve them. We have formulated program policies calculated to maintain creditable standards for broadcast material. As an example I am submitting herewith a copy of the published program policies of our company. (Appendix E.) These policies are not perfect. As a matter of fact, at the present time we are engaged in a

revision of them. They do represent, however, a voluntary and conscientious effort to set up guide posts of sound programming.

All of the measurements of general public opinion which have yet been devised indicate that the general public is reasonably well satisfied with the service it receives from American broadcasters. Nevertheless, broadcasting is constantly being harassed by persons of the type I have mentioned — those who are too impatient to wait for the public to eliminate inferior broadcast practices and unworthy broadcasters, and those who purport to know what the public should want and who insist upon cramming it down the public's throat.

Many valuable suggestions have resulted from my conversations with civic, educational and religious leaders, and our organization has done its best to give effect to them. Too many of the complaints against radio, however, are from people who simply do not know what they are talking about.

As an example, I should like to rise to the defense of the much-maligned daytime serial. These innocent programs have been the butt of satirists who refer to them as "perpetual emotion," of reformers who refer to them as "silly soap-operas" and of the Commission which flings the Blue Book at them. I am inclined to think that most of the critics of the daytime serials have never actually listened to them enough to find out what they are really about.

Lying somewhere between the newspaper cartoon strip and the continued serial in the better national magazines, the stories they unfold are listened to with interest by shut-ins and by the busy housewife. It is not strange that a person tuning in by chance on a single episode of a daytime serial should consider it silly, just as he might consider silly an isolated excerpt from a magazine story, but the vast segment of the public for whom these programs are designed enjoy them.

Obviously a station cannot broadcast debates on domestic and foreign affairs all day long. If it did, I think you will agree that few busy housewives would listen. In few communities, however, are the listeners who may dislike daytime serials confined to this fare at any particular hour. Other programs, such as music or talks on home economics, are usually available at the hours of the day when daytime serials are broadcast. Now, with four national networks and a greatly increased number of stations, competition insures a wide range of selection to most listeners.

Another bit of radio material which has been savagely lampooned and bitterly denounced is the so-called "singing commercial." Whether you like them or not — and I must confess that I consider some of them to be clever and definitely amusing — they are certainly entirely harmless. Doesn't it

seem strange to you that such a harmless and insignificant thing as this should have aroused such a tempest of denunciation against radio broadcasting? In spite of the criticism of singing commercials, the general public has indicated in public opinion polls that these jingles are unobjectionable. If and when they do become objectionable to any substantial segment of the public, you may be sure they will disappear from the air waves.

The self-appointed critics of radio broadcasting are also constantly talking about "good music." By "good music" these critics customarily mean the symphonies of Brahms and Beethoven and operatic music. I question the certainty with which these persons consign all music, except classical and semi-classical music, to the realm of second-rate. But even if we accepted this thesis, you would find that these critics usually are not aware of the amount of classical and semi-classical music that is actually broadcast by the radio stations of our country. Not only are the concerts of most of the symphony orchestras in the country regularly broadcast, generally in network broadcasts, but most of the stations large and small have their own regular hours of classical music on records or transcriptions, if they are not rendered by local musicians.

I have often wondered why radio is subject to these recurring waves of criticism in books, magazines and newspapers and in speeches by certain individual commissioners. I know it is not because radio is doing a bad job. If you will consider the question dispassionately and without preconceived notions, I believe you will agree that the radio broadcasting industry is doing a better job than any other medium of mass communication, in spite of the uncertainties under which it operates.

It has been suggested that the printed sniping at radio results from the jealousy of other media and a desire to injure a commercial rival. I believe, however, that these attacks have a deeper significance and one more creditable to our competitors. I believe that, basically, they stem from the intense interest of the public in all aspects of radio and from the fact that the public considers radio as peculiarly its own. Accordingly, anything written about radio will be read, and criticism is generally more interesting reading than praise.

As long as the public preserves its present interest in radio, you may safely rely upon public opinion to control it and to see that it gives the public what the public desires in the way of programs. You may also rely upon self-appointed critics to continue to tell the public what it should want. I have no desire to stop them or to have them quieted.

Now let us turn to the provisions of the bill which express an unjustified distrust of the choice that the public might make or a doubt, wholly

unwarranted by history, of the ability of the public to enforce its desires without governmental intervention.

## Censorship

In the section-by-section digest released by Senator White concurrently with the introduction of the bill, it was said that Section 16 of the bill

“makes it clear that the Commission does not have the authority to tell a licensee, directly or indirectly, what he can broadcast or cannot broadcast, or how he should run his day-by-day business.”

Apparently, therefore, the proponents of this bill recognize the validity of the arguments I have made regarding the desirability of fostering program control by public opinion and apparently these proponents have the same objective in mind as the broadcasting industry. This objective is the abolition of program control by the whims, fancies and prejudices of an administrative agency of seven men.

Unfortunately, we do not believe that Section 16 accomplishes its avowed purpose. On the contrary, we believe that it actually confirms and ratifies the very practices by which the Commission has gradually been edging into control of the programs broadcast by radio stations and into control of their business practices.

I can only assume, therefore, that the proponents of this bill are not actually aware of the exact instruments used by the Commission and of the manner in which they are used. This is probably due to the indirectness of the Commission's methods and to the fact that encroachments on program control by the Commission are inevitably announced by it in the noblest of phrases.

If the announced objectives of Section 16 are to be accomplished, it is essential that this section, or some other section of the bill, expressly negative the Commission's assumed power to consider program content in any manner in applying the standard of “public interest, convenience or necessity” in proceedings upon applications for renewal of licenses. So long as the Commission can threaten radio stations with the loss of their licenses, if the radio stations fail to conform with the Commission's ideas as to proper program content, the Commission will be able to exercise a censorship of the most effective character.

The mere insertion in the Act of pious denunciations of censorship and vague policy pronouncements against Commission control of program content and business practices is not enough. The present Act contains express guarantees of freedom of speech by radio, which for some inexplicable

reason have been deleted in the amendment and which should by all means be retained in the Act. These freedom-of-speech guarantees have been blithely ignored by the Commission in its assumptions of power over programs, however, and thus far the Commission has successfully avoided a Supreme Court test of their effect.

Accordingly, nothing short of an express denial by Congress of any right in the Commission to discipline stations on renewals of license for alleged program or business shortcomings will be truly effective to relieve the broadcasting industry from Commission interference with business practices and program content.

## Statutory Requirements Concerning Program Content

The presence in the White Bill of those sections relating to political broadcasts, discussions of public questions, identification of news sources and false accusations is somewhat puzzling to me, since I know of no current abuses warranting the new and drastic requirements which certain provisions of these sections would impose on radio broadcasters.

I had believed there was general agreement that radio is doing an outstanding job in the presentation of discussions of public events and news reports and in the handling of political campaigns. In my opinion, the radio industry has been eminently fair in dealing with matters in this field. Why, therefore, should radio now be saddled with burdensome requirements not applicable to other communication media?

The undesirability of these new requirements can only be fully realized when they are examined against the background of the present operations of the industry.

## Political Broadcasts

The proposed amendments in Section 15 of the bill relating to political broadcasts are, in part, theoretically good, in part, indifferent and, in part, exceedingly bad. Unless the undesirable provisions are eliminated, the amendments should not, in my opinion, be adopted.

The proposed amendment relieving the licensee from liability for the broadcasting of defamatory matter contained in speeches which the licensee is forbidden to censor seems to me only common justice. My only criticism of this particular amendment is that the protection accorded the licensee only extends to liability for defamation, and invasion of privacy or "*any similar liability*." The amendment should protect the licensee against any

liability whatsoever, whether it is or is not similar, if the licensee is prohibited from exercising any censorship.

So far as the amendments extend the rights of equal opportunity to candidates in primary elections and define "equal opportunity," the amendments are of indifferent practical value, since they largely conform with present practices of the industry. However, I should like to point out that the definition of "equal opportunity," for the first time, creates an obligation applicable to networks, in that it would require a network to furnish the same grouping of stations to one candidate that it has furnished to another. Incidentally, however, it confers no corresponding right on the network to compel its independent affiliated stations to accept such a program. This phase of the amendment is therefore rendered impossible of performance.

No substantial evil calls for an amendment such as that which prohibits political broadcasts during or for 24 hours in advance of an election. Not only does this put broadcasting at an unwarranted disadvantage as against the press but it wholly ignores and nullifies radio's tremendous capacity and efficiency in stimulating civic responsibility and causing citizens to vote.

One proposed amendment of the section on political broadcasts, however, involves a fundamental aspect of the right of free speech. This amendment forbids the use of a station for discussion for or against political candidates by any persons except the candidates themselves, persons designated by them or persons designated by their political parties. This is patently absurd. Since when have American citizens, as well as religious and civic organizations, lost the right publicly to discuss candidates for public office?

If the section on political broadcasts of the present Act is to be amended, it seems to us imperative that it be so modified as to preclude the Commission from requiring radio stations to recognize as legally qualified candidates persons whose names are not, or cannot, be included on the official ballot in the particular election.

## Discussion of Public Questions

Section 17 of the White Bill, which introduces a new requirement that radio stations afford equal opportunities for the presentation of different views on public questions or issues, is undesirable and highly impractical. There never will be agreement as to what constitutes a controversial issue of public importance, as distinguished from an issue on which only a few cranks disagree. On most issues there are not merely two but many schools of thought. It is not always possible to determine what persons are best qualified to represent the several schools of thought and at the same time are sufficiently

well informed and sufficiently able speakers so that the broadcasts will be interesting and informative to the public. This clause or its equivalent has been proposed in both Houses of Congress many times from as far back as 1926, has been included in a number of bills and has been repeatedly rejected by Congress for the reasons I have given. In my opinion, Congress should continue to reject this proposal. I know of no abuses which justify its inclusion. As a matter of fact the general practice within the entire industry is to lean over backwards in attempting to present all substantial facets of questions of public importance.

## Identification of News Sources

Section 18, which would add new provisions requiring the identification of news sources, is not merely excessive, but actually impossible, in its apparent requirements as to the identification of sources in detail. A competent news analysis of only fifteen minutes duration frequently contains information from many sources of information, combined with the expert judgment of the analyst. The citation of all the sources would consume a substantial amount of time and would be exceedingly dull to the listener.

If only general identification is intended, I believe that the sources of material in radio news commentaries are identified as fully as news sources are identified in other media of communication. All media, of course, must protect the confidence of certain persons who furnish them with news. The treatment of off-the-record statements of high governmental officials is an example of this. The protection of news sources is one of the firmest and most revered tenets in the reporter's creed. Many reporters have accepted imprisonment in preference to violating this tenet. The social benefits from its observance are unquestionable; the public receives important news that would otherwise be concealed.

## False Accusations

The new section proposed by the White bill, which would prohibit the broadcasting of a false accusation or charge, is extremely broad and dangerous. The prohibition is not limited to defamatory matter such as would be the basis for an action for libel or slander. It extends to *any* false accusation or charge. This creates a greater liability than that to which newspapers, magazines or moving pictures are subjected.

My attorneys tell me that no recognition is given by this section to the important doctrine of privileged communications. Accordingly, a quotation from the speech of a Congressman on the floor of either House or the state-



ment of a witness in a trial would not be privileged, as it would be in a libel action. In addition I call your attention to the fact that under the Communications Act a violation might entail a penalty of two years imprisonment and \$10,000 fine and revocation of license or the refusal to renew a license.

My attorneys have also mentioned that a similar provision was proposed for inclusion in the Radio Act of 1927 and that the Chairman of this Committee then opposed the inclusion of this provision, on the ground that the laws of libel and slander adequately covered this situation. I urge the Chairman's position as an answer at this time.

## Network Regulations

I shall now direct my attention to the sections of the bill relating to the regulation of stations engaged in network broadcasting and relating to multiple-ownership of stations. We feel that Congress would be justified in refraining from legislating on the subject of network broadcasting and in revoking the Commission's authority to regulate the business relations between stations and networks. This would place radio broadcasters in a position comparable to that of newspapers and magazines.

This position on our part is not, I assure you, dictated by any desire to engage in any of the practices prohibited by the present network regulations or the Federal Communications Act. We have no desire, for example, to change our present contracts with our affiliates, and these contracts conform with the Commission's network regulations.

Turning to the provisions of the White Bill for the regulation of network broadcasting, it seems to me that two serious objections can be made to them, in addition to the objection that an analogy to newspapers should remove them from the bill and from the Commission's regulations as well.

First of all, it seems to me that certain of the prohibitions in the network regulations contained in the White Bill are unsound. The change of permissible option time from three out of five hours (as provided in the Commission's present network regulations) to two out of three hours, with an over-all limit of 50% of broadcasting time, is wholly unnecessary and a serious threat to successful network operations. So far as I know, no complaints have been made that the Commission's regulation is too generous and no other reason has been advanced for the change in the amount of option time presently permitted by the Commission.

In like manner, I find very disturbing the uncertainty of the provision in the White Bill prohibiting the ownership by any network of broadcast stations in any band whose primary service under the standards of good

engineering practice established by the Commission covers more than 25 per cent of the population of the United States. In view of the controversy that has always existed among radio engineers as to what constitutes primary service and the wide variance in service as between rural and urban communities, as between day and night, and even as between different sections of the country, I am most reluctant to have such a determination left in the hands of the Commission.

Of course, the limit of six or seven stations — which is apparently recognized by the Commission as the limit of multiple-ownership of stations in a single band — is entirely arbitrary, since no consideration is given to the vast difference between the ownership of six 50-kw. clear-channel stations and the ownership of six 250-watt stations which are being used to cover the same area as, and to compete with, one 50-kw. station.

Instead of the indefinite provision on multiple-ownership in the White Bill or the arbitrary standard presently enforced by the Commission, I should prefer to have Congress confer, in some appropriately limited fashion, the power upon the Commission to consider the question of the tendency toward monopolization in connection with applications by multiple-station owners for authorization to erect additional stations or to acquire existing stations.

In this connection, we believe that Sections 311 and 313 of the present Act should be amended so as to relieve radio licensees from the confiscatory penalty to which no other business is subjected under the anti-trust laws, namely, revocation of license.

Secondly, in addition to my objections to the actual provisions of the network regulations in the White Bill, I seriously question the desirability of putting rigid regulations in this field in the statute itself. The regulations of network broadcasting should be flexible enough to conform to developments in the art and industry. Not that I suggest leaving unlimited power in the Commission on this subject. It seems to me that, if network broadcasting is to be regulated, the Communications Act should put the power to make regulations in the Commission, but should specify the limits within which the Commission power might be exercised. This will provide the necessary flexibility or regulatory power and at the same time will protect broadcasting stations and networks from a destructive exercise of such regulatory power by fixing minimums which the Commission cannot encroach upon without Congressional approval.

## Conclusion

The questions I have raised on specific sections of the bill lead inevitably to one big question: Shall the freedom of the air be preserved?

Radio has many critics and I am among them. Broadcasting is far from perfect, but so, also, are the other media — the newspapers, the magazines, the motion pictures and the theatre. So also are all human creations.

This is a period when our democratic form of government and all of its institutions and reflections are being most shrewdly and *viciously* attacked by other ideologies inimical to and irreconcilable with our own. We are all well aware, after years of trial and observation, of the inherent defects in democratic procedures and most of us become annoyed from time to time with the slowness and awkwardness of their performance. But who among us is prepared to adopt in their stead the patterns and methods of Communism or Fascism — which of us will sacrifice his hereditary freedom to secure some measure of ostensibly increased bureaucratic efficiency?

The humiliation, the enslavement, of the individual citizen, the man, for the aggrandizement of some cold impersonal concept of state is profane in the eyes of any American.

It is a truism that freedom of the press is the greatest bulwark of a democracy. To an ever-increasing degree broadcasting is sharing with the press the obligation of keeping the public well informed. I submit that the freedom to speak and to listen is no less sacred to the American than the freedom to write and to read. By virtue of technological developments already accomplished and being improved, freedom of the press and freedom of the air give promise of merging into one and the same freedom within the not too distant future. At this stage, the defense of freedom of the press *alone* is the tragically thoughtless and futile defense of a Maginot Line.

It is slight incursions upon constitutional freedoms, such as those inherent in certain sections of the White Bill, that may ultimately destroy our freedoms. They are the holes in the dike through which first the trickle and then the flood of disaster flow.

This is a time above all other times in our history when the people of America and Congress as the representatives of the people must zealously scrutinize any change in the law in the light of preservation of constitutional freedoms. I submit that the White Bill in its present form will not bear that scrutiny.

# Niles Trammell

President, National Broadcasting Company, Inc.

**T**HE National Broadcasting Company is a nationwide network organization in the field of sound broadcasting, serving 161 independent affiliated stations, and operating six standard broadcast stations owned by the company in New York, Washington, Cleveland, Chicago, Denver and San Francisco. We also have in operation two FM or frequency modulation stations, with construction permits for four more which we intend to operate as companion stations duplicating our standard-band program service. Furthermore, we operate one television station in New York City, and a limited television network service through inter-connection with the General Electric station in Schenectady and the Philco station in Philadelphia. In addition, we shall inaugurate television service over our own station established in Washington, as well as network service between Washington and New York, on June 27, this year. We have been granted construction permits to build and operate three additional television stations in Cleveland, Chicago and Los Angeles. By the establishment of these key television stations we hope ultimately to operate a nationwide network service of television. Experimentally, we are engaged in facsimile broadcasting, that is, the transmission by radio of printed matter direct to the home.

Because of our participation in all these fields of radio service, it is our belief that a new radio law must encompass not only the present services of sound broadcasting, but the future services of television and facsimile.

We appreciate the opportunity to cooperate with the Chairman and the members of this Committee in the consideration of broad and comprehensive legislation for the maximum development of service to the public and for the continued growth of the industry. Two decades have passed since the enactment of the original Radio Act of 1927. We must not only utilize the experience of these years, but we must envision the future, in order to provide for the full development of the many new services of broadcasting now at our door. Many radio broadcasters of today will become the electronic publishers of tomorrow. They will be engaged in the distribution of newsreels and motion pictures to the home by electronic means. Radio newspapers will become commonplace. Practically every form of artistic expression will become available to the people direct from studio to home through these modern methods of mass communication.

Therefore, it is of the utmost importance that such new legislation as may be enacted shall allow for the great technical advances in the electronic art and provide encouragement for the industry that must find new capital to finance a vast program of expansion. We have at hand a postwar industry which, through the inauguration of local and national services, can provide for substantial employment, and make a vital contribution to the life of the American people.

The Chairman of this Committee has had a long and able record in the Senate. Few are as familiar with the problems of communications. He is, therefore, particularly fitted for the present task. He has the opportunity in the formulation of new legislation to make a most valuable and lasting contribution to the future growth and development of American broadcasting. It is my hope that we of the industry will be able to supply to the Chairman and to this Committee the assistance needed for the enactment of beneficent legislation.

Four years ago I appeared before the Senate Interstate Commerce Committee and testified on S. 814, the White-Wheeler bill to amend the Communications Act. At that time I joined with the rest of the industry and urged that legislation be passed to assure to radio the same degree of freedom that is enjoyed by the press.

A free press today is one of the basic guarantees of a free society. Recognition of the same freedom for radio will place a powerful ally at the side of the press. Together they will be able to withstand any assault upon democracy.

I would like to make clear that in advocating new legislation we urge that this Committee permit ample time for a thorough consideration of the many and varied factors involved. This would necessarily entail the pres-

entation of all pertinent technical information as well as the views of the broadcasters. The goal we seek is a new law which will afford the greatest freedom and encouragement for the wide development and use of all the new broadcasting services that are now possible.

I am now able to reveal for the first time that the RCA Laboratories has been working on a revolutionary system of high-speed communications tentatively referred to as ULTRAFAX. It is an outgrowth of television. In effect, it is a radio-mail system, which will surpass radiotelegraphy, wire telegraphy, cables, and air mail in speed of operation. Here television is used for communications.

Preliminary tests through the air have revealed that this new system, which utilizes microwave radio relays, is practical, and that it has a potential for handling more than a million words a minute.

In other words, this system could transmit twenty 50,000-word novels from New York to San Francisco in only 60 seconds. Each printed page is treated as a frame of a television picture, and each page is flashed in rapid succession. At the receiving end, the pages are reproduced by new high-speed photographic processes for quick delivery.

Letters, business documents, checks, photographs, newspapers and magazines can be handled in the same way. In addition, these microwave circuits can simultaneously carry ordinary telephone speech and telegrams, and also provide intercity network for television as well as standard and FM broadcast programs.

World-wide radio and domestic telegraphic communications as we know them today will, in the light of this development, make present-day communications appear as slow as the ox cart compared with a Stratoliner.

The Radio Corporation of America expects to demonstrate publicly its ULTRAFAX system during the summer of 1947, revealing the details of this remarkable advance in the evolution of communications.

We believe that Congress should enunciate again, in clear and unmistakable terms, the philosophy and the policies under which broadcasting can keep pace with its expanding opportunities for service. The regulatory body should be given the limits beyond which it cannot go so as to assure no interference with the rights of a free radio. We believe the Commission should be denied any authority involving control of the program service that the American people are to receive. We must remember that such control would embrace not only communication through sound, but through sight-and-sound as well as facsimile printing. No agency should ever be permitted, by the threat of revocation of a license or denial of renewal, to

intimidate broadcasters as to the kind of program service they must render to the public.

Those who would exercise regulatory power over business practices and program content have based their claims on the scarcity of radio wavelengths. The alleged scarcity has been used to justify restraints on radio that are not imposed upon the press. This excuse, I submit, can no longer stand up against the facts.

Today there are more radio stations in the cities of this country than there are daily newspapers. In many places there are more than twice as many. I submit an exhibit showing the 162 cities in which NBC has affiliated stations, which lists the number of newspapers and standard-band radio stations (including grants for stations not yet on the air) in each city. (Appendix F.) In those cities where there are NBC affiliates there are 617 stations compared to 321 daily newspapers. In the cities in which NBC owns stations there are: New York, 17 stations compared with a total of 11 metropolitan newspapers; Chicago, 15 stations and 5 newspapers; Denver, 6 stations and 2 newspapers; Washington, 7 stations and 4 newspapers; Cleveland, 6 stations and 2 newspapers; and San Francisco, 7 stations and 4 newspapers.

At the end of 1938, the year in which the Federal Communications Commission began the hearings which led to adoption of the network regulations, there were 660 licensed standard broadcast stations. Today there are more than 1,750 licensed or authorized standard broadcast stations within the United States. FM broadcasting, a service unknown when the 1927 Act was passed, has been allocated space in the spectrum for two or three thousand, and possibly more, FM stations. Already there are 850 licenses or grants, including conditional grants, for such stations.

There are now 1,763 daily newspapers in the United States. We can expect to see more than twice that many broadcasting stations in the near future.

In addition, it is easier today to acquire an existing radio station or to establish a new one in most cities of this country than it is to acquire or establish a daily newspaper. No "scarcity" argument can apply to radio that does not apply with even more force to the press. The argument for regulation because of scarcity, in fact, is not applicable to either. How can it any longer be said that scarcity of wavelengths is an excuse for government control of what may go on the air? Why, then, should radio not be as free as the press?

The reason for limiting the Commission's control of radio is all the more compelling as these new radio services are developed. With the coming



of television and facsimile, broadcasting has embraced the written as well as the spoken word. Where is the line to be drawn between a newspaper publisher who delivers news, information, opinion and public discussion by truck and a news broadcaster who puts the same material into the home via the electronic delivery route?

If present restraints are retained or new ones imposed, an autocratic or dictatorial government could determine what the people shall see as well as what they shall hear when television becomes an established service. When newspapers are delivered into the home by radio facsimile the cycle will be complete, for then such a government would be able to control what the people shall read as well as what they shall see and hear.

The only way to meet the problems thus posed is to enact legislation which will prevent the exercise of any restrictive control over programs and other material transmitted by radio, whether it be broadcasting by sound, television or facsimile.

The source of the uncertainty in the law today in the exercise by the Commission of control over broadcasting is the lack of definition of the phrase "public interest, convenience or necessity." Unless the freedom of the public to determine what it should hear is to be surrendered to the government for regulation, this phrase must be defined to exclude from its meaning anything relating to programs and business practices of broadcasters. The definition must be applicable in every instance that the Commission is called upon to apply the term, whether it is upon original application, renewal, modification or revocation.

There are a number of provisions of S. 1333 about which I would like to comment. I will discuss these in the order they appear in the bill.

## Division of Commission — Section 5

In the past we have advocated organization of the Commission into divisions to separate the administration of the broadcasting from the common carrier provisions of the Act. I believe that this is a desirable objective and should be accomplished as soon as possible.

I agree with Chairman Denny that the broadcasting division should consist of more than three members. I should like to recommend that the Commission be composed of nine members and that it be divided by statute into a Broadcast Division and a Common Carrier Division with the Chairman of the Commission to serve on each division. Four members of the Commission should be appointed to serve on the Broadcast Division and four members on the Common Carrier Division, all such appointments to be made upon the basis of the qualifications of such members to serve on

their respective divisions. The statute should prohibit rotation of membership between the Broadcast and Common Carrier Divisions. The Chairman of the Commission should be appointed by the President. The Commission should be permitted to create additional divisions if it desires, to handle such specialized functions as it feels may not appropriately fall under either of the two statutory divisions, with the members of such additional divisions to be selected by the Commission from the membership of the two statutory divisions.

## Uniform Financial Reports — Section 8

Section 8 enlarges the power of the Commission under Section 303(j) of the Act, so as to authorize it to prescribe uniform systems of financial reports.

This provision applies a common carrier concept to an industry which the Congress has said is not a common carrier. It paves the way for further control over the business affairs and thereby the program service of the licensee. For these reasons, it is objectionable.

## Distribution of Facilities — Section 9

Section 9 provides that in distributing radio facilities among the several states and communities the Commission must give effect to the "needs and requirements thereof." I do not see how there can be read into that language a requirement that the Commission consider the economic effect of the licensing of a station in any community. However, it has been suggested that this provision might be construed to have such a meaning. If that is so, I believe the language "giving effect in each instance to the needs and requirements thereof" should be deleted. No restriction based upon economic considerations should be placed upon the licensing of stations.

## Political Broadcasts and Discussions of Public or Political Questions — Sections 15 and 17

Sections 15 and 17 of the bill establish new requirements with respect to the handling of political broadcasts and discussions of public or political questions. The requirements go far beyond those in the existing law. They place upon broadcasters requirements that are impractical and a direct infringement on free speech.

It is the policy of the National Broadcasting Company, as it is of other broadcasters, to permit the use of its facilities for discussions of public and

controversial issues. Every effort is made to afford a fair and equal opportunity for presentation of different views. This policy was established without government compulsion. Such policies should be a matter of industry self-regulation.

I would like to give you an illustration of the difficulties which would result from a statutory directive to afford equal opportunities for the presentation of different views on political or public questions.

Each of our stations carries weekly programs presented by the Catholic, Protestant and Jewish faiths. On these programs there are frequently expressions of the belief in God. Must we make available for arguments in support of atheism an amount of time equal to the time used by the programs of the Catholic, Protestant and Jewish faiths?

The question is not so ridiculous as it may appear to be. This is a real problem for the broadcaster, and upon his action in handling the situation may depend his right to continue in business.

I would not think that the controversy between atheism and theism is of such public importance as to justify depriving the public of the kind of programs I am sure it prefers to hear in order to provide time for programs espousing atheism. Yet, only last year, the Commission indicated in an opinion that its policy concerning the use of radio stations for discussions of controversial issues might require stations to provide time for arguments on behalf of atheism. If Section 17 of the bill would be applicable to a situation such as this, I cannot conceive that the public interest would be served.

There is no necessity for imposing any regulations upon broadcasters for the presentation of public and political questions. No such restraints have been placed upon the press. The practices generally followed by broadcasters today provide a fair and adequate presentation of such issues.

Section 17 of the bill also requires broadcasters to cause certain identifying announcements to be made at both the beginning and end of each program containing discussions of public or political questions. This provision, like that proposed for news broadcasts, would subject the listeners to annoying announcements which I am sure they have no desire to hear.

## Control of Programs and Business Practices — Section 16

Section 16 of the bill deals with the power of the Commission over the business affairs and program material of broadcast stations. I am thoroughly in accord with the objectives of this section in so far as it takes from the Commission any power to regulate the business and programs of the broadcaster. All the good that is done, however, is nullified by the proviso clause,

which specifies that nothing in the bill shall be construed to limit the authority of the Commission on consideration of renewal applications to determine whether the licensee has operated in the public interest.

Unless the term "public interest" is defined to exclude consideration of programs and business practices, the Commission will be unrestrained in its exercise of influence and control over such matters.

The Commission should have no power in advance of a broadcast to control in any measure the contents of the program. It should have no power after a broadcast to impose a penalty for the material transmitted. The control by right to review programs after a broadcast is as powerful as control by right to prescribe programs in advance. The threat of denial of a license renewal in the event a program schedule does not suit the taste of a government agency is as persuasive as a direct mandate before a broadcast to carry the program that the agency desires.

The authority to refuse to renew a license because of the nature of programs that have been broadcast is a form of censorship much more powerful than the blue pencilling kind of censorship. It permits the Commission a tremendously wide latitude in determining what the listeners of the country may or may not hear. It gives the Commission most persuasive powers of suggestion as to the programs which it feels should be broadcast. No licensee can feel free to ignore such suggestions when to do so would jeopardize the continuation of his license. This is a much greater power than the power to delete.

The Commission has decided for the public that certain kinds of programs should be heard during certain periods of the day. Under the threat of failure to renew licenses, it has said that "discussion programs, at the local, national and international levels," must be carried "in reasonable sufficiency, and during good listening hours." It has decided that "a reasonable proportion of time" must be devoted to sustaining programs and that such time must be "reasonably distributed among the various segments of the broadcast day." The fact that the listener may prefer to hear a superior commercial program is apparently of no consequence.

This control over programs should not prevail. I would like to recommend that the law be amended to specify in terms so clear as to be beyond misconstruction, that in applying the term "public interest, convenience or necessity," the Commission shall have no power over the business practices of a licensee; and that the Commission shall have no power to censor, alter or in any manner exercise any control over the material to be broadcast or the right of the licensee to determine the character and source of the material, the time when any such material shall be broadcast, or whether the

material shall be the subject of a commercial or sustaining broadcast. No such power should be exercised in the consideration of either an original application or an application for renewal.

With all the radio facilities at our command we could not gather together an audience except on their own volition and because they desire to listen to what we broadcast. The broadcaster is responsive to the turn of a dial or the flip of a switch. If he is left free from control by the government, public preference will determine the programs which he broadcasts.

## News Broadcasts — Section 18

Section 18 imposes the obligation on the broadcaster to make detailed explanations and announcements on news programs. This requirement will subtract from the broadcasting time available for the news itself and do more to annoy the listener than to enlighten him.

The basic purpose of news dissemination in a democracy is to enable the people to know what is happening and to understand events so that they may form their own conclusions. In the American philosophy, truth and freedom go hand in hand.

The Nazis developed the technique of "secondary censorship" to a fine art in 1939, '40 and '41. Our reporters could broadcast from Germany without direct censorship, but they had to keep within certain limits under the constant threat that broadcast facilities would be denied them.

If Section 18 became law every American broadcaster would have at his shoulder the spectre of this "secondary censorship."

At the present time the NBC network has an administrative and clerical staff of 79 persons, and 32 reporters, analysts, newscasters and foreign correspondents. We operate much the same as a newspaper in the collection of news. While we rely heavily on the press services, as do the newspapers, we are today doing ten times as much original reporting with our own staff as we did in 1942.

Section 18 of the bill imposes restraints on the broadcasters that would be unthinkable for the press. Among these restraints is a requirement to identify sources of the news.

The radio newsman, like the newspaperman, believes in the fundamental ethics of the news-gathering profession. The foundation stone of this is protection of sources. Section 18, if strictly interpreted, would either force radio newsmen to violate the ethics of their profession or prevent them from fully reporting the news, opinion and analysis which is the grist for the press of the nation.

All the members of our reporting and supervisory news staff are men of integrity and ability.

We believe in labeling news and analysis, and have done so for a number of years. We do not believe, though, that any such requirement should be imposed by statute, any more than it is required of the press.

## Network Regulations—Section 19

Section 19 of the bill contains, with some modifications, the substance of the network regulations adopted by the Commission a few years ago. These regulations should not be made a part of the statute. To do so would be to establish in the law a set of inflexible requirements based upon conditions which may not prevail in the future and which in fact do not prevail even today.

The network regulations were adopted by the Commission for the stated purpose of preventing restraints on competition in the broadcasting industry. To justify the need for such regulations the Commission pointed to the limited number of broadcasting stations that could be licensed within the usable portion of the radio spectrum. The Commission said in the Report on Chain Broadcasting:

“The nature of the radio spectrum is such that the number of broadcasting stations which can operate, and the power which they can utilize, is limited. The limitations imposed by physical factors thus largely bar the door to new enterprise and almost close this customary avenue of competition.”

Conditions have vastly changed since the network regulations were adopted. At the end of 1938, while the hearings were being held, there were 660 standard broadcast stations. Today there are 1750 standard broadcast stations. Further changes will occur in the future as more and more FM broadcast stations are constructed. There will be room in the spectrum for thousands of such stations. The limitations imposed by physical factors, about which the Commission spoke, will be no bar to new enterprise. The customary avenues of competition will not be closed, either for the stations or for additional networks. There will be no limitations upon the opportunity for competition that are not applicable to the press and to other industries.

The business activities of the broadcasting industry should be governed by the same laws that apply to other industries. There are no network regulations for the press. There need be none for broadcasters. Public protection is amply afforded by the anti-trust laws.

One of the regulations in particular would adversely affect the broadcasting service to the public. This is the limitation on option time. By this provision stations would be prohibited from granting to a network an option for more than two hours in any consecutive three-hour period.

The National Broadcasting Company is able to provide a solid evening of good programs only because it has an option, exercisable on reasonable notice, on three consecutive evening hours of the time of its affiliated stations. Without the assurance that such hours will be available, it would not be possible to arrange with the sponsors for continued production of network programs throughout the evening.

There is attached to this statement (Appendix G) a series of charts showing the programs of NBC during the three hours of option time in the evening. If the limitation proposed in the bill is adopted, the programs in one of the hours between 8 and 11 p.m. each weekday evening, and 7 and 10 p.m. each Sunday, may be lost because the network will not be able to assure the sponsor that the time will be available on the affiliated stations.

Even if only a small proportion of stations choose to drop an established network program, the resulting pattern of national coverage may be so ragged that it will cause the sponsor to discontinue the program. As every broadcaster knows, there is all the difference in the world between being able to offer a sponsor a complete national service and one that is full of holes.

From the standpoint of the public, we do not think the law should undertake to deprive the national radio audience of many of its popular programs for the hypothetical advantage of substituting strictly local entertainment in certain communities.

## Ownership of Stations — Section 19

Section 19 of the bill places a limit upon the number of broadcast stations which may be licensed to any person. No licensee would be permitted to own stations in any single band which in the aggregate provide a primary service for more than 25 per cent of the population of the United States.

I cannot see any need or justification for a limit on the ownership of broadcast stations, either by Commission action or by statute. The opportunity to serve the public should not be limited by arbitrary restriction.

The present radio law does not establish any limitation on the ownership of stations beyond the requirements of the anti-trust laws. During all the years since the establishment of broadcasting there has been no undue



concentration of ownership. Before NBC disposed of the Blue Network it was the licensee of six stations associated with the Red Network and three and a half with the Blue. Columbia Broadcasting System once was the licensee of nine stations. Each of these stations provided a good broadcasting service. There was no complaint by the public that service was being affected by ownership of the stations by a single licensee.

According to Chairman Denny's testimony, coverage of 25 per cent of the population of the United States could be achieved by two stations; one in New York and one in Chicago. The precise number of stations would depend upon the meaning which the Commission established for "primary service." Under our interpretation of the Commission's present standards for primary service, the six stations owned by NBC — which include stations in New York and Chicago — serve about 25 per cent of the population of the country. The difference between Mr. Denny's estimate and ours in itself illustrates the difficulty resulting from the use of a term as indefinite as "primary service." The proposed section sets up a rubber yardstick as the measure of the number of stations which may be owned by any one person.

Potential coverage of 25 per cent of the population is a long way from the exercise of monopolistic control. The licensee of a station does not control the radio service of the people living within the area served by the station. On the contrary, each station competes with many other stations in its area for the attention of the listeners. The total audience is divided among many stations, so that no one station controls the service to the population in its vicinity.

The National Broadcasting Company owns stations in New York, Washington, Chicago, Cleveland, Denver and San Francisco. In New York there are 17 standard stations; in Washington 7; in Chicago 15; in Cleveland 6; in Denver 6; and in San Francisco 7. In addition, there are many other stations that provide service to parts of the areas covered by our stations. The six NBC stations compete with a total of 58 other stations for the listening audience in the cities where they are located. Therefore, although the primary service area of our stations may include from 20 to 25 per cent of the population, we by no means control the radio service to those people.

There is no logical basis for the 25 per cent limitation. The broadcasting industry is subject to the anti-trust laws as in any other industry. The 25 per cent limitation in the bill is arbitrary and unwarranted. Any such limit on ownership should be avoided.

## Procedural Sections

The National Broadcasting Company endorses generally the comments and suggestions made in the statement filed in these hearings by Mr. Petty, General Counsel of the National Association of Broadcasters.

## Application of Anti-Trust Laws

I should like to take this opportunity to call the Committee's attention to a provision in the Communications Act which is the most unfair and discriminating kind of legislation that has ever come to my attention. This is the provision in the Act which places the broadcasters in double jeopardy for any violation of the anti-trust laws. I know of no other industry that is subject to such harsh treatment.

Broadcasters are subject to all the penalties specified in the anti-trust laws for violation of those laws. In addition, Section 313 of the Communications Act permits the court to order revocation of the license of any licensee found guilty of violating the anti-trust laws. Section 311 permits the Commission to refuse a license to a person found guilty of violating these laws. This may be done even though the court has refused to order a revocation.

By these provisions the broadcasting licensee is placed in jeopardy twice — first, by imposition of penalties under the anti-trust laws, and second, by imposition of the additional penalties of the Communications Act. The broadcasting industry does not seek immunity from the anti-trust laws. It asks only that no greater penalties be enforced against it than are enforced against other industries. I urge, therefore, that the discriminatory penalties provided in the Communications Act for violation of the anti-trust laws be repealed so that the broadcasting industry will stand in an equal position with the rest of the business world.

I have commented briefly on certain of the proposals of Senate Bill 1333. I know that the Chairman of this Committee has presented these proposals for the purpose of provoking the best thought of the industry, and I hope that we have been able to convince him and the members of this committee that drastic revision of the proposed amendments is in order.

I join those who have preceded me in asking for a new radio "Bill of Rights" and I want to endorse the views expressed by Judge Miller and his associates in the National Association of Broadcasters and by my colleagues in the industry. We are unanimous in asking for your thoughtful and deliberate consideration of the vital issues involved in order that we may make progress in framing new legislation for radio. Such legis-

lation should insure the greatest possible service to the public. It should make secure all of our fundamental freedoms. And it should provide the greatest possible encouragement for a potential industry many times the size of the present one.

You may be interested in the situation confronting the radio broadcasters of our neighbor to the north, Canada. In a recent presentation to the Canadian House of Commons, the broadcasters had this to say, and I quote:

“During the past year, this Association [Canadian Association of Broadcasters, representing 89 to 103 independent stations in Canada] has given serious study to the urgent need for a radio ‘Bill of Rights,’ that would establish and guarantee for radio the constitutional freedoms and safeguards which should prevail in a democratic country. Today, radio in Canada is under complete control of any ‘government-of-the-day’ that is in power — not direct control by the elected representatives of the people assembled in Parliament. . . . Canadian radio has now passed its evolutionary stages. Today, it enjoys an importance similar to that of the press. Yet it does not have any of the established rights and safeguards associated with freedom of the press. Radio has a voice, but no legal right to use it. It is controlled by laws and regulations which are outworn, discriminatory and unjust.”

Gentlemen, in Canada, the broadcasters are fighting for a freedom they have never possessed. In the United States the free radio we have enjoyed is threatened by the continued encroachment on the rights of the public to receive a broadcasting service free from federal regulation. In the legislation which we hope that Congress will enact, we ask for equality with the press under all the laws that govern our society. We reaffirm our previous requests for legislative safeguards to protect the freedom of this great medium of mass communication. We urge that Congress strengthen one of this nation’s greatest assets for the preservation of the American way of life.

# J. N. Bailey

Executive Director, FM Association

**M**y name is J. N. Bailey, but for the past eighteen years I have been known as "Bill" Bailey. I am the Executive Director of the FM Association, a non-profit trade organization representing the FM broadcasters, manufacturers and others interested in FM.

FM, as this Committee knows, means Frequency Modulation — the type of broadcast service which we firmly believe will become the accepted system within a period of three to five years.

FM, briefly, means high-fidelity radio reception with no noise, no static and virtually no fading. FM, we believe, will provide the vehicle necessary to assure a free and competitive radio in the United States for many years to come.

A word about our organization. The FM Association was formally organized on January 10, 1947, in Washington, D. C., at a meeting of some 300 FM enthusiasts. A board of directors of twelve was elected and by-laws were adopted. I was employed by the Board to be the Executive Director and assistant secretary-treasurer, effective on February 1, 1947.

On our Board of Directors are the following:

Leonard L. Asch, president and general manager of WBCA, Schenectady, New York, an independent FM station.

Wayne Coy, vice-president and general manager of WINX and WINX-FM, Washington, D. C.

W. R. David, general sales manager of Broadcast Equipment, General Electric Company, Syracuse, N. Y.

Everett L. Dillard, president of Commercial Radio Equipment Co., operators of FM stations WASH, Washington, D. C., and KOZY, Kansas City, Mo.

Gordon Gray, president-publisher, the Piedmont Publishing Co., Winston-Salem, N. Car., operators of WSJS, an AM station, and WMIT and WSJS-FM, both FM stations. Mr. Gray also is a State Senator of North Carolina and chairman of the North Carolina Senate Finance Committee.

Frank A. Gunther, vice-president of Radio Engineering Laboratories, Long Island City, N. Y., manufacturers of transmitters and other FM equipment.

Ira A. Hirschmann, president of Metropolitan Television Corporation, New York City, operators of FM station WABF, one of the pioneer FM stations.

E. J. Hodel, general manager of WCFC, Beckley, West Virginia, owned by the Beckley Newspapers, Inc.

Roy Hofheinz, president of the Texas Star Broadcasting Co., Houston, Texas, owners of KTHT, an AM station, and KOPY, an FM station. Mr. Hofheinz was former County Judge of Harris County, Texas, and a former member of the Texas Legislature.

C. M. Jansky, Jr., partner in the consulting engineering firm of Jansky & Bailey, Washington, D. C., pioneers in FM and former operators of an experimental FM station.

Raymond F. Kohn, one of five war veterans who comprise the Penn-Allen Broadcasting Company of Allentown, Pa., holders of an FM construction permit.

Stanley W. Ray, Jr., vice-president of the Supreme Broadcasting Co., of New Orleans, who started operations with an FM station and later added an AM station.

Our officers, elected by the Board, are: Mr. Hofheinz, President; Mr. Dillard, vice-president; Mr. Gunther, Secretary; and Mr. Arthur Freed, vice-president of the Freed Radio Corporation, New York, Treasurer.

The objectives of the FM Association, which I will hereafter call the FMA, are five. They are:

1. To encourage the development of Frequency Modulation broadcasting.
2. To publicize the superior qualities of FM as an improved broadcasting service to the public.
3. To disseminate information among the members of this Association regarding the general problems incident to FM operation.

4. To cooperate with receiver and transmitter manufacturers, and other suppliers of FM equipment and services, with the objective of establishing the wide-spread operation of FM stations as rapidly as possible.
5. To act as liaison between its members, the Federal Communications Commission and other agencies and organizations on the continuing overall problems affecting FM broadcasting.

Our membership at the present time numbers 166, broken down as follows:

Active broadcasters, 136; equipment and receiver manufacturers, 16; set distributors, 1; consulting radio engineers, 4; communications attorneys, 4; trade journals, 2; transcription producers, 2; news wire services, 1.

Of our aggregate of 136 broadcasters, 77 operate AM stations also, 57 operate FM stations exclusively and two are non-commercial educational FM stations. Forty-seven of our member stations are owned by newspapers, in the main small-town dailies.

I might say here that our broadcasting membership, with the exception of three, is composed entirely of small-station operators who see in FM an opportunity to compete with the larger, high-powered AM stations, an opportunity I might say that is not available in the AM field.

In short, the FM Association represents the "little fellow," the independent who was "left behind" in the AM field. Many of the newcomers to FM radio are small-town newspaper publishers and war veterans, most of whom had been in radio before they entered the military services.

When S.1333 was introduced in the Senate we sent copies to our full membership and requested comments. In most instances our members placed full confidence in their executive officers to represent them before this Committee.

Primarily, the FM Association believes that S.1333 in part is good legislation, and in part is not good legislation. With the Committee's permission I would like to take up the proposed bill section-by-section and comment accordingly.

If it pleases the Committee I shall skip those sections on which we have no comment to offer. This includes Section 5 on the organization of the Federal Communications Commission. We believe that is a policy matter for Congress to determine and we leave it in your good hands, without recommendation.

Section 2. I note that in definitions the term "Relay Stations" is omitted, whereas in the present Act "Relay" is defined. Inasmuch as relays will play a vital part in the future development of FM, particularly in

the establishment of FM networks, we recommend that the portion of the present Act relating to "Relays" be incorporated in the proposed legislation.

Section 8, Subsection (j), which would authorize the Commission to "prescribe uniform systems of financial reports which may be required from the licensee of each radio station regardless of the corporate organization or other control of such radio station by a licensee."

We concur in the provisions of Section 8, Subsection (j) insofar as the Commission is required to keep financial reports confidential, but based upon our interpretation, we are opposed to the provision authorizing the Commission to prescribe uniform systems of financial reports.

We take that provision to mean that the Commission shall prescribe a specific financial system to be kept by all stations, large and small. If, on the other hand, it is not the intent of this Committee to force a small operator to install the same method of bookkeeping or financial reports as the large corporation, then we feel that the language of the provision should be more explicit.

For instance, a community or Class A FM station operating in a small community in Indiana should not be required to keep financial records similar to those kept for WCBS-FM, the Columbia Broadcasting System's FM station in New York. Conversely, the FM Metropolitan or Class B station, operated by a large corporation in a large city, should not be required to adopt the system in use by WEAU, a small community station in Evanston, Illinois.

I cannot feel that it is the intent of this Committee to place a burden on the small-station operator by authorizing the Commission to prescribe for him the same system of bookkeeping that is used by the large million-dollar corporations with vast holdings. If it is the Committee's intent — and I suspect it is — not to establish identical systems of accounts for all types of licensees, then I would suggest that the language of this section be revised to give protection to the small independent operators.

I assume it is the intention of this Committee, in drafting Section 8, Subsection (j), to segregate broadcasting operations from other business enterprises of licensees. If such is true, then the FM Association heartily concurs in the amendment. However, under the present language an undesirable state of affairs might arise, leading to untold difficulties, particularly to the "little fellow" who is struggling along in his efforts to give his own community a really worth-while broadcasting service.

Sections 11 and 12. We question the language of the proposed amended Section 309, Subsection (b), particularly that portion which reads: "The parties in interest shall include, in addition to such others as the Com-



mission may determine, any person whose status as the holder of a construction permit or license would be adversely affected economically or by electrical interference because of the authorization or action proposed and any person then an applicant for facilities whose status as such applicant would be adversely affected on either or both of such grounds."

If we have interpreted this language correctly, then we can see a great hardship ahead for those who desire to enter the radio field, especially the new FM field. For instance, if Stations A, B and C already are in operation in a given community and the Commission grants a construction permit to New Station D, either or all of the three established stations could, under this provision, file protests with the FCC on the grounds that the fourth station would adversely affect them economically. The same would hold true on renewal of licenses. What is to prevent Station A from claiming that Station B affects Station A adversely economically at the time of Station B's renewal?

Congress has decreed that radio broadcasting is a free, competitive enterprise and not a common carrier. Under this proposed amendment, that competition would be limited and I fear the results would be disastrous.

In order for the Commission to determine whether an existing station would be adversely affected economically by (1) a new station or (2) a license renewal, the Commission would have to exercise control over the business practices of radio and determine how much money each station was entitled to earn.

When that day comes, gentlemen, radio as a free, competitive enterprise will be no more. Rather it will become a public utility, regulated economically by the FCC. And that might well lead to ultimate program control by Government. The Commission, in its efforts to reduce the income of one station and bolster that of another, would be obliged to consider the programming of both in its attempts to balance the revenues of each.

In proposed Subsection (c) of Section 309, any party in interest as defined in subsection (b) may file a protest within 30 days after any grant by the Commission without hearing. Again we object to the language of this proposed amendment. It would seem to open the door for a great volume of protests, thereby throwing such grants into hearings and delaying the establishment of FM as a nationwide service. Many a protest not in good faith might well be filed under Subsection (c) as delaying movements to new stations, whether they be FM, AM, television or facsimile. A good applicant, whose qualifications are unquestioned by the Commission, might well be kept out of the broadcasting field indefinitely and a com-

munity could be deprived of a new service because of protests under this provision.

Section 12, if adopted, we believe would serve as an effective weapon in the hands of those monopolies which would rejoice in the death knell of FM. I have in my files letters from certain AM broadcasters who have told me they have no intention of promoting FM nor of aiding its development. These few foot-draggers in the progress of FM are in the small minority. Nonetheless there are others — some with vast AM holdings — who have done nothing to encourage this new FM art.

Should Section 12 be permitted to stand, I fear that the Commission would be burdened with hearing after hearing every time a new FM station is authorized, because certainly those who are not helping FM's development have large financial stakes in lucrative AM operations and they do not want to face the competition that FM will offer.

Section 12, as it is presently written, would strike at the tender roots of FM which, after a delay of a decade, have begun to take hold. Should the Commission construe this section as giving it authority to determine whether a financial loss in operations constitutes economic adversity, then I fear that FM would be delayed for many, many years.

Very few FM stations of the more than 200 presently on the air are operating in the black. No more than five or six are showing any profit at all. Based on their overall investments, they are still operating in the red. FM is a new service. It will take some time to become established economically.

Under this provision the Commission might well determine that a single FM station in a community, which still is operating at a loss, would be adversely affected economically by any more stations in that area and deny additional service to the public. I do not believe that is the intent of this Committee, nor of the Federal Communications Commission. Nonetheless the danger is there.

We respectfully urge the Committee to rewrite Section 12, or to leave the present Sections 308 and 309 stand. We feel that the procedure presently prescribed by the Communications Act and the Commission's Rules and Regulations is fair.

Section 15. The proposed subsection (a), we believe, might open the way for misinterpretation of the Committee's intent with reference to equal opportunities for qualified candidates or their respective representatives to the use of broadcasting facilities.

I assume it is not the intent of this provision to place on the shoulders of licensees the burden of seeking out opposing candidates. Therefore I

would suggest that the language of Section 315 (a) as proposed be changed to read:

“(a) When any licensee permits any person who is a legally qualified candidate for any public office in a primary, general or other election to use a broadcast station, or permits any person to use a broadcast station in support of any such candidate, he shall *not deny* equal opportunities to all other such candidates for that office, or to a person designated by any such candidate, to use such broadcast station; and if any licensee permits any person to use a broadcast station in opposition to any such candidate or candidates, he shall *not deny* equal opportunities to the candidate or candidates so opposed or to a person designated by any such candidate, in the use of such broadcast station.” (Suggested changes in italics.)

I might go a bit further and suggest that the word “afford” be changed to “make available upon formal request in writing,” rather than “shall not deny.” We are fearful that many licensees will feel obligated to seek out the opposition to a particular candidate or party, thereby causing him to refuse to carry all political campaign broadcasts.

We believe that proposed Section 315(c) places dangerous restrictions on free speech in that it specifies who is a legally qualified candidate. Frequently a candidate is elected, particularly in local elections, through the write-in method. If his name does not appear on the ballot he is not entitled, under this provision, to time on the air to reply to his opponents. We believe Section 315(c) as proposed tends to give the majority parties the breaks and to stifle the voices of any minorities, and recommend that it be stricken, or broadened.

We believe that subsection (e) likewise should be deleted, inasmuch as it tends to place restrictions on free speech.

Section 17. Generally we are in accord with proposed Sections 330 and 331, with one exception. The proviso of Section 331(c) reads, “That in the case of a public officer speaking as such, the announcements shall specify only the subject of the discussion, the office held by him, whether such office is elective or appointive and by what political unit or political officer the power of election or appointment is exercised.”

We believe this to be cumbersome and would impose unnecessary obligations on the licensee. For instance, should the Secretary of State speak on the Moscow Conference, the licensee would be bound under this provision, to state that the Secretary of State is appointed by the President,

by and with the consent of the Senate. On a local level, licensees would be required to use two or three minutes to explain who some local officials are and how they obtained their offices.

I would suggest that identification of the speaker and his office would be sufficient to meet what I assume is the intent of the Committee.

Section 18. We have no objection to proposed Section 332.

We must oppose Section 333(c) (2) which permits a single licensee to own sufficient stations to serve not more than 25 per cent of the population.

Although I am sure it was not the intent of this Committee to create a condition whereby four monopolies might well control all of this nation's radio facilities, nevertheless that danger is apparent as the provision now stands. We heartily concur in the statement of Chairman Charles R. Denny of the Federal Communications Commission with reference to Subsection (2) of Section 333(c).\*

The FM Association prefers to leave the procedure as it now stands. Although we may not agree that a strict limitation of six FM stations should be placed arbitrarily on any licensee, we would much prefer to see a limit of six stations, rather than the limitation on population.

On the other hand we feel that the Commission should promulgate no ironclad rule, but rather should handle FM station distribution in the manner in which AM stations are licensed. An occasion might arise whereby one large corporation, operating stations profitably in six metropolitan markets, could give service to some smaller unprofitable market or two, whereas such small markets could not support an independent station.

Section 25. We heartily endorse this proposed amendment to prohibit discrimination. This Committee no doubt had in mind the newspaper ownership hearings which the Commission held some years ago and which resulted in a long delay — and in some instances eventual denials — of

\*Chairman Denny stated, in part: "The Commission has never felt it possible to adopt a single rule for the various broadcast services. For example, in standard broadcast there is no specific provision concerning the maximum number of stations which a single licensee may own. Such determinations are made on a case-to-case basis. In FM, on the other hand, the Commission has from the outset had a six-station limit on the number of stations. In the case of television we originally started out with a limit of three stations and have raised it to five stations. We have consistently announced that we are at all times prepared to consider a revision of these rules if an appropriate showing is made."

"The 25% rule proposed in Section 19 would lead to unfortunate results. On the basis of the 1940 census 25% of the people would be approximately 33,000,000 people. This would mean that a single person could have stations serving, for example the entire population of 20 of the 22 states west of the Mississippi. . . . From another point of view, the 25% rule would make it impossible, for example, for a single person to own two 50 kw stations in such scattered regions as New York City and Chicago."

"The Commission has considered the problem of network ownership of stations and has determined that on a nation-wide basis it is not against the public interest for a network to own stations in certain key cities such as New York, Chicago, San Francisco, Los Angeles, and Washington. This is based on the fact that these cities are not concentrated in one area but reach across the entire country and also that network operations are facilitated by the ownership of stations in key cities. Certainly, a much more serious problem is raised by the same person owning a station in every city in New England, for example, than is involved in the ownership of stations by the networks in key cities. Yet, under the proposed amendment the networks would have to dispose of many of their existing stations, while one person would be permitted to own a station in every city in New England."

"On the basis of the foregoing it is clear that it is impracticable to devise a statutory provision based upon population served."

AM facilities to newspapers. Inasmuch as the smaller newspapers which were squeezed out of AM broadcasting comprise a large number of applicants for FM facilities, and in view of the fact that these newspapers are diligently promoting FM, we concur in proposed Section 418.

It is not our intent to burden this Committee with a parade of witnesses. I might say that after we had received comments from our membership on S.1333, I met with our executive committee, which is charged with policy matters of the FMA, and with our legal counsel. As a result of those meetings we offer two additional proposals for S.1333.

I respectfully ask permission at this time to submit proposed drafts of two amendments before the record is officially closed. Our legal counsel is preparing these drafts and they should be ready momentarily.

Briefly we will propose that the Congress require the Federal Communications Commission to issue FM licenses for a period of five years.

Under the present Act the Commission may issue licenses for a period of three years. It was not until after hearings were held on S.814 in the 78th Congress, and the term of licenses came up, that the Commission extended the license period from two to the maximum three years provided by law.

Inasmuch as those entering FM must invest large sums and be prepared to keep their stations in operation for long periods of time before they can hope to realize any profit, we urge the Congress to give serious consideration to making the license periods for FM a minimum of five years rather than a maximum of three years. This would, we believe, tend to stabilize the FM profession and would serve to entice high-type broadcasters into the field.

Many qualified applicants are hesitant to invest their money in FM in view of the one-year license period now in effect under Commission rules. We of the FMA are doing all we can to stimulate interest in FM, which we believe will eventually replace AM as the accepted method of broadcasting. Some encouragement from the Congress and the FCC in the way of five-year licenses would do much, we feel, to bring about FM's rapid development.

Our second point is this: We respectfully urge the Congress to give serious consideration to the extension of the FM band. When the Commission moved FM from the 42-50 megacycle band to the 88-108 megacycle band, provision was made for 20 channels to be reserved for the exclusive use of non-commercial educational stations, leaving 80 channels for commercial stations. Of these 80 channels, 20 have been set aside for com-

munity or Class A stations and 60 for Class B or metropolitan and rural stations.

Already the northeastern section of the United States, designated by the Commission as Area 1, is suffering a shortage of FM channels. That is not true in the less thickly-populated areas farther west, but in Area 1 there have not been sufficient channels to meet the demands.

In FM we believe lies the solution to a free, competitive radio, providing there are sufficient channels available for all who are qualified to become broadcasters under the Communications Act. In the past fortnight the Commission held informal engineering conferences which developed the fact that low-band television below 88 megacycles is experiencing considerable interference. It is on these low bands that television is sharing space with emergency and other services.

We sincerely believe that television eventually will find its permanent home in the upper frequencies, above 400 megacycles, where there is sufficient room for expansion. Therefore we request that the Congress authorize the Commission to add another 20 or 30 FM channels to the present band below and contiguous to 88 megacycles.

Television is still in more or less experimental stages, whereas FM is an established service. If the FM band is to be widened — and we believe it must be to provide an adequate nationwide service — it should be done before these other services become established and the public is saddled with expensive receiving sets.

# Bill Henry

## President, Radio Correspondents' Association

**Y**OUR committee has indicated a desire to know the reaction of the individual broadcaster of news and analysis to the proposed law, and this statement is offered in response to that request.

I have been in the business of gathering, editing and reporting news for thirty-seven years, did my first broadcasting more than twenty years ago, and my present major radio activity is a news broadcast at 8:55 p.m. over the Columbia Broadcasting System five nights a week. You have heard considerable testimony concerning other parts of the proposed bill, and I will confine myself to a brief discussion of Section 18, sub-section 332(a), which is of particular interest to me as a newscaster.

I believe that I speak for everyone in radio newscasting in agreeing heartily with the primary purpose of this section — namely, to protect the public interest by properly identifying news broadcasters and, insofar as possible, giving the source of their news and describing the nature of their broadcast. This is a problem which has concerned not only radio but everyone who has been in the news business ever since the dissemination of information began.

This is not a new problem. Long before the radio was invented, identification of news sources was a matter of vital interest. It was important to the Indian who saw a smoke signal not only to be able to read it but to know who was sending it in order that he might judge how much faith to put in the information it transmitted. But it was equally important to the



sender of the smoke signal that his identity should be known in order that the information he sent should be taken at its proper value.

I am emphasizing this point in order to make clear that proper identification of the source of news is not a matter of concern only to the recipient but equally, if not more so, to the broadcaster of the news. The individual radio stations, the radio networks, and the individual newscasters have sought to properly identify the source of the news not only because it is a duty and a responsibility under their voluntary concept of public responsibility but also because it is to their own advantage to do so.

It has been said here, by a member of the Committee, that he found difficulty in differentiating between news and opinion in some broadcasts to which he has listened. He is not alone in that quandary. That difficulty has existed since the first bit of information was passed along from one man to another centuries ago. The difficulty lies in the nature of news. The distinction between fact and interpretation of fact is very fine and has defied exact definition.

The new law seeks to clarify, and at the same time protect the listener, by requiring in Section 332(a) that the newscaster identify the source of his news. It was stated before this Committee and is, I believe, rather generally accepted, that most newscasters start basically with the ticker service supplied by one of the established news services, such as the Associated Press, United Press, International News Service, or Transradio. These agencies daily perform miracles of gathering and disseminating hundreds of thousands of words with an accuracy and objectivity that is almost unbelievable.

However, I would suggest that these news agencies themselves do not give the source of their news. They seldom give the name of the person who actually writes what comes off the ticker and they never mention the several persons involved in gathering, editing, augmenting and rewriting it. In other words, if a newscaster should say, in accordance with Section 332(a), "the source of my news is the Amalgamated Press" (to use a fictitious name rather than choose any one of them), he would not really be giving the source of the news at all. He would merely be naming the organization which is not only willing, but proud, to accept responsibility for the accuracy and authenticity of the news put out under its name.

Quoting a reliable, established source such as a news service does not give full protection. The devil can quote Scripture to suit his purpose, and so can a special pleader for some cause if he is unscrupulous, by clever choice of items.

The consumer, whether he be a radio listener who hears it or an editor who puts it in his paper, accepts or rejects this information in accordance

with the qualities that are associated in his mind with the news agency which puts it out. That, gentlemen, is the exact duplicate of what happens with a newscaster when he goes on the air and identifies himself — he is taking responsibility for what he says, regardless of the source of his information. It is my experience that, as a listener to the radio and a reader of news, I base my acceptance or rejection of the statements I hear and see on the opinion I have formed of the person who makes the statements. Radio stations, networks and individual broadcasters now meet this problem by clearly identifying the person making the broadcast.

In the matter of distinguishing between news and comment I must say, out of long experience, that in fact there is little or no news without the exercise of personal judgment and opinion. My own program, for instance, is generally regarded as a straight news program. It is quite obvious that it does not contain, in its four minutes of actual news, all the news. That makes it plain that my personal judgment has been exercised in sorting out of all the news that is available those events which seem to be of the greatest importance or public interest. Even though I should make up my entire program — although this never happens — from the wires of one news service, there would probably be not a half dozen words identifiable with those which appeared on the news agency wires. I frequently combine the essential parts of three or four news stories in a single paragraph, or even a single sentence. The ability to select related items, condense them, and rewrite them clearly and concisely is my major contribution to the program and involves judgment and opinion in an extreme degree — yet most experts would agree that what emerges in the listeners' parlor is news, and not comment.

Actually — and this applies to most of us — what I present to my listeners on the air is information which I gather from news tickers, from personal or public interviews, from attending press conferences, from other reading, listening, and public or private discussion — all of this screened against whatever my own personal experience, background and training may be. I work from 8 in the morning until 9 at night condensing the news into a four-minute broadcast. In short, what people get from me is pure Bill Henry.

Most news analysts or commentators use the news provided by such major wire sources as the Associated Press or the United Press as a starting point and then make such research as is necessary or as time permits, or as their judgment dictates, in order to find out what it means. This often entails obtaining background and clarification from government officials who, for good reason, may not wish to be quoted by name or position.

The State Department, for instance, may not judge that the time has come to take an expressed position on some issue; yet such a position might be inferred if it were known that an explanation of the situation had come from the State Department. And this is even more conspicuously true of information received from members of Congress, not for quotation.

Possibly the requirement in Section 332 which says "all news items shall be identified generally as to source" does not imply that a broadcaster must tell the name of his informant — too many court decisions have held the contrary. But even a general identification of source would sometimes be embarrassing to the source for quite valid and honorable reasons.

If general identification merely means the announcement at the beginning and end of the broadcast, it could still take a good deal of time. In a typical broadcast dealing with a dozen or more topics — and most of them deal with more than that — such an announcement might be something like this:

"The news in this broadcast comes from the Associated Press, the United Press, the publicity releases of the National Association of Manufacturers, the United Automobile Workers' Union, reports of the Department of Commerce, Department of the Interior and the Department of State; material from the information services of the French and Netherlands governments; the speaker's personal recollection of conversations with foreign statesmen over the past several years; and information gathered from various other sources by myself and my staff. The editorial expressions are those of the speaker, who is an employee of the Nonesuch Broadcasting Company." Such an announcement at the beginning and end would make something of a dent in any broadcast — greatly limiting the amount of information that could be given because of lack of time and, without question, severely injuring the listenability of the program. Of course, if each specific news item had to be identified as to source — and under a strict interpretation of the proposed law that would certainly be possible — the listening value of the program would be completely destroyed.

I should respectfully suggest to the committee that the restrictions proposed under Section 332(a) would apply to many things other than the sort of thing it is intended to cover. I suggest that the committee consider the effect of this regulation on sports broadcasts, theatrical and musical and book and motion picture reviews, fashion discussions and other such radio programs which are popular and educational — and highly opinionated — and which are classified as news features. Will Ted Husing and Deems Taylor and Hedda Hopper and Lily Dache have to stop and explain which of their statements are fact and which of them are opinion

when discussing the greatest fullback in gridiron history, or the relative merits of Bach and Irving Berlin, or whether something is a two-star or a four-bell picture? Previous witnesses have suggested the possible effects on television and facsimile printing of newspapers. Furthermore, you can't legislate against voice inflection or provocative and unduly exciting delivery. The Committee, it seems to me, in its commendable effort to protect the listening public must also weigh the possibility that this new legislation may open a Pandora's Box of future complications.

To sum up: This is an important problem, but NOT a new problem. The radio networks, the individual stations and the individual broadcasters have long recognized it, both as a responsibility and as an opportunity, and have sought to meet it. I believe that their voluntary solution, currently applied almost universally, is about as good a solution as can be reached. Almost without exception the newscaster is identified as to name; frequently his position with the broadcasting company is given and also the city from which his broadcast originates. Usually the individual is further identified as a "reporter" or a "news analyst" or a "commentator" or, even more specifically, the wording characterizes the nature of the program with some such statement as "here is Mister So-and-So with the news behind the news" or "with the news and his comments on the news."

In the last analysis the object of all our thoughts is the listener — the ordinary everyday citizen who turns on his radio to hear news and comment from one or a number of broadcasters. I believe that it is a grave error to underestimate his intelligence and his power of discrimination. He is free to turn the programs on and off at his own discretion — and we all know that he does it because we all do it ourselves. Eventually, after a certain period of listening, he arrives, according to the best American tradition, at his own opinion regarding the merits of the program, which he almost invariably identifies with his opinion of the person whose voice he hears. He would do so regardless of the explanatory matter before and after or during the program and, also in accordance with the best American tradition, he is free to listen or not to listen. He exercises that right. Furthermore, he exercises his right to tell the world in general, and us in particular, just what he thinks. He exercises that right too. That's the free American way of doing things. I believe in it.

# Radio Correspondents' Association

Statement submitted by Bill Henry, President

**W**E agree heartily with the importance of pinning responsibility for accuracy on broadcasters of news, analysis and comment. We agree that the listening public has a right to be informed as to the identity of the broadcaster, his responsibility, and the nature of his broadcast.

We believe that responsible stations and networks are already doing these things, not only as a matter of duty to the public, but also for their own benefits.

We believe, as a matter of principle, that broadcasting should be as free of regulation as the press and we oppose any regulation beyond that already in existence.

We state it as our opinion that Section 332(a) of Section 18 as proposed, if applied generally, is meaningless and, if applied literally or harshly, would have the effect of destroying the continuity and listenability of news, analysis and commentary programs and would trespass on the well-established right of responsible reporters to protect confidential sources of legitimate news. We believe that Section 332(a) is both unnecessary and unworkable and believe it should be eliminated.

With regard to Section 332(b), which exempts news programs from proposed regulations designed to control other types of broadcasts, we respectfully suggest clarifying it in two places. Beginning with the words "general news reports" we suggest it should say "general news reports or descriptions, presentations, discussions or analyses of current events," etc. We also suggest that after the words "general purpose of the broadcast" it should read "nor to news analysis or comment by a regular employee of the station or network originating the broadcast."

## Fulton Lewis, Jr.

It is my desire to confine my testimony on Senate Bill 1333 to those provisions about which I have some first-hand experience and interest, and I wish the Committee to understand that any testimony I give is not by way of criticism, but rather with the constructive intention of trying to assist the Committee in arriving at sound, workable legislation.

Therefore, with one exception, I shall confine myself to a single provision of the bill, specifically Section 332(a), which is entitled "Identification of Source in News Broadcasts."

The one exception which I just mentioned has to do with provisions contained in Section 315(f) of the bill concerning the non-liability of any licensee for libel, slander or other similar actions on the part of a broadcaster over whom they have no control.

Section 332(b) makes this provision inoperative insofar as it may apply to regular news broadcasts or broadcasters. I respectfully suggest that the Committee give serious consideration to the inclusion of a provision in the bill which would grant the same immunity to radio stations in the case of network news broadcasts as the bill now grants them on uncontrolled political speakers. The mere mechanics of radio broadcasting makes it humanly impossible for any radio station, except the one at which a network news broadcaster or commentator is originating, to have any knowledge of what he will say in the course of a given broadcast and that in turn makes it humanly impossible for the station to protect itself from

any libelous or slanderous or otherwise actionable statements that the broadcaster may make during a news period.

In my own case, I respectfully submit that I should be the person held responsible for any slanderous or libelous statements that I make, but that if I am broadcasting from Washington, D. C., and my broadcast is put on the air by radio station KHJ in Los Angeles, and I make a libelous statement about some individual, radio station KHJ in Los Angeles certainly has no responsibility in the matter, because it becomes nothing more than a cog in the mechanics of radio distribution. It could not possibly prevent the libel, even if it wished to do so, because the libel has gone out over its air waves before it is able to cut the program off, and nothing can recall those air waves.

I submit that the situation is entirely different in the case of a newspaper printing the news or a press association. There the editors and employees of the local newspaper have ample opportunity to stop such libel, and having the opportunity, they have also the responsibility to do so. If they fail, they are properly subject to action. The same is true in the case of a local newscaster who compiles from the press association or other sources a five-minute or a fifteen-minute news broadcast and reads it over the air. He, as an employee and official of the radio station, has the opportunity of deleting and eliminating any libel, and if he fails to do so, it is his responsibility and that of his employers. But where a radio station manifestly has no physical opportunity to safeguard and protect itself, I suggest — and I am sure that the Committee will agree — that the local radio station should not be held responsible.

As for the provisions of Section 332(a), "The Identification of Source in News Broadcasts," I personally discern in the wording, as it now stands, a very commendable intention on the part of the authors of the bill to try to correct certain irresponsibilities and unfairness and improprieties which have crept unhappily into some phases of radio news broadcasting.

As one who has been gathering and reporting news by radio for ten years, and who was a local newspaper and press association newspaper reporter for thirteen years prior thereto, I sincerely believe that the Committee will see after a little explanation the unworkability and impracticability of the proposed solution of the problem as contained in this section.

As I interpret this provision, all news pertaining to political matters which is used on any radio broadcast would have to be specifically attributed to some specific individual or some specific department. The mere statement of fact, even though indisputably true, would be ruled out, and



I gravely doubt whether any member of this Committee would want such a situation from the standpoint of the public interest or from the standpoint of their own individual interest. Such a course would reduce news broadcasting on national affairs to a mere slanted recitation of whatever propaganda and half truths and politically-slanted statements officials of a given department or agency of government might wish to make, and would reduce the very important function of radio news dissemination in national affairs to the status of being a sounding board for those in official position.

The truth is that the most important news that comes out of a presidential press conference or a State Department press conference is that information which, for various reasons, the President or the Secretary of State is very glad to have released, but which cannot be attributed to him for diplomatic or possibly domestic political reasons. The day never passes but that dozens of the members of this Congress — and, in the best of good nature, I must include members of this Committee as well — do not pass on to me highly accurate and valuable information so far as the public is concerned; information that it is essential that the public know but which — for various reasons best known to these gentlemen and to you gentlemen yourselves — cannot be attributed to them or to you.

To deprive radio news sources of the privilege to use such information and yet to allow the newspaper press to continue to do so (and I am sure that you gentlemen agree that the Congress would not have the power to impose such a regulation as this on the printed press) would be to hamstring and paralyze the highly important and useful radio news-gathering facilities of the nation in their competitive position with printed news.

In all honesty, I doubt that Congress has the constitutional right to impose this provision on the radio news profession.

Suppose, for example, that I make a statement over the air that is perfectly truthful, accurate to the last detail, and no one on either side of the political fence could quarrel with in any particular. No one is harmed by it, no one is helped by it. It certainly cannot be the contention of this Committee that, because I did not disclose the source of that information, it is within the power of Congress to say that I committed an unlawful act. If the statement was untrue, and injured someone, I am subject to the laws of libel. If the statement was seditious, I am subject to criminal prosecution. But as I interpret this provision, I could not make a truthful harmless statement over my microphone, without being in violation of this law.

If I may say so, I even doubt the constitutionality of a law that would forbid one to make an *untruthful* statement without stating the source of that statement.

The fact is that this provision underwrites untruthful statements, as long as they can be attributed to somebody. And I suggest that that has been too much the rule in national affairs reporting for a long time past, even without a law to underwrite it.

I suggest also that the attempts to distinguish between straight news and "editorial or interpretative comment" is also virtually impossible. Let me assure you gentlemen that there is no such thing as an objective reporter. There never has been; there never will be. There never can be because objectivity itself is a question of what values one places on it and by what standards one identifies it. What may be objectivity to me — an attempt to interpret the news of a given day in terms of the Constitution and the Declaration of Independence and the commonly accepted tenets of American tradition — is entirely unobjective to someone who thinks that those standards are less important than the carrying-on and promotion of a cause which they call the New Deal.

Even the local newscaster who takes the International News Service news report and selects items which he reads over the air — even he is not an objective reporter, because his mere selection of this item of news as against another which he throws away reflects his own personal opinion of what is or is not important.

I assure you gentlemen that, as a radio broadcaster or as a newspaper editor, I can take the press association reports of any given day and by mere selection of the news therein produce two 15-minute broadcasts; one of which will be violently reactionary and the other of which will be so radical as to sound as though it came from the Daily Worker.

No reporter covering any committee hearing or any debate in this Congress can report with complete objectivity, because it is impossible for him to report everything with equal weight, and in the selection of what he considers to be important, he thereby expresses his own editorial opinion.

I believe very sincerely, gentlemen, that that is one of the fundamental reasons that freedom of speech and of the press has been such an important factor in the political processes of this country. I realize more keenly than you do, perhaps, the numerous crimes and offenses that have been committed and attempt to be committed in the name of a free press. Too often it is used by individuals whose confused minds picture it as some special privilege for newsmen and editorialists. It is not a privilege of

theirs, of course — rather it is the privilege of the public at large to have a free and untrammelled expression.

So, out of the extremes of both sides, out of the myriad facets of points-of-view and full public debate and discussion, there may come in the end — and there generally does come — a reasonably sound and logical balance of conclusion in the public mind.

That being so, I respectfully suggest that any legislation that would tend to cut off any part of the truthful information which could and should reach the American public, is far more damaging than any possible good that could be accomplished.

If the Committee will bear with me, I should like to suggest a possible substitute by way of accomplishing the same end which, I believe, is considerably more in keeping with the tradition of free speech and with the really important responsibility of radio broadcasting in helping to inform the American people as to what is going on and what is happening in the affairs of their government that they may better and more intelligently govern themselves and rule their own destinies.

It occurs to me that this provision probably is born of a concern about possible ulterior motives in the minds of those doing the broadcasts, possible hidden influences behind them, one force or another using them as mouthpieces, rather than an actual concern over what the source of information is. The source is far less important, I submit, than whether the information is truthful or not, and whether it is propaganda, and whether the individual who puts it out is really a reporter who is looking for facts or whether he is a propagandist, trying to *distort* the facts.

Why not attack the problem frontally, then? Why not treat the smallpox as smallpox, inside the system, instead of putting salve on the surface eruptions?

You, the Congress, have declared that the air over which radio broadcasters speak belongs to the people, to the public, and the declaration is entirely sound. We enjoy the use of those air waves only insofar as we perform a public service — in this case, the public service of helping to keep the public informed and factually equipped to make their decisions of self-government.

In view of my contention that there is no such thing as objective reporting, and no laws that the Congress can ever pass will ever achieve it, I suggest that the Committee abandon the idea of trying to caponize radio news broadcasting, and instead, try to write some stipulations that will permit the public to do its own censoring and its own appraising.

I suggest that there be written into this bill, as a substitute for this provision, a requirement that every radio news broadcaster, including me and the local station announcer who merely selects news items from a press association report, be required to keep on public file, under oath and at all times, a complete, up-to-date list of all his sources of income — private and professional — and all sources of income of all members of his immediate family, all organizations with which he is affiliated or ever has been affiliated, all clubs and societies to which he has ever belonged and all jobs he has ever held — everything about him, so that the public may know exactly the nature of his background and his experience, and what his influences are, and where his financial backing comes from, and who he is. And I should say there should be a heavy penalty for any wilful misrepresentation or coloring or covering up in that sworn statement.

Then the public knows exactly the nature of the mill that is his mind, and exactly the prejudices that are likely to be there, and can discount his interpretations accordingly.

If that were done, all worries about ulterior motives would, I believe, be ended. It would serve as a highly effective policing influence on the news broadcasting profession in general.

For those of us who have nothing to hide and nothing to conceal, there is no reason in the world for us to object. If we are purporting to use the public air waves, and enjoy the public trust that goes with that, the public certainly is entitled to know everything there is to know about us.

For those of us who DO have something to hide, and who cannot stand the full light of day, I submit that the public is entitled to know the truth about us, because if there IS something wrong, we shouldn't be entitled to exercise that position of trust and to use those air waves.



# APPENDIX

## APPENDIX A (Facsimile of S. 1333)

80TH CONGRESS  
1ST SESSION

# S. 1333

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### IN THE SENATE OF THE UNITED STATES

MAY 23 (legislative day, APRIL 21), 1947

Mr. WHITE introduced the following bill; which was read twice and referred to the Committee on Interstate and Foreign Commerce

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## A BILL

To amend the Communications Act of 1934, as amended, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That this Act may be cited as "Communications Act Amend-  
4       ments, 1947".

5       SEC. 2. Subsections (o) and (p) of section 3 of the  
6       Communications Act of 1934, as amended, are amended  
7       to read as follows:

8       “(o) ‘Broadcasting means the dissemination of radio  
9       communications intended to be received directly by the  
10      public.

11      “(p) ‘Network broadcasting’ or ‘chain broadcasting’



1 means the simultaneous or delayed broadcasting of identical  
2 programs by two or more stations however connected.”

3 SEC. 3. Section 3 of such Act is further amended by  
4 adding after subsection (aa) the following:

5 “(bb) The term ‘license,’ ‘station license,’ or ‘radio  
6 station license’ means that instrument of authorization re-  
7 quired by this Act or the rules and regulations of the Com-  
8 mission made pursuant to this Act, for the use or operation  
9 of apparatus for transmission of energy, or communications,  
10 or signals by radio, by whatever name the instrument may  
11 be designated by the Commission.

12 “(cc) The term ‘broadcast station,’ ‘broadcasting sta-  
13 tion,’ or ‘radio broadcast station’ means a radio station  
14 equipped to engage in broadcasting as herein defined.

15 “(dd) ‘Network organization’ means any person who  
16 sells or clears time, or who has any contract, agreement,  
17 understanding, or arrangement, either express or implied,  
18 with any broadcast station under which such person under-  
19 takes to sell or clear time, for the presentation of programs,  
20 produced either by itself or others, to be broadcast simul-  
21 taneously over more than one broadcast station irrespective  
22 of the means employed, or to be broadcast simultaneously  
23 over more than one broadcast station by means of record-  
24 ings; but shall not include advertising agencies or persons

1 who contract directly with the licensee or broadcast station  
2 for broadcast time for their own use.

3 “(ee) The term ‘hours’ or ‘broadcast hours’ means  
4 clock hours.

5 “(ff) The term “construction permit’ or ‘permit for  
6 construction’ means that instrument of authorization required  
7 by this Act or the rules and regulations of the Commission  
8 made pursuant to this Act for the installation of apparatus  
9 for the transmission of energy, or communications, or signals  
10 by radio, by whatever name the instrument may be desig-  
11 nated by the Commission.

12 “(gg) The term ‘single broadcast band’ means that  
13 group of channels assigned for broadcasting by means of  
14 amplitude modulation, international shortwave amplitude  
15 modulation, frequency modulation, facsimile, television, or  
16 any other type of broadcast service subsequently developed,  
17 respectively.”

18 SEC. 4. (a) Subsection (a) of section 4 of such Act,  
19 as amended, is amended by striking out “, one of whom the  
20 President shall designate as chairman”.

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

23 “CHAIRMAN AND DIVISIONS OF THE COMMISSION

24 “SEC. 5. (a) Within thirty days after the enactment

1 of this Act, and annually thereafter, the Commission  
2 (1) shall select one of its members to be Chairman of  
3 the Commission for the ensuing year, and (2) shall organ-  
4 ize its members, other than the Chairman, into two  
5 divisions of three members each, said divisions to be known  
6 and designated as the 'Common Carrier Division' and the  
7 'Broadcast Division'. Except as hereinafter provided, no  
8 member designated to serve on one division shall, while  
9 so serving, have or exercise any duty or authority with  
10 respect to the work or functions of the other division.

11       “(b) The Broadcast Division shall have jurisdiction  
12 over all questions of substance and procedure arising under  
13 the provisions of this Act and the rules and regulations  
14 of the Commission enacted pursuant to this Act relating  
15 to wire and radio communications intended to be received  
16 by the public directly, and shall make all adjudications  
17 involving the interpretation and application of those pro-  
18 visions of the Act and of the Commission's regulations.

19       “(c) The Common Carrier Division shall have jurisdic-  
20 tion over all questions of substance or procedure arising  
21 under the provisions of this Act and the rules and regula-  
22 tions of the Commission enacted pursuant to this Act relat-  
23 ing to wire and radio communications by a common carrier  
24 or carriers, or which are intended to be received by a desig-  
25 nated addressee or addressees, and shall make all adjudica-

1 tions involving the interpretation and application of those  
2 provisions of the Act and of the Commission's regulations.

3       “(d) The whole Commission shall have and exercise  
4 jurisdiction over the adoption and promulgation of all rules  
5 and regulations of general application authorized by this  
6 Act, including procedural rules and regulations for the Com-  
6 mission and the Divisions thereof; over the assignment of  
8 bands of frequencies to the various radio services; over all  
9 signals and communications of an emergency nature, includ-  
10 ing those by ships at sea and those relating to fire control  
11 and police activities; over all signals and communications  
12 by and between amateur stations; over the qualification and  
13 licensing of all radio operators; over the selection and ap-  
14 pointment of all officers and other employees of the Com-  
15 mission and the Divisions thereof; and generally over all  
16 other matters with respect to which authority is not other-  
17 wise specifically conferred by the other provisions of this  
18 Act. In any case where a conflict arises as to the jurisdic-  
19 tion of the Commission or any Division thereof, such question  
20 of jurisdiction shall be determined by the whole Commission.

21       “(e) The Chairman of the Commission shall be the  
22 chief executive officer of the Commission. It shall be his  
23 duty to preside at all meetings and sessions of the whole  
24 Commission, to represent the Commission in all matters  
25 relating to legislation and legislative reports, to represent

1 the Commission or any Division thereof in all matters re-  
2 quiring conferences or communications with representatives  
3 of the public or other governmental officers, departments,  
4 or agencies, and generally to coordinate and organize the  
5 work of the Commission and each Division thereof in such  
6 manner as to promote prompt and efficient handling of all  
7 matters within the jurisdiction of the Commission. The  
8 Chairman of the Commission shall not be a member or serve  
9 upon either of said Divisions, except in the case of a vacancy  
10 or the absence or inability of a Commissioner appointed to  
11 serve thereon, the Chairman may temporarily serve on either  
12 of said Divisions with full power as a member thereof until  
13 the cause or circumstance requiring said service shall be  
14 eliminated or corrected.

15       “(f) Each Division of the Commission shall choose its  
16 own chairman, and, in conformity with and subject to the  
17 foregoing provisions of this section, shall organize its mem-  
18 bership and the personnel assigned to it in such manner as  
19 will best serve the prompt and orderly conduct of its busi-  
20 ness. Each Division shall have power and authority by a  
21 majority thereof to hear and determine, order, certify, report,  
22 or otherwise act as to any of said work, business, or func-  
23 tions over which it has jurisdiction. Any order, decision,  
24 report made, or other action taken by either of said Divisions  
25 with respect to any matter within its jurisdiction, shall be

1 final and conclusive, except as otherwise provided. The  
2 secretary and seal of the Commission shall be the secretary  
3 and seal of each Division thereof.

4       “(g) In the case of a vacancy in the office of the  
5 Chairman of the Commission or the absence or inability of  
6 the Chairman to serve, the Commission may temporarily  
7 designate and appoint one of its members to act as Chair-  
8 man of the Commission until the cause or circumstance  
9 requiring said service shall have been eliminated or corrected.  
10 During the temporary service of any such Commissioner  
11 as Chairman of the Commission, he shall continue to exer-  
12 cise the other duties and responsibilities which are conferred  
13 upon him by this Act.

14       “(h) The term ‘Commission’ as used in this Act shall  
15 be taken to mean the whole Commission or a Division  
16 thereof as required by the context and the subject matter  
17 dealt with. The term ‘adjudications’ means the final dis-  
18 position of particular cases, controversies, applications, com-  
19 plaints, or proceedings involving named persons or a named  
20 res.

21       “(i) The Commission or either Division thereof is  
22 hereby authorized by its order to assign or refer any portion  
23 of its work, business, or functions to an individual Commis-  
24 sioner, or to a board composed of an employee or employees  
25 of the Commission, to be designated by such order for

1 action thereon, and by its further order at any time to  
2 amend, modify, or rescind any such order or reference:  
3 *Provided*, That this authority shall not extend to duties  
4 specifically imposed upon the Commission, either Division  
5 thereof, or the Chairman of the Commission, by this or any  
6 other Act of Congress. Any order, decision, or report made  
7 or other action taken by any such individual Commissioner  
8 or board in respect of any matter so assigned or referred  
9 shall have the same force and effect and may be made,  
10 evidenced, and enforced as if made by the Commission or  
11 the appropriate Division thereof: *Provided, however*, That  
12 any person aggrieved by any such order, decision, or report  
13 may file a petition for review by the Commissioner or the  
14 appropriate Division thereof, and every such petition shall  
15 be passed upon by the Commission or that Division.

16 “(j) Notwithstanding any other provision of this sec-  
17 tion, the Commission may, by specific order to that effect,  
18 continue any member in the performance of particular duties  
19 undertaken and commenced while serving as Chairman of  
20 the Commission or as a member of a particular Division,  
21 irrespective of the fact that such a member has been assigned  
22 to and has assumed the performance of other duties; but such  
23 an assignment shall be made only when necessary to the  
24 efficient and proper functioning of the Commission or of  
25 either Division thereof, or when the failure to make such



1 an assignment would or might result in hardship or unneces-  
2 sary delay to parties having business before the Commission.  
3 During the temporary service of any Commissioner pursuant  
4 to any such assignment, such Commissioner shall continue  
5 to exercise the other duties and responsibilities which are  
6 conferred upon him by or pursuant to this Act.”

7 SEC. 6. Subsection (k) of section 4 of such Act is  
8 amended to read as follows:

9 “(k) The Commission shall make an annual report to  
10 Congress, copies of which shall be distributed as are other  
11 reports transmitted to Congress. Such reports shall contain —

12 “(1) such information and data collected by the  
13 Commission as may be considered of value in the deter-  
14 mination of questions connected with the regulation of  
15 interstate and foreign wire and radio communication and  
16 radio transmission of energy;

17 “(2) such information and data concerning the  
18 functioning of the Commission as will be of value to  
19 Congress in appraising the amount and character of the  
20 work and accomplishments of the Commission and the  
21 adequacy of its staff and equipment;

22 “(3) information with respect to all persons taken  
23 into the employment of the Commission during the year  
24 covered by the report, including names, pertinent bi-

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1 ographical data and experience, Commission positions  
2 held and compensation paid, together with the names of  
3 those persons who have left the employ of the Commis-  
4 sion during such year: *Provided*, That the first annual  
5 report following the date of enactment of Communica-  
6 tions Act Amendments, 1947, shall contain such infor-  
7 mation with respect to all persons in the employ of the  
8 Commission at the close of the year for which the report  
9 is made:

10 “(4) an itemized statement of all funds expended  
11 during the preceding year by the Commission, of the  
12 sources of such funds, and of the authority in this Act  
13 or elsewhere under which such expenditures were made;  
14 and

15 “(5) specific recommendations to Congress as to  
16 additional legislation which the Commission deems  
17 necessary or desirable.”

18 SEC. 7. Subsection (i) of section 303 of such Act is  
19 amended to read as follows:

20 “(i) Have authority to make such special regulations  
21 applicable to the technical apparatus and the technical opera-  
22 tion of stations engaged in chain broadcasting as it may  
23 deem necessary to prevent interference between stations.”

24 SEC. 8. Subsection (j) of section 303 of such Act is  
25 amended to read as follows:

1       “(j) Have authority to make general rules and regula-  
2 tions requiring stations to keep such records of programs,  
3 transmissions of energy, communications, or signals as it  
4 may deem desirable; and to prescribe uniform systems of  
5 financial reports which may be required from the licensee  
6 of each radio station rendering a particular type of broadcast  
7 service, which reports shall disclose the financial statements  
8 of any such radio station regardless of the corporate organiza-  
9 tion or other control of such radio station by a licensee. All  
10 such reports so filed shall be kept confidential by the Com-  
11 mission, except that they shall be available, upon request,  
12 for the information of any committee of the Congress, or for  
13 use upon order of the Commission, or either Division thereof,  
14 in any proceeding before the Commission.”

15       SEC. 9. Subsection (b) of section 307 of such Act, as  
16 amended, is amended to read as follows:

17       “(b) In considering applications for licenses, and modi-  
18 fications thereof, the Commission shall make such distribu-  
19 tion of licenses, frequencies, hours of operation, and of power  
20 among the several States and communities as to provide a  
21 fair, efficient, and equitable distribution of radio service to  
22 each of the same, giving effect in each and such instance to the  
23 needs and requirements thereof.”

24       SEC. 10. Subsection (d) of section 307 of such Act is  
25 amended by striking out from said subsection the following

1 language appearing in the last sentence thereof: “, but action  
2 of the Commission with reference to the granting of such  
3 application for the renewal of a license shall be limited to  
4 and governed by the same considerations and practice which  
5 affect the granting of original applications.”; by inserting a  
6 period after the word “licenses” preceding such language,  
7 and by inserting the following sentence at the end of said  
8 subsection: “When application is made for renewal of license  
9 which cannot be disposed of by the Commission under the  
10 provisions of section 309 (a) hereof, the Commission shall  
11 employ the procedure specified in section 309 (b) hereof  
12 and pending hearing and final decision pursuant thereto  
13 shall continue such license in effect.”

14 SEC. 11. (a) So much of subsection (a) of section 308  
15 of such Act as precedes the proviso is amended to read as  
16 follows: “The Commission may grant instruments of author-  
17 ization entitling the holders thereof to construct or operate  
18 apparatus for the transmission of energy, or communications,  
19 or signals by radio or modifications or renewals thereof, only  
20 upon written application therefor received by it: *Provided*,  
21 That (1) in cases of emergency found by the Commission  
22 involving danger to life or property or due to damage to  
23 equipment, or (2) during the continuance of any war in  
24 which the United States is engaged and when such action  
25 is necessary for the national defense or security or otherwise

1 in furtherance of the war effort, the Commission may grant  
2 and issue authority to construct or operate apparatus for the  
3 transmission of energy or communications or signals by radio  
4 during the emergency so found by the Commission or during  
5 the continuance of any such war, in such manner and upon  
6 such terms and conditions as the Commission shall by regu-  
7 lation prescribe, and without the filing of a formal applica-  
8 tion, but no such authority shall be granted for a period  
9 beyond the period of the emergency requiring it nor remain  
10 effective beyond such period:".

11 (b) Section 308 of such Act is further amended by  
12 adding a new subsection (d) as follows:

13 "(d) No license granted and issued under the authority  
14 of this Act for the operation of any radio station shall be  
15 modified by the Commission, except in the manner pro-  
16 vided in section 312 (b) hereof, and no such license may  
17 be revoked, terminated, or otherwise invalidated, by the  
18 Commission, except in the manner and for the reasons  
19 provided in section 312 (a) hereof. No proceeding for  
20 authority to transfer a station license or to transfer stock  
21 in a licensee corporation under section 310 (b) of this Act  
22 shall be utilized by the Commission for the imposition of  
23 sanctions or penalties upon any licensee for his conduct  
24 as such or for alleged deficiencies in the operation of his  
25 station."

1        SEC. 12. Section 309 of such Act, as amended, is  
2 amended to read as follows:

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

5        "SEC. 309. (a) If upon examination of any applica-  
6 tion provided for in section 308 the Commission shall deter-  
7 mine that public interest, convenience, and necessity would  
8 be served by the granting thereof, it shall authorize the  
9 issuance of the instrument of authorization for which appli-  
10 cation is made in accordance with said finding.

11        "(b) If upon examination of any such application the  
12 Commission is unable to make the finding specified in sub-  
13 section (a) of this section, it shall forthwith notify the  
14 applicant and other known parties in interest of the grounds  
15 and reasons for its inability to make such finding. Such  
16 notice, which shall precede formal designation for a hearing,  
17 shall advise the applicant and all other known parties in  
18 interest of all objections made to the application as well  
19 as the source and nature of such objections. The parties in  
20 interest shall include, in addition to such others as the Com-  
21 mission may determine, any person whose status as the holder  
22 of a construction permit or license would be adversely affected  
23 economically or by electrical interference because of the  
24 authorization or action proposed and any person then an  
25 applicant for facilities whose status as such applicant would

1 be adversely affected on either or both of such grounds.  
2 Following such notice, the Commission shall formally designate the application for hearing on the grounds or reasons  
3 then obtaining and shall notify the applicant and all other  
4 known parties in interest of such action and the grounds  
5 and reasons therefor, specifying with particularity the matters  
6 and things in issue but not including issues or requirements  
7 phrased generally. The parties in interest, if any, who  
8 are not notified by the Commission of its action with respect  
9 to a particular application may acquire the status of a party  
10 to the proceeding thereon by filing a petition for intervention  
11 showing the basis for their interest at any time not less than  
12 ten days prior to the date of hearing. Any hearing subsequently held upon such application shall be a full hearing  
13 in which the applicant and all other parties in interest shall  
14 be permitted to participate but in which both the burden  
15 of proceeding with the introduction of evidence upon any  
16 issue specified by the Commission, as well as the burden  
17 of proof upon all such issues, shall be upon the applicant.

18       “(c) When any instrument of authorization is granted  
19 by the Commission without a hearing as provided in subsection (a) hereof, such grant shall remain subject to protest as hereinafter provided for a period of thirty days.  
20 During such thirty-day period any party in interest, as  
21 defined in subsection (b) hereof, may file a protest directed  
22  
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25

1 to such grant and request a hearing on said application so  
2 granted. Any protest so filed shall contain such allegations  
3 of fact as will show the protestant to be a party in interest  
4 and shall specify with particularity the matters and things  
5 in issue but shall not include issues or allegations phrased  
6 generally. Upon the filing of such protest the application  
7 involved shall be set for hearing upon the issues set forth  
8 in said protest, together with such further specific issues,  
9 if any, as may be prescribed by the Commission. In any  
10 hearing subsequently held upon such application all issues  
11 specified by the Commission shall be tried in the same  
12 manner provided in subsection (b) hereof but with respect  
13 of all issues set forth in the protest and not specifically  
14 adopted by the Commission, both the burden of proceeding  
15 with the introduction of evidence and the burden of proof  
16 shall be upon the protestant. The hearing and determina-  
17 tion of cases arising under this subsection shall be ex-  
18 pedited by the Commission and pending hearing and  
19 decision the effective date of the Commission's action to  
20 which protest is made shall be postponed to the date of  
21 the Commission's decision after hearing, unless the authori-  
22 zation involved is necessary to the maintenance or conduct  
23 of an existing service, in which event the Commission shall  
24 authorize the applicant to utilize the facilities or authoriza-



1 tion in question pending the Commission's decision after  
2 hearing.

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

16       SEC. 13. Subsection (b) of section 310 of said Act is  
17 amended to read as follows:

18       “(b) No instrument of authorization granted by the  
19 Commission entitling the holder thereof to construct or to  
20 operate radio apparatus and no rights granted thereunder  
21 shall be transferred, assigned, or disposed of in any manner,  
22 voluntarily or involuntarily, directly or indirectly, or by  
23 transfer of control of any corporation holding such instrument  
24 of authorization, to any person except upon application to  
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1 the Commission and upon finding by the Commission that  
2 the proposed transferee or assignee possesses the qualifica-  
3 tions required of an original permittee or licensee. The pro-  
4 cedure for handling such application shall be that provided  
5 in section 309 hereof with respect to applications for  
6 licenses.”

7 SEC. 14. Section 312 of such Act, as amended, is  
8 amended to read as follows:

9 SEC. 312. (a) Any station license may be revoked (1)  
10 because of conditions coming to the attention of the Com-  
11 mission since the granting of such license which would have  
12 warranted the Commission in refusing to grant such license,  
13 or (2) for violation of or failure to observe the terms and  
14 conditions of any cease-and-desist order issued by the  
15 Commission pursuant to subsection (b) hereof: *Provided*,  
16 That no such order of revocation shall take effect until thirty  
17 days’ notice in writing thereof, stating the cause for the  
18 proposed revocation, has been given to the licensee. Such  
19 licensee may make written application to the Commission  
20 at any time within said thirty days for a hearing upon such  
21 order, and upon the filing of such written application said  
22 order of revocation shall stand suspended until the conclusion  
23 of the hearing. Upon the conclusion of said hearing the  
24 Commission may affirm, modify, or revoke said order of  
25 revocation.

1       “(b) Where a station licensee (1) has failed to operate  
2 substantially as set forth in the license, or (2) has failed  
3 to observe any of the restrictions and conditions of this Act  
4 or of a treaty ratified by the United States, or (3) has  
5 violated or failed to observe any rule or regulation of the  
6 Commission authorized by this Act, the Commission may  
7 institute a proceeding by serving upon the licensee an order  
8 to show cause why it should not cease and desist from such  
9 action. Said order shall contain a statement of the particulars  
10 and matters with respect to which the Commission is inquiring  
11 and shall call upon the licensee to appear before the Com-  
12 mission at a time and place therein stated, but in no event  
13 less than thirty days after receipt of such notice, and give  
14 evidence upon the matter specified in said order. If, after  
15 hearing, or a waiver thereof by the licensee, the Commission  
16 determines that a cease and desist order should issue, it shall  
17 make a report in writing stating the findings of the Com-  
18 mission and the grounds and reasons therefor and shall cause  
19 the same to be served on said licensee, together with such  
20 order.

21       “(c) Any station license granted under the provisions  
22 of this Act or the construction permit required thereby may  
23 be modified by the Commission either for a limited time or  
24 for the duration of the term thereof, if in the judgment of  
25 the Commission such action will promote the public interest,

1 convenience, and necessity, or the provisions of this Act or  
2 of any treaty ratified by the United States will be more  
3 fully complied with: *Provided*, That no such order of modi-  
4 fication shall become final until the holder of such outstand-  
5 ing license or permit shall have been notified in writing of  
6 the proposed action and the grounds and reasons therefor,  
7 and shall have been given reasonable opportunity, in no  
8 event less than thirty days, to show cause by public hearing,  
9 if requested, why such order of modification should not issue.

10 “(d) In any case where a hearing is conducted pur-  
11 suant to the provisions of this section, both the burden of  
12 proceeding with the introduction of evidence and the burden  
13 of proof shall be upon the Commission.”

14 SEC. 15. Section 315 of such Act is amended to read  
15 as follows:

16 “SEC. 315. Nothing in this Act shall be understood as  
17 imposing or as authorizing or permitting the Commission  
18 to impose any obligation upon the licensee of any radio broad-  
19 cast station to allow the use of such station in any political  
20 campaign. In the event that the licensee of any such station  
21 shall permit such use, it shall be in accordance with the fol-  
22 lowing conditions and obligations:

23 “(a) When any licensee permits any person who is a  
24 legally qualified candidate for any public office in a primary,  
25 general, or other election to use a broadcast station, or per-

1 mits any person to use a broadcast station in support of  
2 any such candidate, he shall afford equal opportunities to  
3 all other such candidates for that office, or to a person desig-  
4 nated by any such candidate, to use such broadcast station;  
5 and if any licensee permits any person to use a broadcast  
6 station in opposition to any such candidate or candidates, he  
7 shall afford equal opportunities to the candidate or candidates  
8 so opposed, or to a person designated by any such candidate,  
9 in the use of such broadcast station.

10       “(b) When a licensee permits an official of a regularly  
11 organized political party, or a person designated by him, to  
12 use a broadcast station in any political campaign, then the  
13 corresponding official in all other regularly organized political  
14 parties, or a person designated by him shall have equal  
15 opportunities for its use.

16       “(c) No licensee shall, during a political campaign,  
17 permit the use of the facilities of a broadcast station for or  
18 against any candidate for any public office except (1) by  
19 a legally qualified candidate for the same office; or (2) by  
20 a person designated, in writing, by such candidate; or  
21 (3) by a regularly organized political party whose candi-  
22 date's or candidates' names appear on the ballot and whose  
23 duly chosen responsible officers designate a person to use  
24 such facilities.

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1       “(d) When any licensee permits any person to use a  
2 broadcast station in support of or in opposition to any  
3 public measure to be voted upon as such in a referendum,  
4 initiative, recall, or other form of election, he shall afford  
5 equal opportunities (including time in the aggregate) for  
6 the presentation of each different view on such public  
7 measure.

8       “(e) No licensee shall permit the making of any po-  
9 litical broadcast, or the discussion of any question by or  
10 upon behalf of any political candidate or party as herein  
11 provided, for a period beginning twenty-four hours prior  
12 to and extending throughout the day on which a National,  
13 State, or local election is to be held.

14       “(f) Neither licensees nor the Commission shall have  
15 power of censorship over the material broadcast under  
16 the provisions of this section: *Provided*, That licensees shall  
17 not be liable for any libel, slander, invasion of right of pri-  
18 vacy, or any similar liability imposed by any State, Federal,  
19 or Territorial or local law for any statement made in any  
20 broadcast under the provisions of this section, except as to  
21 statements made by the licensee or persons under his control.

22       “(g) The duty of the licensee to observe the conditions  
23 herein stated shall apply to all political activities, whether  
24 local, State, or National in their scope and application. The  
25 term ‘equal opportunities’ as used in this section and in sec-

1 tion 330 of this Act means the consideration, if any, paid  
2 or promised for the use of such station, the approximate  
3 time of the day or night at which the broadcast is made,  
4 an equal amount of time, the use of the station in combina-  
5 tion with other stations, if any, used by the original user,  
6 and in the case of network organizations, an equivalent  
7 grouping of stations connected for simultaneous broadcast or  
8 for any recorded rebroadcasts.”

9 SEC. 16. The heading of section 326 of such Act is  
10 amended to read “Censorship”, and such section is amended  
11 to read as follows:

12 “SEC. 326 (a) Nothing in this Act shall be under-  
13 stood or construed to give the Commission the power to  
14 regulate the business of the licensee of any radio broadcast  
15 station unless otherwise specifically authorized in this Act.

16 “(b) The Commission shall have no power to censor,  
17 alter, or in any manner affect or control the substance of  
18 any material to be broadcast by any radio broadcast station  
19 licensed pursuant to this Act, and no regulation or condition  
20 shall be promulgated or imposed by the Commission which  
21 shall interfere with the right and duty of the licensee of  
22 any such station to determine, subject to the limitations  
23 of this Act, the character and the source of the material  
24 to be broadcast: *Provided*, That nothing herein contained  
25 shall be construed to limit the authority of the Commission

1 in its consideration of applications for renewal of licenses  
2 to determine whether or not the licensee has operated in  
3 the public interest.”

4 SEC. 17. Part 1 of title III of such Act is amended by  
5 adding two new sections as follows:

6 “DISCUSSION OF PUBLIC OR POLITICAL QUESTIONS

7 “SEC. 330. When and if a radio broadcast station is  
8 used for the presentation of political or public questions other-  
9 wise than as provided for in section 315 hereof, it shall be  
10 the duty of the licensee of any such station to afford equal  
11 opportunities for the presentation of different views on such  
12 questions *Provided*, That the time, in the aggregate, de-  
13 voted to different views on any such questions shall not be  
14 required to exceed twice that which was made available to  
15 the original user or users. Neither the licensee of any sta-  
16 tion so used nor the Commission shall have the power to  
17 censor, alter, or in any manner affect or control the substance  
18 of any program material so used: *Provided, however*, That  
19 no licensee shall be required to permit the broadcasting of  
20 any material which advocates the overthrow of the Govern-  
21 ment of the United States by force or violence: *And pro-*  
22 *vided further*, That no licensee shall be required to broad-  
23 cast any material which might subject the licensee to liability  
24 for damages or to penalty or forfeiture under any local, State,  
25 or Federal law or regulation. In all cases arising under



1 this section, the licensee shall have the right to demand and  
2 receive a complete and accurate copy of the material to be  
3 broadcast a sufficient time in advance of its intended use to  
4 permit an examination thereof and the deletion therefrom  
5 of any material necessary to conform the same to the require-  
6 ments of this section.

7 "SEC. 331. No licensee of any radio broadcast station  
8 shall permit the use of such station for the presentation of  
9 any public or political questions under section 315 or 330,  
10 unless the person or persons arranging or contracting for  
11 the broadcast time shall, prior to the proposed broadcast,  
12 disclose in writing and deliver to the licensee (a) the name  
13 of the speaker or speakers; (b) the subject of the discus-  
14 sion; (c) the capacity in which the speaker or speakers  
15 appear; that is, whether on their own account as an indi-  
16 vidual candidate or public officer, or as the representative,  
17 advocate, or employee of another; and how the time for  
18 the broadcast was made available, and if paid for, by whom.  
19 It shall be the duty of the licensee of the station so used to  
20 cause an announcement of the name of the speaker or  
21 speakers using the station, together with the other informa-  
22 tion required by this section, to be made both at the begin-  
23 ning and at the end of the broadcast: *Provided*, That in the  
24 case of a public officer speaking as such, the announcements  
25 shall specify only the subject of the discussion, the office

1 held by him, whether such office is elective or appointive  
2 and by what political unit or political officer the power of  
3 election or appointment is exercised. Where more than one  
4 broadcast station or a network of such stations is used as  
5 herein provided, the requirements of this section will be  
6 met by filing the required material with the licensee of the  
7 originating station and by broadcasting the required an-  
8 nouncements over all stations which broadcast the subject  
9 program.”

10 SEC. 18. Part 1 of title III of such Act is further  
11 amended by adding at the end thereof a new section as  
12 follows:

13 “IDENTIFICATION OF SOURCE IN NEWS BROADCASTS

14 “SEC. 332. (a) All news items or the discussion of  
15 current events broadcast by any radio broadcast station shall  
16 be identified generally as to source and all editorial or inter-  
17 pretative comment, if any, concerning such items or events  
18 shall be identified as such and as to source and responsibility.  
19 It shall be the duty of the licensee of any radio broadcast  
20 station used for such purpose to cause an appropriate an-  
21 nouncement to be made both at the beginning and at the  
22 end of any such broadcast in sufficient detail to inform the  
23 audience concerning the origin of the material being broad-  
24 cast and whose editorial and other comment, if any, is being  
25 expressed. Where more than one broadcast station or a net-

1 work of such stations is used as herein provided, the responsi-  
2 bility for compliance with the requirements of this section  
3 shall be upon the original station.

4 “(b) Nothing contained in sections 315, 330, and 331  
5 hereof shall apply to broadcasts devoted to general news  
6 reports or descriptions or presentations of current events in  
7 which reference to a particular candidate or to public or  
8 political questions is incidental to the general purpose of the  
9 broadcast.”

10 SEC. 19. Part 1 of title III of such Act is further  
11 amended by adding at the end thereof a new section as  
12 follows:

13 “LIMITATIONS ON CHAIN BROADCASTING AND STATION  
14 OWNERSHIP

15 “SEC. 333. (a) No radio broadcast station shall enter  
16 into any contract, arrangement, or understanding, express or  
17 implied, with a network organization —

18 “(1) under which the station is prevented or hin-  
19 dered from, or penalized for, broadcasting the program  
20 of any other network organization on time otherwise  
21 available for that purpose (including time optioned but  
22 upon which no notice of exercise has been given); or

23 “(2) which prevents or hinders another station  
24 serving the same or substantially the same area from  
25 broadcasting the network’s programs not taken by the

1 former station, or which prevents or hinders another  
2 station serving a substantially different area from broad-  
3 casting any program of the network organization; or

4 “(3) which provides, by original term, provisions  
5 for renewal, or otherwise that the station will broadcast  
6 the programs of the network organization for a period  
7 longer than three years; or

8 “(4) which gives any network organization an  
9 option upon periods of time which are unspecified or  
10 which gives one or more network organizations options  
11 upon specified periods of time totaling more than 50  
12 per centum of the total number of hours for which  
13 the station is licensed to operate or upon a total of more  
14 than two hours in any consecutive three-hour period or  
15 options which can be exercised upon notice to the station  
16 of less than fifty-six days; or

17 “(5) which prevents the station from rejecting or  
18 refusing network programs which the station reasonably  
19 believes to be unsatisfactory, unsuitable, or contrary to  
20 the public interest, or from substituting a program of  
21 outstanding local or national importance for any offered  
22 by the network; or

23 “(6) under which the network fixes or attempts  
24 to fix or control the rates charged by the station for

1 the sale of broadcast time for other than the network's  
2 programs.

3 “(b) No person shall own, control, or operate more  
4 than one such network in a single broadcast band: *Provided*,  
5 That this subsection shall not be applicable if such net-  
6 works are not operated simultaneously, or if there is no  
7 substantial overlap in the territory served by the group of  
8 stations comprising each such network.

9 “(c) One year after the date of enactment of this  
10 Act the Commission shall observe the following limitations  
11 upon its licensing powers:

12 “(1) No person (including all persons under com-  
13 mon control) shall own or control or be the licensee of  
14 more than one broadcast station in any single broad-  
15 cast band when such stations cover the same or sub-  
16 stantially the same area.

17 “(2) The Commission shall make or promulgate  
18 no rule or regulation of general application, the purpose  
19 or effect of which will be to fix or limit the number  
20 of broadcast stations which may be licensed to any per-  
21 son, but in acting upon individual applications the  
22 Commission is hereby authorized and directed to make  
23 and maintain a fair and equitable distribution of radio  
24 broadcast facilities as between various applicants there-

1     for when such action can be taken consistent with the  
2     requirements of section 307 and the equities of existing  
3     licensees: *Provided*, That no person (including all per-  
4     sons under common control) shall own or control or  
5     be the licensee of broadcast stations in any single band  
6     which in the aggregate provide a primary service, under  
7     the standards of good engineering practice established  
8     by the Commission, for more than 25 per centum of  
9     the population of the continental United States as deter-  
10    mined in the last preceding decennial census.

11       “(d) It shall be the duty of the Commission to take  
12    such action as is necessary to expedite compliance with the  
13    provisions of this section including, where necessary, the  
14    voluntary transfer of outstanding construction permits and  
15    licenses for stations of the class or classes affected thereby  
16    from licensees or permittees made ineligible to hold the same  
17    to persons who are qualified under the provisions of this  
18    section. The term ‘control’ as used in this section means  
19    the actual or legal right to the direction, supervision, and  
20    control of a broadcast station or its licensee or permittee,  
21    whether resulting from ownership of a controlling percentage  
22    of the issued shares of stock or other evidences of ownership  
23    of the entity holding the license or permit, or from other  
24    cogent proof of the actual or legal right to such direction,  
25    supervision, or control.”

1        SEC. 20. Part I of title III of such Act is further  
2 amended by adding at the end thereof a new section as  
3 follows:

4        INDECENT LANGUAGE AND FALSE STATEMENTS

5        "SEC. 334. No person shall utter any obscene, indecent,  
6 or profane language, and no person shall knowingly make or  
7 publish any false accusation or charge against any person,  
8 by means of radio communication."

9        SEC. 21. The heading of section 401 of such Act is  
10 amended to read "Jurisdiction to Enforce Act and Orders  
11 of Commission; Declaratory Orders"; and such section is  
12 amended by adding at the end thereof a new subsection  
13 (d) as follows:

14        "(d) In a case of actual controversy arising under any  
15 provision of this Act or of any order, rule, regulation, term,  
16 condition, limitation, or requirement adopted pursuant  
17 thereto (whether or not involving failure to comply there-  
18 with), the Commission may, upon petition of any interested  
19 person, and after notice and opportunity for hearing, enter  
20 a declaratory order declaring rights and other legal rela-  
21 tions thereunder."

22        SEC. 22. Section 402 of such Act is amended to read  
23 as follows:

24        "SEC. 402. (a) The provisions of the Act of  
25 October 22, 1913 (38 Stat. 219), as amended, relating to

1 the enforcing or setting aside of orders of the Interstate  
2 Commerce Commission are hereby made applicable to suits  
3 to enforce, enjoin, set aside, annul, or suspend any order of  
4 the Commission under this Act (except those appealable  
5 under the provisions of subsection (b) hereof), and such  
6 suits are hereby authorized to be brought as provided in  
7 that Act. In addition to the venues specified in that Act,  
8 suits to enjoin, set aside, annul, or suspend, but not to enforce,  
9 any such order of the Commission may also be brought in  
10 the United States District Court for the District of Columbia.

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

14 “(1) By any applicant for any instrument of au-  
15 thorization required by this Act, or the regulations of  
16 the Commission made pursuant to this Act, for the con-  
17 struction or operation of apparatus for the transmission  
18 of energy, or communications, or signals by radio, whose  
19 application is denied by the Commission.

20 “(2) By any party to an application for authority  
21 to assign any such instrument of authorization or to  
22 transfer control of any corporation holding such instru-  
23 ment of authorization whose application is denied by  
24 the Commission.

25 “(3) By any applicant for the permit required by



1 section 325 of this Act whose application has been  
2 denied by the Commission or any permittee under said  
3 section whose permit has been modified or revoked  
4 by the Commission.

5 “(4) By the holder of any instrument of authoriza-  
6 tion required by this Act, or the regulations of the Com-  
7 mission made pursuant to this Act, for the construction  
8 or operation of apparatus for the transmission of energy,  
9 or communications or signals by radio, which instrument  
10 has been modified or revoked by the Commission.

11 “(5) By any other person who is aggrieved or  
12 whose interests are adversely affected by any order of  
13 the Commission granting or denying any application  
14 described in paragraphs (1), (2), (3), and (4) hereof.

15 “(6) By any person upon whom an order to cease  
16 and desist has been served under section 312 (b) of  
17 this Act.

18 “(7) By any party to a proceeding under section  
19 401 who is aggrieved or whose interests are adversely  
20 affected by a declaratory order entered by the Com-  
21 mission.

22 “(8) By any radio operator whose license has been  
23 suspended by the Commission.

24 “(c) Such appeal shall be taken by filing a notice of  
25 appeal with the court within thirty days after the entry

1 of the order complained of. Such notice of appeal shall  
2 contain a concise statement of the nature of the proceedings  
3 as to which the appeal is taken; a concise statement of the  
4 reasons on which the appellant intends to rely, separately  
5 stated and numbered; and proof of service of a true copy  
6 of said notice and statement upon the Commission. Upon  
7 filing of such notice, the court shall have exclusive juris-  
8 diction of the proceedings and of the questions determined  
9 therein and shall have power, by order, directed to the  
10 Commission or any other party to the appeal, to grant such  
11 temporary relief as it may deem just and proper. Orders  
12 granting temporary relief may be either affirmative or  
13 negative in their scope and application so as to permit  
14 either the maintenance of the status quo in the matter  
15 in which the appeal is taken or the restoration of a posi-  
16 tion or status terminated or adversely affected by the order  
17 appealed from and shall, unless otherwise ordered by the  
18 court, be effective pending hearing and determination of  
19 said appeal and compliance by the Commission with the  
20 final judgment of the court rendered in said appeal.

21       “(d) Upon the filing of any such notice of appeal the  
22 Commission shall, not later than five days after the date of  
23 service upon it notify each person shown by the records of  
24 the Commission to be interested in said appeal of the filing  
25 and pendency of the same and shall thereafter permit any

1 such person to inspect and make copies of said notice and  
2 statement of reasons therefor at the office of the Commission  
3 in the city of Washington. Within thirty days after the  
4 filing of an appeal, the Commission shall file with the court  
5 a copy of the order complained of, a full statement in writing  
6 of the facts and grounds relied upon by it in support of the  
7 order involved upon said appeal, and the originals or certified  
8 copies of all papers and evidence presented to and considered  
9 by it in entering said order.

10 “(e) Within thirty days after the filing of an appeal  
11 any interested person may intervene and participate in the  
12 proceedings had upon said appeal by filing with the court a  
13 notice of intention to intervene and a verified statement  
14 showing the nature of the interest of such party, together  
15 with proof of service of true copies of said notice and state-  
16 ment, both upon appellant and upon the Commission. Any  
17 person who would be aggrieved or whose interest would be  
18 adversely affected by a reversal or modification of the order  
19 of the Commission complained of shall be considered an  
20 interested party.

21 “(f) The record upon which any such appeal shall be  
22 heard and determined by the court shall contain such in-  
23 formation and material, and shall be prepared within such  
24 time and in such manner as the court may by rule prescribe.

25 “(g) At the earliest convenient time the court shall

1 hear and determine the appeal upon the record before it,  
2 and shall have power, upon such record, to enter a judgment  
3 affirming or reversing the decision of the Commission, and  
4 in event the court shall render a decision and enter an order  
5 reversing the decision of the Commission, it shall remand  
6 the case to the Commission to carry out the judgment of the  
7 court: *Provided*, That the review by the court shall be  
8 limited to questions of law and that findings of fact by the  
9 Commission, if supported by substantial evidence, shall be  
10 conclusive unless it shall clearly appear that the findings of  
11 the Commission are arbitrary or capricious.

12 “(h) In the event that the court shall render a decision  
13 and enter an order reversing the order of the Commission, it  
14 shall remand the case to the Commission to carry out the  
15 judgment of the court and it shall be the duty of the Com-  
16 mission, in the absence of the proceedings to review such  
17 judgment, to forthwith give effect thereto, and unless other-  
18 wise ordered by the court, to do so upon the basis of the  
19 proceedings already had and the record upon which said  
20 appeal was heard and determined.

21 “(i) The court may, in its discretion, enter judgment  
22 for costs in favor of or against an appellant, or other in-  
23 terested parties intervening in said appeal, but not against  
24 the Commission, depending upon the nature of the issues  
25 involved upon said appeal and the outcome thereof.

1       “(j) The court’s judgment shall be final, subject, how-  
2 ever, to review by the Supreme Court of the United States  
3 as hereinafter provided —

4       “(1) an appeal may be taken direct to the  
5 Supreme Court of the United States in any case wherein  
6 the jurisdiction of the court is invoked, or sought to be  
7 invoked, for the purpose of reviewing any decision or  
8 order entered by the Commission in proceedings insti-  
9 tuted by the Commission which have as their object and  
10 purpose the revocation of an existing license or any  
11 decision or order entered by the Commission in pro-  
12 ceedings which involve the failure or refusal of the  
13 Commission to renew an existing license. Such appeal  
14 shall be taken by the filing of an application therefor  
15 or notice thereof within thirty days after the entry of  
16 the judgment sought to be reviewed, and in the event  
17 such an appeal is taken the record shall be made up  
18 and the case docketed in the Supreme Court of the  
19 United States within sixty days from the time such an  
20 appeal is allowed under such rules as may be prescribed.

21       “(2) in all other cases, review by the Supreme  
22 Court of the United States shall be upon writ of certiorari  
23 on petition therefor under section 240 of the Judicial  
24 Code, as amended, by the appellant, by the Commission,  
25 or by any interested party intervening in the appeal,

1 or by certification by the court pursuant to the provi-  
2 sion of section 239 of the Judicial Code, as amended.”

3 SEC. 23. Section 405 of such Act is amended to read  
4 as follows:

5 SEC. 405. After a decision, order, or requirement has  
6 been made by the Commission or any Division thereof in  
7 any proceeding, any party thereto or any other person ag-  
8 grieved or whose interests are adversely affected thereby  
9 may petition for rehearing. When the decision, order, or  
10 requirement has been made by the whole Commission the  
11 petition for rehearing shall be directed to the whole Com-  
12 mission; when the decision, order, or requirement is made  
13 by a Division of the Commission the petition for rehearing  
14 shall be directed to that Division; petitions directed to the  
15 whole Commission requesting a rehearing in any matter de-  
16 termined by a Division thereof shall not be permitted or con-  
17 sidered. Petitions for rehearing must be filed within thirty  
18 days from the entry of any decision, order, or requirement  
19 complained of and except for those cases in which the deci-  
20 sion, order, or requirement challenged is necessary for  
21 the maintenance or conduct of an existing service, the filing  
22 of such a petition shall automatically stay the effective date  
23 thereof until after the decision on said petition. The filing  
24 of a petition for rehearing shall not be a condition precedent  
25 to judicial review of any such decision, order, or requirement,

1 except where the party seeking such review was not a party  
2 to the proceedings before the Commission resulting in such  
3 decision, order, or requirement, or where the party seeking  
4 such review relies on questions of fact or law upon which  
5 the Commission has been afforded no opportunity to pass.  
6 Rehearings shall be governed by such general rules as the  
7 Commission may establish. The time within which an  
8 appeal must be taken under section 402 (b) hereof shall  
9 be computed from the date upon which the Commission  
10 enters its order disposing of all petitions for rehearing filed  
11 in any case, but any decision, order, or requirement made  
12 after such rehearing, reversing, changing, or modifying the  
13 original determination shall be subject to the same provisions  
14 as an original order.”

15 SEC. 24. Subsection (a) of section 409 of such Act is  
16 amended to read as follows:

17 “(a) In all cases where a hearing is required by the  
18 provisions of this Act, or by other applicable provisions of  
19 law, such hearing shall be a full and fair hearing. Hearings  
20 may be conducted by the Commission or a Division thereof  
21 having jurisdiction of the subject matter or by any member  
22 or any qualified employee of the Commission when duly  
23 designated for such purpose. The person or persons con-  
24 ducting any such hearing may sign and issue subpoenas,  
25 administer oaths, examine witnesses, and receive evidence at

1 any place in the United States designated by the Commis-  
2 sion. In all cases, whether heard by the Commission or a  
3 Division thereof or by any member or qualified employee of  
4 the Commission, the person or persons conducting such  
5 hearing shall prepare and file an intermediate report setting  
6 out in detail and with particularity all basic or evidentiary  
7 facts developed by the evidence as well as conclusions of fact  
8 and of law upon each issue submitted for hearing. In all  
9 cases the Commission, or the Division having jurisdiction  
10 thereof, shall, upon request of any party to the proceeding,  
11 hear oral argument on said intermediate report or upon  
12 such other and further issues as may be specified by the  
13 Commission or the Division and such oral argument shall  
14 precede the entry of any final decision, order, or require-  
15 ment. Any final decision, order, or requirement shall be  
16 accompanied by a full statement in writing of all the relevant  
17 facts upon each issue submitted for hearing as well as  
18 conclusions of law upon those facts.”

19 SEC. 25. Title IV of such Act is amended by adding at  
20 the end thereof a new section as follows:

21 “DISCRIMINATION PROHIBITED

22 “SEC. 418. The Commission shall make or promulgate  
23 no order, rule, or regulation of substance or procedure, the  
24 purpose or effect of which will or may be to effect a dis-  
25 crimination between persons based upon race, or religious



1 or political affiliation, or kind of lawful occupation, or busi-  
2 ness association, and no rights, privileges, benefits, or  
3 licenses authorized by law shall be denied or withheld in  
4 whole or in part where adequate right or entitlement thereto  
5 is shown."

80TH CONGRESS  
1ST SESSION

**S. 1333**

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## **A BILL**

To amend the Communications Act of 1934,  
as amended, and for other purposes.

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By Mr. WHITE

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MAY 23 (legislative day, APRIL 21), 1947  
Read twice and referred to the Committee on  
Interstate and Foreign Commerce

# APPENDIX B (Exhibit submitted by Frank Stanton, CBS)

## INDUSTRIES AND PERCENT OF TOTAL PRODUCT ACCOUNTED FOR BY A SINGLE COMPANY

(Staff Report — Committee on Small Business —  
Pursuant to H. Res. 64 — 79th Congress)

Printed 1946

<i>Product</i>	<i>Percent</i>	<i>Product</i>	<i>Percent</i>
Fire extinguishing apparatus and supplies .....	85	Copper refining .....	37
Still film for amateurs .....	85	Agricultural machinery (all types combined) .....	37
Taper bearings .....	80	Steel ingots .....	35
Cinema positive film .....	75	Electrical water heaters .....	35
Canned soup .....	66	Rubber tires .....	33
Cinema negative film .....	65	Cheese .....	33
Fruit jars .....	60	Dyestuffs .....	30
Ball bearings .....	60	Electrical steel .....	27
Incandescent lamps (large) .....	59	Electron tubes .....	27
Farm machinery — binders .....	56	Cigarettes .....	26
Biscuits and crackers .....	55	Synthetic rubber (Copolymer capacity: Private firms operating Government-owned facilities) .....	24
Tin cans .....	55	Flour milling .....	23
Christmas tree lamps .....	54	Electric flatirons .....	22
Primary aluminum .....	50	Drugs and medicines .....	22
Incandescent lamps (miniature, excluding Christmas tree lamps) .....	50	Electric fans .....	21
Towels .....	50	Chlorine .....	21
Sewing machines .....	49	Condensed and evaporated milk .....	20
Automobile passenger cars .....	45	Meat packing .....	20
Gasoline .....	45	Domestic vacuum cleaners .....	20
Synthetic fibers (rayon, etc.) .....	44	Distilled liquors .....	18
Farm machinery — tractors .....	43	Canned fruits .....	15
Copper mining .....	41	Grocery retailing .....	14
Corn products .....	40	Portland cement .....	14
Industrial alcohol .....	40	Domestic washing machines .....	13
Trucks .....	40	Wines (storage capacity) .....	11
Heavy alkali .....	40	Butter .....	8
Soap .....	40	Bread baking .....	7
Asbestos .....	40	Canned vegetables .....	5
Lead mining .....	39	Beer .....	5
Electric ranges .....	39		

## APPENDIX C (Exhibit Submitted by Edgar Kobak, MBS)

### SHAREHOLDERS OF MUTUAL BROADCASTING SYSTEM, INC.

Bamberger Broadcasting Service, Inc. (R. H. Macy & Co.)	25 shares
Licensee of WOR, New York City	
Don Lee Broadcasting System	25 shares
Licensee of KHJ, Los Angeles	
KFRC, San Francisco	
KGB, San Diego	
KDB, Santa Barbara	
WGN, Inc. (Chicago Tribune)	25 shares
Licensee of WGN, Chicago	
Yankee Network, Inc. (General Tire and Rubber Co.)	25 shares
Licensee of WNAC, Boston	
WEAN, Providence	
WAAB, Worcester	
WICC, Bridgeport	
WONS, Hartford	
United Broadcasting Company (Cleveland Plain Dealer)	13½ shares
Licensee of WHK, Cleveland	
WHKC, Columbus	
WHKK, Akron	
Western Ontario Broadcasting Company, Ltd.	8 shares
Licensee of CKLW, Windsor, Ontario	
Pennsylvania Broadcasting Company (Gimbel Bros.)	8 shares
Licensee of WIP, Philadelphia	

## APPENDIX D (Exhibit submitted by Edgar Kobak, MBS)

### SECTION-BY-SECTION COMMENTARY OF THE WHITE BILL, S. 1333

The bill under discussion reproduces in large measure the features of the so-called White-Wheeler Bill introduced March 2, 1943 (S.814), as revised in a Committee Print dated May 23, 1944. Extensive hearings were held in November and December, 1943, on the bill in its original form but no hearings were held on the many changes and innovations introduced by the later revision. Consequently, the industry has never had a hearing on much that is contained in the present bill which will be referred to as S.1333.

For convenience, references will be made from time to time to S.814 for purposes of comparison. When such references are made, they will be to the revision of May 23, 1944, and not to the original S.814. References will also occasionally be made to the digest and explanation of S.1333 given out by Senator White at the time he introduced it, which will be referred to as the White digest of May 23, 1947.

It is pertinent to note that S. 1333 has had a series of numerous predecessor bills (in addition to S.814) extending back over a period of years, the principal original bills have been introduced by Senator White in the Senate and former Representative Sanders in the House. Extensive hearings were held on the Sanders Bill before the House Committee on Interstate Commerce in the spring of 1942. Other hearings that may be of interest were those held on the White Resolution (S. RES. 113) in June, 1941, designed to nullify the network regulations of the Federal Communications Commission. During the same period there were extensive hearings before a special committee in the House under a resolution to investigate the Commission.

### SECTIONS 1, 2 AND 3—DEFINITIONS

Sections 1 and 2 are exact reproductions of S.814. Sec. 3 reproduces six out of nine definitions contained in Sec. 3 of S.814 with only one substantial change, i.e., the addition of language to the definition of "network organization."

*Network broadcasting.* The new definitions of network broadcasting and network organization in Secs. 2 and 3 are necessary only if later provisions in the bill relating to network broadcasting are retained.

The two definitions are inconsistent. Sec. 2 seems to include the broadcasting of transcriptions only in the case of *delayed* broadcasts. Sec. 3

seems to include only cases of *simultaneous* broadcasting of transcriptions. Sec. 2 seems to require connection between the stations and Sec. 3 seems to eliminate this requirement.

Sec. 3 excepts advertising agencies or persons contracting directly, etc. No reason or justification is perceived for this exception, if it means that such persons are to have the privilege of maintaining network organizations without the obligations to which existing networks will be subjected. This language has been added to the equivalent provision of S.814.

*Single broadcast band.* This definition in Sec. 3 is necessary only if the later provisions on multiple ownership are maintained. It is necessary if such provisions are retained.

It contains a defect in so far as it relates to international broadcasting which requires several stations operating on different frequencies in different bands in order to maintain a single continuous service throughout the hours of the day and the seasons of the year.

*License and construction permit.* These two definitions in Sec. 3, or their equivalent, are desirable to overcome the effects of a court decision several years ago and the Commission's assumption, that by calling an authorization something other than a license, it can escape certain requirements of the Act. Actually, however, there is no present evil of any substance in this connection.

*Broadcast station and hours.* These two definitions seem unnecessary and superfluous. They merely define the obvious.

## SECTIONS 4 AND 5 — SETUP AND FUNCTIONS

To a large extent these sections are reproductions of Secs. 4 and 8 of S.814.

Sec. 4 substitutes selection of the chairman by the Commission for appointment by the President. Sec. 5 requires separation of the Commission into two statutory divisions of three members each, and defines the function of each division and of the Commission as a whole.

Opinions differ as to the desirability of these changes. In our opinion, most of them are unsound, unnecessary, and based on fallacious premises. The benefits which are hoped for from the amendments are set forth in the White digest of May 23, 1947.

Actually, Sec. 5 leaves jurisdiction over the most important and controversial problems of broadcasting in the full Commission, inasmuch as it confers power on the full Commission over the making of all general rules and regulations.

One trouble with the section is that it is regarded by many persons as a panacea for all ills at the Commission. They are, it is believed, doomed to disappointment.

Experience of the past does not show that undesirable regulatory activities of the Commission have been due to any common carrier attitude but rather to the influence of certain individuals who happen to have been on the Commission from time to time. Broadcasting might conceivably be far worse off under a division system, if a certain type of individual predominated in the division.

Sec. 5 leaves a large twilight zone of uncertainty as to what matters fall within the jurisdiction of the two divisions and within the jurisdiction of the full Commission. Many matters are so closely related that they should have the benefit of the experience and knowledge of the men on both divisions, e.g., rates for wire lines used for transmission of broadcast programs, stations engaged in relaying of broadcast programs as well as other types of radio communications, etc. It is impossible to say where aeronautical communications fall under the section as now worded. Controversy and litigation turning on jurisdictional questions between the divisions and the full Commission would be sure to arise.

The present Act already gives the Commission ample power to organize into divisions. It needs only a slight amendment to make it susceptible of working satisfactorily. The needed amendment is to eliminate from Sec. 5 the requirement that all decisions of a division be subject to petition for rehearing by the full Commission. The Commission should have the right to delegate to any division the power to make a final decision in a matter or class of matters, including action on any petition for rehearing that may be filed.

No advantage will be gained by having the chairman selected by the Commission. While the bill does not require rotation in office (as did S.814) this will probably be the result, as shown by the experience of other Commissions. In any event, special abilities and experience are desirable in the chairman which will, or may be, lost by rotation in office. Nothing very much is gained by depriving him of any voice in the decisions in particular cases, since he will retain his voice on most of the important controversial matters in broadcasting as well as in other fields, as above pointed out. So far as the Commission deems it advisable to relieve the chairman of responsibility in quasi-judicial matters it can do so by the creation of divisions under the present Act.

The analysis of Sec. 5 as contained in the White digest of May 23, 1947, is misleading in certain respects. The impression is given that the Com-

mission is given authority for the first time to refer matters to divisions, individual commissioners, employees, etc. The Act already contains ample provisions on this subject, except for the need of the slight amendment already pointed out.

## SECTION 6 — ANNUAL REPORT

This section is taken largely from Sec. 7 of S.814. In our opinion this section goes too far in the requirements it makes of the Commission. The Commission reports have been on the whole well prepared and edited and there is no substantial complaint on this score. Sec. 6 is, it is believed, largely a reflection of a resentment toward former Chairman Fly for his several refusals to give information to Congress. This situation no longer obtains. Incidentally, the same is true of several sections in this bill including Sec. 5, large portions of which were originally designed to curtail Mr. Fly's powers as chairman and ultimately to eliminate him from that position.

## SECTION 7 — CHAIN BROADCASTING

This amendment reduces subsection (i) of Sec. 303 to a nullity. The Commission has ample power to prevent interference between any and all kinds of radio stations under Sec. 303(f). According to contentions frequently made in 1943 and prior years by those opposed to the chain broadcasting regulations, Sec. 303(i) should have been interpreted only in a technical or physical sense but was broad enough to include regulation of synchronization of network programs and, possibly, excessive duplication of network programs. Whether and to what extent the Commission should have power over this subject will be discussed in connection with Sec. 19 below.

## SECTION 8 — RECORDS OF PROGRAMS

This is largely taken from Sec. 12 of S.814. This section unfortunately does not accomplish all that is needed to keep the Commission within the proper bounds of its jurisdiction. For some years it has been requiring reports on finance, labor and other matters without any discernible authority in the Act. At first, the information was requested and received entirely on a voluntary and confidential basis, but this no longer seems to be true. It should be added that the Commission also has, almost from the beginning, requested a large amount of similarly irrelevant financial information in connection with applications of all classes, but particularly, applications for transfer of license.

There are persons who believe that such information is of interest and value, without believing that the Commission should make any use of it in its regulatory activities. If this view is sound then the collection of this information should be turned over to the Bureau of the Census to be handled just as it handles the gathering of similar information in other industries.

The Commission should be limited to gathering only information which is necessary or of value to it in the exercise of its regulatory power as set forth in the Act. The Act declares that broadcasting is *not* a common carrier.

Subsection (j) should be amended to strike out the word "programs" but otherwise kept in its present form. As thus worded there is no need for any provision that the information be kept confidential.

#### SECTION 9 — LICENSE ALLOCATION

This section is not to be found in S.814.

It makes three changes in subsection (b) of Sec. 307 of the present Act which provides that the Commission shall make such distribution of licenses, etc., as to provide a fair, efficient and equitable distribution of radio service. The amendment omits all reference to renewal applications, which is desirable. It also omits the language "when and in so far as there is demand for the same" which, on the whole, is also desirable because the Commission has used the language as an excuse for not holding facilities open for use in communities from which it has no application, claiming it has no power to do so if it has any application at hand for such facilities.

The amendment, however, adds the language "giving effect in each such instance to the needs and requirements thereof." This, particularly when taken in conjunction with the White digest of May 23, 1947, is highly undesirable. Its intention appears to be to force the Commission to take economic questions into account in determining whether or not to grant an application for license or modification of license, namely, whether existing stations will be economically injured, whether there is enough business to support the new station, etc. This leads directly into the rate regulation type of activity.

#### SECTION 10 — LICENSE RENEWAL

This is a modification of Sec. 14 of S.814.

The first portion of the amendment is highly desirable, namely, the elimination of the requirement that the same considerations obtain in actions on renewal applications as obtain in actions on original applications.



The last portion of the amendment is highly objectionable as now written. It recognizes the renewal application as a proper means for disciplinary purposes (a matter which is discussed again later). Also, by reference to Sec. 309(b) it places the burden of proof on the applicant for renewal. This is outrageous when the renewal procedure is used to punish the renewal applicant for some violation of the Commission's regulations or of its notions as to proper operation of a station. The burden should always be on the Commission in such cases.

## SECTIONS 11 AND 12 — LICENSING PROCEDURE

Sec. 11 is virtually an exact reproduction of Sec. 16 of S.814.

Sec. 11 is not objectionable, except for the fact that in the proviso it gives what is believed to be an excessively broad power to the Commission to disregard formalities in time of war. Since, however, this may be regarded as almost inevitable, no time will be taken in discussing it.

Notice that Sec. 11 refers to "instruments of authority" and to "modifications or renewals thereof." This is pointed out because in later stages of the bill references to modifications and renewals are omitted in such a way as to create very serious dangers that applicants for modifications or renewals may not have the right to appeal, etc. While it seems desirable to use the phrase "instruments of authority" to embrace both licenses and construction permits, and all forms of either, consideration should be given to the desirability of a definition which will make this clear.

Subsection (b) of Sec. 11 makes a commendable proposal, although its phraseology is open to improvement. Either this subsection, or some other provision in the Act, should provide specifically that renewal applications may not be used as the basis for any disciplinary action and that only revocation (or criminal proceedings) may be employed for this purpose.

The subsection overlooks the fact that licenses may be modified by the Commission not only under Sec. 312(b) but also on voluntary application by a licensee.

Sec. 12 is difficult to discuss adequately in brief fashion. It is in substance a reproduction of Sec. 17 of S.814. It or something like it has been in every bill beginning with the Sanders Bill.

It is believed that the section goes too far in its rigid prescriptions on the subject of procedure, unduly tying the hands of the Commission, particularly in fields other than broadcasting; and unduly ignores and departs from the standards of procedure set up by the Administrative

Procedure Act. Since the provisions of this section will undoubtedly be discussed at length by attorneys, no very extensive comment will be made here, but certain points should be brought out.

It is regrettable that S.1333 completely ignores the Administrative Procedure Act, in connection both with procedure and appeals. The White digest of May 23, 1947, makes repeated references to the Attorney General's Report, without any apparent realization on the part of its author that the report is now outdated and that Congress has passed an act on the subject. In view of the laudable tendency of the Administrative Procedure Act toward uniformity of procedure, it would be regrettable if this bill should inaugurate a radical departure from the uniformity.

The principal evils against which this section was originally directed have to a considerable extent been corrected by the Administrative Procedure Act and by court decisions, particularly the decision of the U. S. Supreme Court in the KOA case (*FCC v. National Broadcasting Co.*, 319 U.S. 239). It is true that the Administrative Procedure Act does not apply to original applications in certain respects, but the Commission has already indicated that it may extend the same requirements to all kinds of applications. Incidentally, however, the Commission treats applications for modification as applications for an original license and in so doing departs, it is believed, from the intent of the Administrative Procedure Act.

The proposed Sec. 309(b) should be rephrased so as to eliminate applications for renewal of license from its purview. In all events, it should be made clear that the burden of proof in any hearing on a renewal application is on the Commission and not on the applicant.

In the proposed subsection (c) there should be an exception for renewal applications. In other words, no one should have the right (by filing a protest) to fix an automatic hearing on a cause.

Consideration should be given to the possibility of having these rigid procedural provisions apply only to broadcasting (particularly the protest rule) since there are many instances in common carrier, aviation, etc., where any automatic 30-day delay might be fatal.

#### SECTION 13—TRANSFER OF LICENSE

This is a virtual reproduction of Sec. 18 of S.814. It is a desirable improvement over the present section since it limits the Commission to pertinent matters in determining whether to approve an assignment.

## SECTION 14—REVOCATION OF LICENSE

This section is designed to effect a notable improvement in the law and, while it does not go as far as it should, does make considerable progress.

Consideration should be given to requiring court action for any revocation leaving the Commission the power to act only by cease and desist orders. The first general ground of revocation set forth, namely, "because of conditions coming to the attention of the Commission," etc., is alarmingly broad although it is taken verbatim from the present Act. There is always the danger that the Commission will consider that it may revoke a license because of failure to conform to "public interest, convenience or necessity" on the subject of programs. Positions it has taken in briefs filed in the courts show that members of its law department feel that the Commission has such power under this clause. Would it not be well to qualify the language or perhaps to substitute another clause, namely, "false statements in the application," etc.?

Somewhat the same cause for alarm is present in the language "has failed to operate substantially as set forth in the license" as a ground. This, however, should be corrected by later and separate provisions of the bill restricting the Commission in such matters as program and economic regulation.

It might also be made clear that there should be no revocation, whether by the Commission or by the court, unless the offense is of so serious or repeated a character as to justify such drastic action. The section should also provide that the Commission shall have no power to impose penalties or sanctions other than those provided by the section, or for any grounds other than those specified in the section. This is necessary to prevent it from continuing to use action (or threat of action) on renewal and modification applications as its principal disciplinary weapon. The Commission should have the burden of alleging and proving its charges against licensees on specified grounds. It should not be permitted to use the vague indefinite standard of "public interest, convenience or necessity" as a means of penalizing a licensee, for some reason or conduct not specifically forbidden either by the statute or some authorized regulation of the Commission.

Incidentally, the section should cover permits as well as licenses.

Consideration might also be given to placing the subsection having to do with compulsory modification of a license in a separate section. This is not, and was not intended to be, a disciplinary proceeding, but one to accomplish such purposes as a general shift of frequencies by all stations in the broadcast band pursuant to international regulation or some similar situation.

## SECTION 15 — POLITICAL BROADCASTS

This section corresponds to, and is largely a reproduction of, Sec. 20 of S.814.

As will be seen from the following review, some of the proposed amendments are theoretically good, some indifferent, and some exceedingly bad. Unless the latter are eliminated the section should not be enacted.

*Primary elections.* Technically construed, Sec. 315 of the present Act may be deemed not to apply to primary elections. Actually, however, the Commission's regulations on the subject have embraced primary elections for several years, with general acquiescence on the part of the industry and with no indication there has been any abuse or unfairness in primary elections. Consequently there seems to be no need for an amendment of this character.

The last five lines of subsection (a) are a questionable innovation. They may be used as a basis for claiming that a bona fide report or analysis of news constitutes a use of the station in opposition to a candidate. Perhaps this may be considered as corrected by Sec. 18(b) of the bill but nothing is to be gained by creating any uncertainty on this question. There should be no doubt about the right of news analysts and commentators to talk about candidates.

*Officials of regularly organized political parties.* Of course there is no harm in recognizing the obligation of broadcasters to treat such officials equally. On the other hand there has been no evil of this character and there is no need for such a provision.

*Discussion of candidates.* Subsection (c) forbids use of a station for discussion for or against candidates by any persons except the candidates themselves, persons designated by them, or persons designated by their political parties. This is absurd. Since when has the American citizen lost his right publicly to discuss candidates for public office whether on the public platform or by radio? This involves a fundamental aspect of the right of free speech. Representatives of religious or civic organizations may wish to discuss candidates by radio. So may organizations of voters who have investigated candidates. They may not desire to place themselves under the aegis of particular candidates or parties and should not be required to. This provision savors too much of protecting men now in office and existing political parties from a traditional American right of fair comment and criticism.

At this point it is appropriate to point out that the Commission has gone to dubious lengths in its regulations in recognizing parties and can-

didates who do not even have the right to appear on the ballot of a particular state. No station should be under any hazard of discipline for rejecting a party or candidate representing a cause which is either illegal in that state or does not have the right to appear on the ballot.

*Referendum on public measures, etc.* Theoretically there is no great harm in the principle that equal opportunity should be afforded for expression of varying points of view on public measures to be voted on by referendum, etc. On the other hand there has been no abuse and there is no need for such a provision. The industry has been eminently fair in dealing with such measures. The practical impossibility of enforcing such a provision will be pointed out below in connection with the section which purports to require that the varying points of view on all controversial issues all be given equal opportunity on the air.

*Prohibition of political broadcast for 24 hours before and during day of election.*

This is unsound. It puts broadcasting at a disadvantage, as compared with the press. Any practical difficulties that may have arisen in the allocation of time on the eve of election will simply be shifted to the preceding evening. Radio's tremendous potentiality for persuading citizens to cast their ballots will be crippled by any such provision. There has been no substantial evil calling for such a provision as this.

*Prohibition of censorship.* Opinions differ as to whether licensees should have the power of censorship (to eliminate libel, material in violation of other laws, etc.) accompanied with corresponding liability, or whether they should have no power of censorship and no liability. Observe that this bill is not consistent in these respects. In this proposed amendment of Sec. 315, licensees are deprived of the power of censorship, but are relieved from liability only with respect to defamation, rights of privacy, "or any *similar* liability." Licensees should be relieved of *any* liability, whether it is similar or not, if they are to be deprived of the right of censorship.

It must be recognized that there is a doubt as to whether Congress can relieve any licensee of liability for defamation or other language which is illegal under state laws. This memorandum does not attempt to resolve that doubt. On the side of practicability and policy, it would seem preferable that the licensee have no power of censorship and no liability, if this can be achieved.

It must be recognized that a choice must be made between the hazard of a certain amount of bad programs and the hazard of excessive censorship by licensees.

*Details of equal opportunity.* Theoretically the language of subsection (g) is not objectionable. Actually, it goes into too much detail as to what is meant by "equal opportunities" and may be productive of injustices and uncertainty in the relations between networks and affiliates. Also, for the first time, it creates an obligation directly on networks and contributes to the tendency, elsewhere manifest in this bill, toward subjecting networks directly to the jurisdiction of the Commission.

So far as is known there has been no substantial abuse in interpreting what is meant by "equal opportunities." The Commission's regulations are fairly explicit on the subject. The entire industry has acquiesced in the notion that the term means equality with regard to amount of time, desirability of time, and other factors entering into the purpose really aimed at.

In connection with the network aspect, the provision implies a duty on the part of networks and a power in them over affiliate stations which does not exist and which would be undesirable.

The White digest of May 23, 1947, falls far short of correctly describing the present law either as a separate instrument or when read in conjunction with the Commission's regulations.

## SECTION 16 — CENSORSHIP

This section is a virtual reproduction of Sec. 23 of S.814.

On the whole this amended section would be desirable *if* (1) the proviso at the end of the subsection (b) were eliminated, (2) the original language of Sec. 326 were retained in addition to the two new subsections, and (3) certain language elsewhere in the bill, implying that the Commission has the right on applications for renewal to discipline stations because of program or economic considerations, were eliminated.

1. *The proviso.* The proviso confirms the hitherto doubtful power of the Commission to refuse to renew a license on grounds not specified in the Act (as well as for violations of the Act or of the Commission's regulations), such as alleged poor program performance. It has done this on the theory that it may take programs into account in applying the standard of "public interest, convenience or necessity." This amounts to censorship of the most effective character.

Commission decisions condemning certain programs, or types of programs, have virtually the same effect as regulations forbidding all such programs or types of programs. While not many stations have been de-

stroyed in this manner (although many more than is commonly supposed), the Commission achieves its objective by threats of subjecting renewal applications for hearing, notices from its Law Department containing complaints on particular programs, speeches by Commissioners denouncing particular programs or program practices, etc. The Commission's power was upheld in decisions of the District Court of Appeals in 1931-32, but has never been passed upon by the Supreme Court (unless Justice Frankfurter's famous dictum be so interpreted). Justice Roberts' dictum in the Sanders case denies the FCC has such power (*Federal Communications Commission vs. Sanders Bros. Radio Station*, 309 U.S. 470).

It is easy to demonstrate, by reference to the legislative debates in 1926-1927 that Congress never intended the Commission to have this power. On the contrary, by enacting Sec. 326 in its *present* form, Congress intended expressly to deprive the Commission of this power.

During the past year or more the Commission has carried this asserted power to extreme lengths in actions such as its adoption of the Blue Book, claiming that it may consider the contents of a newspaper when acting on the publisher's application for a license, requiring that stations permit their facilities to be used by atheists, exponents of prohibition, etc. All these actions have been on the theory that the Commission, in applying the standard of "public interest, convenience or necessity" to renewal applications, may take such matters into account, may set up standards the violation of which will cause stations to lose their licenses, etc. There is no more important objective to be achieved in amending the Communications Act than to eliminate all power over programs and program policies and to affirm for broadcasting a status comparable to that held by the press under the First Amendment.

2. *Elimination of the existing Sec. 326.* Section 326 in its present form reads:

"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."

The bill proposes to shift the last sentence, covering obscene language, etc., to a separate section (see Sec. 27 below). This is sound.



*But the bill also proposes to eliminate all the remaining language of the present Sec. 326.* This is absolutely unjustifiable. As is clear from the above-quoted language, Sec. 326 forbids the Commission to exercise censorship or to interfere with free speech *over all forms of radio communications*, not merely broadcasting. This includes wireless telegraphy and telephony, not only within the United States, but in international communications. This prohibition should not be eliminated. The proposed new provision does not even mention the right of free speech.

3. *Other provisions in bill.* As is apparent from an examination of other provisions in the bill, its drafters seem to have accepted the notion that a proceeding on a renewal application may be used to discipline licensees for alleged program defects and to terminate licenses because of the existence of various economic situations. Needless to say, all such language should be rectified, so as to be in accordance with the foregoing. There is no more disturbing feature of S.1333 than the language criticized above and the fact that in the White digest of May 23, 1947, it is stated that the regulatory agency must be given such authority over programs and that the only problem is the creation of "a clear, definite and orderly procedure."

## SECTION 17 — DISCUSSION OF PUBLIC QUESTIONS

This corresponds to Sec. 24 of S.814.

It proposes two new sections, Sec. 330 and 331. Both sections are unsound and in serious respects highly objectionable.

Sec. 330 provides that, if any licensee shall permit any person to use a station for the discussion of any public question or issue, he shall afford equal opportunities for the presentation "of different views on such questions." While this requirement is subject to slight qualification, it is undesirable and highly impractical.

There is, and will be, no agreement as to what constitutes a controversial issue, as distinguished from an issue on which only a few cranks disagree. An issue which is controversial in one section of the country is not so regarded in another. On most issues, there are not merely two but many schools of thought. It is not always possible to determine what persons are best qualified to represent the several schools of thought, and at the same time are sufficiently well informed and sufficiently able speakers so that the broadcasts will be interesting and informative to the public. This clause or its equivalent has been proposed in both Houses of Congress many times from as far back as 1926, has been included in a number of



bills, and has been repeatedly rejected by Congress for the reasons above stated.

The section prohibits not only the Commission, but also the licensee, from censoring any program material devoted to the discussion of any such question. This prevents the licensee from a mere attempting to make the program more interesting, from eliminating language which is offensive or short of obscene or from eliminating language which may be dangerous to the peace of the community, etc. Why should not the broadcaster have a right of editorial selection and supervision corresponding to that exercised by the editor of a newspaper or publication? Why punish the public with poor speakers? There is no abuse calling for such a drastic measure as is proposed in Sec. 330.

Sec. 331 is a bureaucratic dream. It is unsound in its requirement that an excessive and impractical amount of detailed information be collected and broadcast regarding the speaker. There is no abuse calling for any such remedy as the foregoing.

#### SECTION 18 — SOURCE OF NEWS

This corresponds to Sec. 25 of S.814.

This section is not merely excessive but impossible in its requirements that in the broadcasting of news items or discussion of current events, the sources be identified in detail. A competent news analysis of only fifteen minutes duration is frequently the result of study of many sources of information combined with the expert judgment of the analyst as to what is correct, interesting and most deserving of emphasis.

Subsection (b) may relieve some apprehension in connection with new Sections 315, 330 and 331, but it more than compensates for this by the burden it imposes under Sec. 332.

#### SECTION 19 — STATION OWNERSHIP

This section corresponds to Sec. 26 of S.814.

No more puzzling question is presented by the bill than is presented by this proposed Sec. 333, taken in conjunction with Sec. 7 which would deprive the Commission of all authority to make regulations with respect to stations engaged in chain broadcasting. There are three alternative approaches:

- a. The view that no government agency, FCC, Department of Justice or other, should have any control over the provisions of contracts between networks and affiliate stations.

- b. The view that the Commission should have the power to make regulations on the subject under some such broad standard as "public interest, convenience or necessity," as exercised by it in the regulations now in force.
- c. The view that some regulations of this character are necessary or desirable but that they should be expressed definitely in the law and not left to Commission discretion.

It is understood, of course, that the subject under discussion does not embrace any degree of program control, but only embraces measures supposedly designed to promote competition and prevent monopoly in the broadcasting industry.

It is believed that Congress will not entertain any proposal by which the broadcasting industry is exempted from the principles of the anti-trust laws, or under which any network or other organization can obtain such a position or power in the industry as to amount to a substantial restraint of trade.

If these views be correct, it becomes a choice of method and agency. Where there is a choice, it is believed that a definite provision in the statute is far preferable to any broad discretion in the Commission. There are certain subjects which are susceptible of definite expression in the statute. For example, it is simple to forbid any exclusivity clause, or any contract for more than three years, etc. On the other hand it is not simple to express any restriction of option time without creating a dangerous rigidity which may not be to the interests of the industry in the future.

Consequently a further alternative suggests itself, namely, that where it is not feasible to phrase an unqualified prohibition, the Commission be given a discretion but with a minimum or floor below which it cannot go. For example, on option time it might be given power to make regulations as to the amount of time to be placed under option but in no event may it make this amount less than a certain prescribed figure, for example, three consecutive hours out of any five consecutive hours. It might allow more option time than this, but not less. The same principle could be applied to duration of network contracts, i.e., the Commission may fix the period of such contracts but not at a figure less than three years.

The desideratum is that the Commission be deprived of any broad discretion such as a discretion under the standard "public interest, convenience or necessity" to make any regulation it pleases on these subjects. So far as it retains any power it should be on specified subjects and with prescribed minima.

It is recognized that so far as can be achieved radio should enjoy a status comparable to the press. It must be remembered, however, that the press, as a free enterprise, is subject to the anti-trust laws, so far as it applies to the federal government. Radio differs in that, once the Commission has licensed certain stations under certain ownership, it may be difficult for another agency of the government, i.e., the Department of Justice, to upset the result through anti-trust laws.

With respect to multiple-ownership of stations in the same city, there is no substantial reason why Congress should not define this specifically rather than leave any broad power in the Commission. The trouble with subsection (b) Sec. 333 is that the multiple-ownership is not confined to a single city but leaves unsolved the problem of any overlapping between stations in separated cities. The section should be changed so that this uncertainty will be eliminated.

A more difficult situation is presented by subsection (c) Sec. 333, covering multiple-ownership in different cities. At present the Commission appears to recognize a limit of approximately six or seven stations in the standard broadcast band, which figure is apparently derived simply from the fact the networks own this number of stations. Obviously this is arbitrary since it is one thing for a company to have six 50-kw clear channel stations and an entirely different thing for a person to have six 250-watt stations in a given territory trying to compete with one clear channel station.

If the limitation is to be expressed in terms of number of stations there should be some consideration given to the class of station. No suggestion is being made here as to what that number should be. To express the limitation in terms of percentage of population of the United States has serious dangers because of the extreme uncertainty as to what will be considered to be "primary service" or any other specified kind of service, day or night, city, residential, or rural, etc. There will be considerable advantage in having a specified figure in preference to such uncertainty.

## SECTION 20 — OBSCENE LANGUAGE AND FALSE ACCUSATIONS

This is a reproduction of Sec. 27 of S.814.

So far as it covers obscene, indecent or profane language it is sound in that it puts this prohibition into a separate section and does not combine it with the matter of censorship and free speech.

The second clause is new and should not be enacted in its present form. It provides —

“ . . . and no person shall knowingly make or publish any false accusation or charge against any person, by means of radio communication.”

This is an extremely broad and dangerous prohibition, particularly when it is recalled that violation entails (1) a maximum penalty of two years imprisonment and \$10,000 fine; (2) liability to revocation of license; and (3) liability to refusal of renewal of license.

The prohibition is not limited to defamatory matter, such as would be the basis for action for libel or slander. It extends to *any* false accusation or charge. Thus, it subjects broadcasters and persons speaking over their stations to a far broader liability than are newspapers, magazines, or moving picture concerns, and criminal at that. Whether the false accusation or charge is made “knowingly” will be a matter for the Commission (or, in criminal proceedings, the jury) to determine.

No provision is made for important defenses which are available to an action for libel or slander, i.e., that the matter is privileged (such as quoting the speeches of a Congressman on the floor of either House, or the statement of a witness in a trial), or that the matter is in the field of fair comment and criticism.

No provision, furthermore, is made for defenses, corresponding to those available in the law of libel and slander, tending to mitigate damages or lighten the penalty, e.g., that the broadcaster or speaker has made an adequate retraction, or that the injured party has been given an adequate opportunity to reply, or that the injured party has suffered no real damage.

The Commission should not have any jurisdiction over either indecent language or false charges and accusations. Such offenses should be prosecuted in the criminal courts in the district where the offender resides or does business.

## SECTION 21 — DECLARATORY ORDERS

This corresponds to Sec. 28 of S.814.

The section is sound and highly desirable in principle. Actually, it is much better covered by the Administrative Procedure Act already enacted into law. There is no reason for introducing a new or different provision on the subject, particularly as this section is not as good as the section in the Administrative Procedure Act.

## SECTION 22 — JUDICIAL REVIEW

This section corresponds to Sec. 29 of S.814.

It contains certain desirable changes but also some objectionable defects.

Chief among its defects is the failure to provide for any appeal from a decision of the Commission on an application for modification of license or renewal of license (or permit). An "instrument of authorization" clearly does not include a modification thereof (see Sec. 11) and possibly does not include a renewal. In any event no chance should be taken on this important subject.

Again the bill crosses paths with the Administrative Procedure Act. The latter represents an able effort to give a maximum scope of review to the reviewing court, whereas S.1333 retains the language of the present Act (see p. 36, lines 7-11). No justification is perceived for introducing language differing from that of the Administrative Procedure Act. In fact the entire section should be studied from this point of view, since somewhat the same question is raised with respect to stay orders.

There is room for doubt as to the advisability of requiring a direct appeal to the Supreme Court in all revocation and renewal cases. There are some cases which called for, and should have had, such review. There are others that did not. Unfortunately, it is all too true that the Supreme Court has almost always granted certiorari to the government and almost never to the applicant or licensee. Consequently, some remedy seems necessary.

## SECTION 23 — REHEARING PROCEDURE

This section corresponds to Sec. 30 of S.814.

Whether this section is desirable depends almost entirely on whether the compulsory reorganization of the Commission into divisions is adopted. Otherwise it has no serious importance.

## SECTION 24 — HEARINGS

This section corresponds to Sec. 31 of S.814.

It has both desirable and undesirable features. Its most undesirable features result from its overlapping with the Administrative Procedure Act. It should be revised from this point of view. The person drafting this section, as is true at so many junctures in the bill, seems to have been

familiar only with the Report by the Attorney General's Committee and not with the bill which became law.

#### SECTION 25 — DISCRIMINATION

This corresponds to Sec. 32 of S.814.

While this section probably contains more language than is necessary, its purpose is sound and it or its equivalent should be enacted. It would prevent the Commission from any action unfavorable to any particular type of applicant, e.g., newspaper publishers, etc., on applications for license.

## APPENDIX E (Exhibit submitted by Edgar Kobak, MBS)

### PROGRAM STANDARDS — MUTUAL BROADCASTING SYSTEM, INC.

#### SECTION 1 — PROGRAM STANDARDS

The following Standards apply to all programs, sustaining or sponsored, broadcast over the facilities of Mutual. For ready reference, they have been set down in two general groups.

##### A. RELIGIOUS, MORAL AND SOCIAL CONSIDERATIONS

###### *Religion*

The subject of religion must invariably be treated with respect.

Reverence shall mark any mention of the name of God, His attributes or powers.

References to religious faiths, tenets or customs must be respectful and in good taste, free of bias and ridicule.

Religious rites — baptism, marriage, burial and other sacraments — must be portrayed with accuracy.

A priest or minister, when shown in his calling, must be vested with the dignity of his office.

###### *Race, Color, Nationality*

Because America is made up of peoples of all races, colors and nationalities, Mutual accepts no program which misrepresents, ridicules or attacks any of them.

(A wartime exception exists in programs depicting “the nature of the enemy.”)

###### *Marriage & The Family*

Marriage and the home are fundamental institutions of our society; all treatment of these themes must tend to uphold their sanctity.

Adultery and infractions of moral law, being condemned by society, are permissible themes only when absolutely essential to plot development and must not be presented as glamorous or socially or morally excusable.

Divorce may not be lightly introduced as the solution to marital problems.

Extra-marital relations may not be used for comedy; nor may marriage be made a vehicle for suggestive or offensive lines.

No material tending to break down juvenile respect for moral conduct will be accepted for broadcast.

### *Sex*

Radio is an invited guest in the home and listening is communal: hence good taste, restraint and decency must govern all references to sex.

Songs and lyrics involving "double entendre" will not be approved.

Passion and lust, even when required by plot must be played down. Dramatic situations and dialogue which tend to be suggestive may not be used.

Sex crimes — seductions, rape, etc. — and aberrations may not be dramatized.

### *Crime & Punishment*

The drama of crime is a recognized and popular literary form: but crime may not be presented in a manner which will "glamorize" the criminal as against law and justice; or suggest imitation; or shock the sensibilities of the audience.

Gruesome details of crime may not be presented: nor may torture and agony be dramatized — either in dialogue or sound effects.

Suicide may not be held up as a satisfactory solution for personal problems, nor detailed in method.

Crime should find retribution, but details of punishment, such as hangings and electrocution, may not be dramatized.

The kidnapping of children is not an acceptable theme. Cruelty to children and horror themes in general may not be presented in distressing detail.

Mutual will not permit the appearance of individuals involved or featured in current news of crime or of a morbidly sensational character.

### *Physical & Mental Afflictions*

Physical deformities and mental afflictions should inspire sympathy rather than ridicule.

Neither may be used for comic effect; nor may either be presented in such a manner as to offend those suffering from such infirmities.

Scripts dealing with deformity or insanity will be individually examined and approved only if within the bounds of good taste.



### *Alcoholism & Narcotic Addiction*

Insobriety and addiction to narcotics may not be introduced except when essential to plot development; and if used at all, may not be dramatized in detail.

Alcoholism is not to be presented as commendable and narcotic addiction may not be shown as other than a vicious practice.

### *Profanity & Obscenity*

Use will not be permitted of any material or language which is blasphemous, sacrilegious or profane; salacious or obscene; indecent or vulgar.

Mutual recognizes that such words as "damn" and "hell" sometimes have contextual uses that do not constitute profanity; but in general, good taste demands their deletion.

## B. LEGAL, ETHICAL AND OTHER CONSIDERATIONS

### *Wartime Restrictions*

Of all programs, sponsored or sustaining, Mutual will require strict conformity to the "Code of Wartime Practices for American Broadcasters" as promulgated by the Office of Censorship. Adherence to the directives and regulations of the Armed Forces, and Government agencies will also be required.

### *Impersonations — References to Living Persons*

Impersonations of living characters may not be made without the written authorization of the individual impersonated — to cover either a single broadcast or a series. An announcement of the fact of impersonation must be made at least once during each broadcast, unless the dramatic context obviously denotes the impersonation.

The names of living persons shall not be used without their written consent, except (a) in the case of news programs; (b) in the case of programs of an educational or informative character, as distinguished from programs presenting episodes in fictionalized or dramatic form; and (c) in the case of other types of programs where the name used is that of a prominent public figure, such as a statesman or an outstanding radio or motion picture personality, or where Mutual's program director has waived the requirement of written consent. In any case where the name of a living person may be used in accordance with the foregoing, such use must be governed by good taste and the accepted amenities.

### *Simulation of News*

The news format may not be used for the presentation of fictional events: in other words, such events may not be treated as authentic newscasts or news announcements.

No program, other than an authentic newscast, may make use of such terms as "bulletin," "flash" and "stand by for news"; nor may any such program employ sound effects so closely identified with news broadcasts that their use in other types of programs may alarm or mislead the public.

### *Fact & Fiction — Fictional Call Letters*

Mutual realizes that the inclusion of actual names and factual events and references frequently adds an atmosphere of authenticity to fiction; however, it does not permit the mixing of fact and fiction in such a manner as to confuse or alarm the listening audience.

A case in point is the use of station call letters in carrying forward the action or plot of a broadcast. For the protection of existing broadcasting stations and to avoid possibility of confusion, fictional call letters must be cleared with Mutual.

### *Legislation & Litigation — Court Atmosphere*

Factual reporting, comment or opinion on pending legislation and litigation will be permitted only on news and discussion programs.

Simulation of court atmosphere or use of the term "Court" in a program title, in such a manner as to create the false impression that the program is vested with judicial or official authority, is unacceptable.

### *False & Confusing Sound Effects*

Sound effects which have a tendency to confuse, mislead or shock the listening audience may not be employed. An example is the use of "S.O.S." or other distress signals.

Sec. 325 of The Federal Communications Acts reads in part as follows: "No person within the jurisdiction of the United States shall knowingly utter or transmit, or cause to be uttered or transmitted, any false or fraudulent signal of distress, or communication relating thereto . . ."

### *Legal & Medical Advice*

Mutual does not permit the broadcasting of legal advice or medical diagnosis, treatment or advice.

### *Point-to-Point Communication*

By the terms of its license, no broadcasting station may broadcast a message "intended primarily for a specific individual and not to be received by the public."

Where a message, though addressed to a specific individual such as a man in public life, is in keeping with the program's format and its import is clear to the audience, such a message may be accepted.

### *Qualifications of Speakers*

Mutual reserves the right to pass upon the qualification of speakers on specialized, technical and scientific subjects.

### *Special Standards*

While the foregoing standards apply to all programs, there are additional and particularized standards governing News and Children's programs. These are dealt with in later sections.

Mention of special Children's Program standards is made here for this reason: that situations and techniques unsuitable for juvenile programs should be avoided in adult programs broadcast at times of day when the listening audience may include large numbers of children.

## SECTION II — STANDARDS OF PROCEDURE FOR SPONSORED PROGRAMS

### A. GENERAL PROCEDURE

#### *Rights to Programs & Titles*

The formats and titles of new programs, and proposed changes in existing programs, must be submitted to Mutual — in order that search may be made to clear rights to the material and avoid conflict and possibility of claims.

#### *Previews*

Mutual reserves the right, before accepting a program or program series for broadcasting, to require the sponsor or his agent to furnish a complete, performed audition.

#### *Deadline for Scripts*

Continuities of all programs — including the text of all program lines and of the advertising message — must be submitted to Mutual a full forty-eight hours in advance of the broadcast, except when this procedure is made impossible by the nature of the program, such as a Newscast. Scripts of News

Commentaries and Analyses must be submitted for review at least two hours prior to the broadcast.

The forty-eight hour deadline notwithstanding, the sponsor or his agent has the privilege of making revisions and changes in both program and commercial continuity within a reasonable time prior to the broadcast.

Forum, quiz and other "ad-lib" programs, on which written scripts cannot be prepared, will be subject to supervision.

### *Continuity Approval — Changes*

All continuities—including program content, lyrics of all songs, and text of commercial messages—are subject to approval by Mutual.

Mutual reserves the right to require the elimination or revision of any program or commercial announcement material which runs contrary to Mutual's standards and policies.

### *Rights to the Use of Literary Material*

The sponsor or his agent, upon request from Mutual, shall submit evidence of his right to use the literary material in his broadcast.

### *Music Copyright — Duplication*

For the protection both of advertisers and of Mutual, all music used on programs must be cleared for copyright.

Advertisers shall submit, at least forty-eight hours prior to broadcast, duplicate lists of all music—the lists to include (a) correct titles, (b) composers and copyright owners of the music and (c) lyrics of all songs. Subsequent changes may not be made without the approval of Mutual.

In cases where two or more advertisers, in adjoining or close-by periods, propose using the same musical number, preference goes to the advertiser who first submitted his program selections. A musical number in one program may not be repeated in another, until an hour has elapsed between the *end* of the first program and the *start* of the second.

### *Broadcast Tickets*

Tickets for broadcasts may not be offered over the air except with the consent of, and by arrangement with, Mutual.

### *Recorded Programs*

Mutual does not preclude the use of electrically transcribed programs when their use is required: however, recorded programs must be identified as such, in accordance with the pertinent rules and regulations of the

Federal Communications Commission. Such rules and regulations presently in effect read as follows:

"Each broadcast program consisting of a mechanical record or a series of mechanical records shall be announced in the manner and to the extent set out below.

"(a) A mechanical record or a series thereof, of longer duration than 30 minutes, shall be identified by appropriate announcement at the beginning of the program, at each 30 minute interval, and at the conclusion of the program: *Provided, however,* that the identifying announcement at each 30 minute interval is not required in case of a mechanical record consisting of a single, continuous, uninterrupted speech, play, religious service, symphony concert, or operatic production of longer duration than 30 minutes.

"(b) A mechanical record, or a series thereof, of a longer duration than 5 minutes, and not in excess of 30 minutes, shall be identified by an appropriate announcement at the beginning and end of the program.

"(c) A single mechanical record of a duration not in excess of 5 minutes shall be identified by appropriate announcement immediately preceding the use thereof.

"(d) In case a mechanical record is used for background music, sound effect, station identification, program identification (theme music of short duration), or identification of the sponsorship of the program proper, no announcement of the mechanical record is required.

"(e) The identifying announcement shall accurately describe the type of mechanical record used, i.e., where an electrical transcription is used it shall be announced as a 'transcription' or an 'electrical transcription' or as 'transcribed' or 'electrically transcribed,' and where a phonograph record is used it shall be announced as a 'record.'

"(f) A licensee shall not attempt affirmatively to create the impression that any program being broadcast by mechanical reproduction consists of live talent."

## B. CONTESTS AND OFFERS — PRODUCT SAMPLING

On the subject of contests and offers, Sec. 316 of the Federal Communications Act reads as follows:

"No person shall broadcast by means of any radio station for which a license is required by any law of the United States, and

no person operating any such station shall knowingly permit the broadcasting of, any advertisement of or information concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes.

"Any person violating any provision of this section shall, upon conviction thereof, be fined not more than \$1,000 or imprisoned not more than one year, or both, for each and every day during which such offense occurs."

### *Contests*

When an advertiser proposes to use a contest in connection with any program, full details must be submitted to Mutual in advance of the first public announcement in any medium tying in with the program, and at least 10 days prior to the first broadcast announcement of the contest.

Contests will be permitted only when they fulfill all the following standard requirements:

1. Equal opportunity to all contestants to win on the basis of skill and ability, and not on chance. Contests based on chance are not acceptable.
2. The basis for judging entries must be clearly stated in each contest announcement, except in preliminary or "teaser" announcements.
3. The decision of the judges must be final; and duplicate prizes must be awarded in event of ties. These provisions must be included in each contest announcement.
4. All prizes and awards must have the approval of Mutual before the start of the contest.
5. Mutual must be informed of contest closing dates. In a contest lasting two weeks or less, the closing date must be included in all announcements from the start; in longer contests, closing dates must be announced at least two weeks in advance.
6. Box-tops, wrappers or other evidence of purchase may be required of contestants; but provision should be made to accept "reasonable facsimiles."
7. Judging must be completed as soon after closing date as possible; and announcements of winners must be made promptly, on the program itself. When, because of length, announcement of all winners cannot be made, Mutual must be supplied with a list of winners so as to be able to answer queries from contestants.

8. Entries to contests must be directed to the advertiser and not to Mutual, at an address to be mutually agreed upon.
9. All announcements are subject to approval by Mutual; and must be made within the time limits set for commercial messages in the programs involved.

### *Offers*

Details of all offers proposed to be made on any program must be submitted to Mutual for approval at least 5 days prior to the first broadcast announcement of the offer.

Offers will be permitted only when they conform to the following standard requirements.

1. An advertiser must in all cases completely fulfill the conditions of his offer to each qualified acceptor thereof.
2. No premium will be approved which may prove harmful to person or property, or which plays upon superstition.
3. An offer which involves monetary consideration may not be described as "free" or as a "gift"; the consideration charged is subject to approval by Mutual and must be commensurate with the value of the article offered; and the advertiser must agree to refund such consideration if listeners express dissatisfaction and request it.
4. Mutual and all Mutual stations must be held free and harmless by the advertiser from all liability in connection with offers.
5. Termination date of offers must be announced as far in advance as possible. When an offer is to be withdrawn, full details must be broadcast, including date and time.
6. All written responses to offers must be directed to the advertiser and not to Mutual, at an address to be mutually agreed upon.
7. All announcements are subject to approval by Mutual; and they must be made within the time limits set for commercial messages in the programs involved.

### *Product Sampling and Displays*

Sponsors who wish to arrange for displays or product sampling in Mutual's studios will find Mutual ready to cooperate. All such plans should be taken up at least a week prior to the broadcast and, except for products which may not suitably be distributed in the studios, or for arrangements conflicting with those of other advertisers, Mutual will extend every assistance to the advertiser.

## SECTION III—STANDARDS FOR COMMERCIAL COPY

### A. FOR ALL SPONSORED PROGRAMS

#### *Acceptability of Advertiser*

As a national advertising medium, Mutual is desirous of serving the nation's advertisers. Mutual, however, reserves the right to reject advertising for such products and services which, in its opinion, are unsuitable for advertising by radio.

#### *Sponsorship Identification*

Announcements must be made of the sponsorship of programs, as required by The Federal Communications Act, as follows:

"Sec. 317. All matter broadcast by any radio station for which service, money or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall at the time the same is so broadcast, be announced as paid for or furnished as the case may be by such person."

The rules and regulations of the Federal Communications Commission (Section 3.409 — Announcement of Sponsored Programs) read as follows:

"(a) In the case of each program for the broadcasting of which money, services, or other valuable consideration is either directly or indirectly paid or promised to, or charged or received by, any radio broadcast station, the station broadcasting such program shall make, or cause to be made, an appropriate announcement that the program is sponsored, paid for, or furnished, either in whole or in part.

"(b) In the case of any political program or any program involving the discussion of public controversial issues for which any records, transcriptions, talent, scripts, or other material or services of any kind are furnished, either directly or indirectly, to a station as an inducement to the broadcasting of such program, an announcement shall be made both at the beginning and conclusion of such program on which such material or services are used that such records, transcriptions, talent, scripts, or other material or services have been furnished to such station in connection with the broadcasting of such program; provided, however,



that only one such announcement need be made in the case of any such program of five minutes' duration or less, which announcement may be made either at the beginning or conclusion of the program.

"(c) The announcement required by this section shall fully and fairly disclose the true identity of the person or persons by whom or in whose behalf such payment is made or promised, or from whom or in whose behalf such services or other valuable consideration is received, or by whom the material or services referred to in subsection (b) hereof are furnished. Where an agent or other person contracts or otherwise makes arrangements with a station on behalf of another, and such fact is known to the station, the announcement shall disclose the identity of the person or persons in whose behalf such agent is acting instead of the name of such agent.

"(d) In the case of any program, other than a program advertising commercial products or services, which is sponsored, paid for or furnished, either in whole or in part, or for which material or services referred to in subsection (b) hereof are furnished, by a corporation, committee, association or other unincorporated group, the announcement required by this section, shall disclose the name of such corporation, committee, association or other unincorporated group. In each such case the station shall require that a list of the chief executive officers or members of the executive committee or of the board of directors of the corporation, committee, association or other unincorporated group shall be made available for public inspection at one of the radio stations carrying the program.

"(e) In the case of programs advertising commercial products or services, an announcement stating the sponsor's corporate or trade name or the name of the sponsor's product, shall be deemed sufficient for the purposes of this section and only one such announcement need be made at any time during the course of the program."

### *Accuracy of Commercial Announcements*

Mutual reserves the right to investigate the accuracy of all statements and claims made in commercial copy; and to require the elimination or correction of any statements or claims which it deems contrary to the public interest or to its standards.

### *Misleading Statements*

False or misleading statements, whether in commercial copy or in the program itself, concerning product or service or nature and origination of the program, will not be accepted.

### *Derogatory Statements*

Mutual will not accept for broadcasting any statement which is derogatory to an industry, profession, trade, group or individual; nor any statement, suggestion or implication which reflects upon any competitor, his products or services.

### *Claims Concerning Value & Price*

Statements of value and price must be limited to factual material.

Comparisons and claims which mislead or confuse will not be permitted.

### *Testimonials*

1. *Civil Rights.* In a number of States, the law prohibits the use of an individual's name for trade or advertising purposes without his or her written consent. Consequently, when names are to be used in connection with testimonials, Mutual requires written evidence of consent from the individuals concerned.
2. *Blanket releases* will be accepted from sponsors or agencies covering specific periods of broadcasting, provided the sponsors or agencies will, in writing, assume the responsibility for obtaining the necessary individual releases.
3. *Authentication.* Testimonials must reflect the authenticated experiences or judgment of competent living persons; and such testimonials may not contain material which is unacceptable in other forms of commercial copy.
4. *Mutual announcers* and employees are not permitted to give personal testimonials on the air, nor to endorse any product personally.

### *Dramatized Appeals*

The device of having a character in a radio drama take part in a dialogue with the announcer in delivering the advertiser's commercial is recognized. However, the dramatic action itself may not be used as the basis for a commercial appeal — for example, making the solution of a story problem depend upon the purchase of the advertiser's product by the listening audience.

### *Charity Appeals*

Appeals on behalf of charitable institutions are, in general, not permitted on sponsored programs. Advertisers should clear with Mutual before making commitments to include in their programs any appeals for funds.

### *Guest Appearances*

When an artist, regularly broadcasting for a sponsor over another network, appears as a guest on a Mutual program, whether for the same or another sponsor, reference to the guest's program and sponsor may be made once during the performance; mention may be made of the day, but not of the time or facilities of the program.

### *Network Cross References*

When a sponsor using Mutual and other network facilities desires, on his Mutual program, to make reference to his programs on other networks, such reference must be limited to mention of (a) title and talent, (b) product advertised and (c) day on which the program is broadcast. No mention may be made of the hour or the competing network.

### *Change of Program Time & Network Facilities*

A Mutual client whose program is being moved to a new time on Mutual will desire to publicize the change by announcements in his program. Such announcements should take into consideration the status of his station line-up. It is suggested that the listener be referred to "your local paper for exact time and station."

An advertiser changing from Mutual to another network must limit his announcement to the fact of the change; the new network, station, or time may not be mentioned. Again, the listener should be referred to "your local paper for station and time."

### *Length of Commercial Time*

Experience has shown that from the viewpoint of both the listening quality and of program balance there is a right proportion of commercial time to program length. The following are maximums permitted by Mutual's standards:

	<i>Daytime (Minutes)</i>	<i>Nighttime (Minutes)</i>
Five-minute programs	1.45	1.30
Ten-minute programs	2.30	2.00
Quarter-hour programs	3.15	2.30
Twenty-five minute programs	4.15	2.45
Half-hour programs	4.30	3.00
Hour programs	9.00	6.00

News programs have a different ratio (see News Programs).

### *“Cow-Catchers” & “Hitch-Hikes”*

Mutual has devoted considerable study to “cow-catcher” and “hitch-hike” announcements. Pending a more satisfactory treatment of them, Mutual’s policy is as follows:

1. Within the limits of the commercial time allotted to him by the length of his program period (e.g., 3 minutes for a half-hour evening program), the advertiser is permitted to use a preliminary and/or concluding announcement in addition to the usual opening, middle and closing commercial.
2. All such announcements, however, must definitely be within the framework of the program; in other words an announcement may not *precede* the opening of, nor may one *follow* the sign-off of the program.

### B. MEDICAL ADVERTISING

Since the advertising of medical products involves not only good taste but the public health and safety, Mutual has established additional standards for medical advertising.

#### *Acceptability of Product*

Mutual reserves the right thoroughly to investigate any medical product proposed for advertising over its facilities; and to require of the sponsor all relevant and scientific data necessary to substantiate claims made for the product.

Mutual will not accept a product which contains harmful drugs; or which fails to comply with Government regulations on medical advertising.

Mutual will not accept a product advertised as a remedy for ailments known to be chronic or unremediable; or a product the use of which requires self-diagnosis or self-medication in circumstances which might be dangerous.

Additional factors involved in a decision on a product’s acceptability for advertising are: the nature and time of the broadcasts and the audiences they will reach.

#### *Accuracy of Commercial Announcements*

The intimate and personal nature of medical commercials calls for strict supervision of all copy and claims and Mutual reserves the right to exercise such supervision.

Announcements may not dramatize nor over-emphasize symptoms and situations which are distressing or morbid; and they must be restrained and in good taste when referring to bodily functions, internal or external.

Such terms as "safe" and "harmless" and "without risk" may not be used in commercials.

Claims that a product will effect a "cure" may not be used.

### *Dramatized Commercials*

In dramatized commercials introducing statements by doctors, dentists, druggists, nurses or other professional persons, such statements must be delivered by actual members of those professions; moreover the statements must be based on actual experiences. Otherwise, it must be established and announced that the dramatizations are fictional.

### *Testimonials*

1. *Authentication.* Medical product testimonials must be based on authenticated experience or judgment of competent living witnesses; and they may not contain statements or claims which are unacceptable in other forms of commercial copy.
2. *Endorsement by professional groups.* Blanket statements purporting to be the opinion of the medical profession or of any substantial group thereof, may not be used in medical copy.

## C. OTHER TYPES OF PRODUCTS OR SERVICES

### *Financial Advertising*

Mutual will accept the advertising of such financial institutions as banks, insurance companies and investment services; but subject to approval in each individual case. A pre-requisite is that the advertiser shall have complied with all Federal, State and Local regulations governing financial advertising.

No advertising for speculative promotions — financial, real estate or any other — will be accepted.

### *Professional Advertising*

Mutual will not accept the advertising of members of professions, such as medical and legal, which consider advertising of their services unethical.

### *Alcoholic Beverage Accounts*

Mutual will accept the advertising of beer and light wines subject to applicable Federal and State laws regulating such advertising. Suitability

of the program submitted for this type of sponsorship will be carefully considered. No hard liquor accounts are acceptable.

### *Unacceptable Types of Advertising*

In addition to the professional and designated types of financial advertising, there are other classifications of accounts which Mutual does not accept. Specific information will be supplied upon request.

## SECTION IV — SPECIAL PROGRAM CLASSIFICATIONS

### A. CHILDREN'S PROGRAMS

Probably no programs are subjected to closer scrutiny on the part of parents than those planned and broadcast for the entertainment of children. Reaching as they do millions of young, eager and impressionable minds, children's programs have a greater burden of responsibility than any other. For these reasons, Mutual believes in the need for special additional standards for children's programs.

#### *Program Standards*

Children's programs must be founded on a sound social concept — reflecting respect for law and order; for adult authority; good morals and clean living.

Fair play and honorable conduct, intelligence and moral courage should be reflected in sympathetic characters (heroes and heroines) in children's programs.

Lawlessness, cowardice, malice, deceit and selfishness may not be shown as other than reprehensible.

In script material the following must be avoided:

1. Torture or horror, by suggestion, dramatization or sound effect; over-emphasis on gun-play or violence.
2. Utilization of the supernatural or of superstition in ways that might arouse fear or mental confusion.
3. Profanity or vulgarity.
4. Treatment of kidnapping or other crimes calculated to terrorize juvenile listeners.
5. Stirring up of morbid suspense or hysteria through "cliff-hanging" — the ending of an episode on a note of distressing uncertainty.

Mutual feels it is important in the writing of children's programs to keep the audience constantly in mind. As a check on writers, Mutual requires that a complete story line, describing plot, dramatic action, locale and characters, be submitted in advance of each thirteen-week cycle of programs.

### *Special Advertising Standards*

Children's programs must comply not only with the advertising policies governing all programs on Mutual, but also with the following special standards:

*Advertising messages* on children's programs must, in general, follow the regulations covering *program content*.

Unusual care must be exercised in commercial announcements so that they do not mislead the young listener.

Announcements may not stress unduly the idea of asking parents to purchase the product; nor may announcements suggest that the purchase of the product will help solve a situation for a character in the program, or that failure to purchase may bring a termination to the program.

### *Clubs & Codes*

The formation of secret clubs and the use of codes for communication between members is recognized as effective program promotion. However, full details of such clubs, initiation routine, conditions of membership, codes and other pertinent data must be submitted to Mutual at least 10 days before the advertiser commits himself to the purchase of the necessary material such as forms, badges, membership cards, etc.

### *Contests & Offers*

The general rules and regulations on contests and offers also apply to contests and offers on children's programs — with the added provision that children must not be encouraged to enter strange places or approach strangers to solicit box-tops, wrappers and other contest materials.

## **B. NEWS PROGRAMS**

Fundamental in the Mutual approach to the handling of news, commentary and opinion is the concept of Freedom of Speech. Translated into program terms, it means a full presentation of news and current events; of intelligent interpretation and analysis of the news; of fair, balanced and unbiased commentary representing all important phases of opinion upon any national or fundamental issues.

Mutual assumes no editorial position: it does view as its responsibility the proper use of its facilities for keeping the people informed — fully, fairly, accurately and without sensational treatment.

### *Definitions*

In Mutual's view, news programs fall into two main classifications:

1. Newscasts, direct reporting and documentary broadcasts.
2. Analyses or commentaries.

### *Qualifications of Commentators*

Mutual requires that the commentators heard over its facilities shall be fully qualified for their task and Mutual reserves the right to be the sole judge of whether these qualifications are met:

1. That the commentator shall have experience in reporting and analyzing the news; high standards of journalism; and a knowledge of his subject matter.
2. That the commentator does not represent, directly or indirectly, the outlook of any group or groups, but that his commentaries reflect his own personal viewpoint.
3. That the commentator shall not engage in special pleading but shall, at all times, be factual, accurate and fair.

In judging commentators, Mutual seeks not to impose censorship, but to assure a completely balanced schedule of news analyses and commentaries.

### *Program Content*

Mutual reviews all news scripts in the light of the following standards:

1. News must be properly procured from reliable sources. Sponsors may not select or edit items in news programs.
2. News shall be reported with accuracy, truth and sound balance.
3. News programs must not contain any defamatory material.
4. Crime and sex news shall be treated factually, with restraint and no sensationalism. Good taste must govern all handling of news.
5. News may not be presented in a manner to cause confusion or alarm or panic.
6. News programs will conform to the "Code of Wartime Practices."
7. News of litigation and pending legislation must be handled with care so as not to interfere with the course of the law.



8. Opinions which make news must be clearly identified as opinions and the source must always be quoted.
9. The originating point of a program must be clearly stated; and news items, commentary or opinion must be identified as to source.

### *Commercial Announcements*

The rules governing commercial announcements on sponsored programs of other types apply also to news programs. In addition, the following specific rules must be observed:

The commercial message must be introduced by a statement which separates it from news.

News may not be used as a lead-in to the commercial announcement.

No *middle* commercial is permitted in a news program of five minutes: a ten or fifteen-minute newscast or commentary may include a middle commercial, but its placing must not interrupt the continuity of thought and is subject to approval by the Mutual News Editor.

### *Length of Commercial Time*

On programs of news, analysis or commentary, the time allotted for commercial messages is as follows:

	<i>Daytime (Minutes)</i>	<i>Nighttime (Minutes)</i>
Five minute programs	1.15	1.15
Ten minute programs	2.15	2.00
Quarter-hour programs	2.45	2.30

## C. POLITICAL BROADCASTS

Time for political broadcasts may be purchased over the facilities of Mutual by recognized candidates of political parties in national elections; or by duly qualified candidates for primary elections; or by the representatives of such candidates; or by the various political parties.

Time for political broadcasts will be sold during the period starting with the nominee's acceptance of candidacy and ending with the close of broadcasting on the eve of election.

### *FCC Regulations*

Sec. 315 of The Federal Communications Act reads as follows:

"If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates

for that office in the use of such broadcasting station, and the Commission shall make rules and regulations to carry this provision into effect: Provided, That such licensee shall have no power of censorship over the material broadcast under the provisions of this section. No obligation is hereby imposed upon any licensee to allow the use of its station by any such candidate."

The rules and regulations of the Federal Communications Commission on Broadcasts by Candidates for Public Office read:

"3.421 GENERAL REQUIREMENTS. No station licensee is required to permit the use of its facilities by any legally qualified candidate for public office, but if any licensee shall permit any such candidate to use its facilities, it shall afford equal opportunities to all other such candidates for that office to use such facilities, Provided, That such licensee shall have no power of censorship over the material broadcast by any such candidate.

"3.422 DEFINITIONS. A 'legally qualified candidate' means any person who has publicly announced that he is a candidate for nomination by a convention of a political party or for nomination or election in a primary, special, or general election, municipal, county, state or national, and who meets the qualifications prescribed by the applicable laws to hold the office for which he is a candidate, so that he may be voted for by the electorate directly or by means of delegates or electors, and who

(a) has qualified for a place on the ballot or

(b) is eligible under the applicable law to be voted for by sticker, by writing in his name on the ballot, or other method, and (1) has been duly nominated by a political party which is commonly known and regarded as such, or (2) makes a substantial showing that he is a bona fide candidate for nomination or office, as the case may be.

"3.423 RATES AND PRACTICES. The rates, if any, charged all such candidates for the same office shall be uniform and shall not be rebated by any means, directly or indirectly; no licensee shall make any discrimination in charges, practices, regulations, facilities, or services for or in connection with the service rendered pursuant to these rules, or make or give any preference to any candidate for public office or subject any such candidate to any prejudice or disadvantage; nor shall any licensee make any contract or other agreement which shall have the effect of permitting

any legally qualified candidate for any public office to broadcast to the exclusion of other legally qualified candidates for the same public office.

"3.424 RECORDS: INSPECTION. Every licensee shall keep and permit public inspection of a complete record of all requests for broadcast time made by or on behalf of candidates for public office, together with an appropriate notation showing the disposition made by the licensee of such requests, and the charges made, if any, if request is granted."

### *Continuity Requirements*

Mutual requires that a copy of each speech and of all other text be submitted in advance of each political broadcast.

Mutual does not exercise censorship over scripts; but reserves the right to check them for compliance with the laws of libel, defamation, sedition; and for accuracy of statement.

Contracting parties are required to sign indemnities; in addition when several speakers appear, each speaker is required to sign an indemnity covering his or her portion of the broadcast.

Political broadcasts may not be dramatized or fictionalized.

All political broadcasts must be clearly identified as to sponsorship both at the start and at the end of the broadcast.

## D. RELIGIOUS PROGRAMS

Time for the broadcast of religious programs may be purchased over the facilities of Mutual by recognized church organizations and religious groups representing the three major faiths in the United States — Catholic, Jewish and Protestant.

Because radio is an universal medium, the character of such religious broadcasts should be calculated to be of interest to the general listening audience, and the appeal should be predicated upon basic religious truths and concepts.

### *Program Content*

Religious broadcasts may not introduce discussions of any political or controversial material.

Opinions on social and economic issues may not be used on religious programs.

No program may be made the vehicle of attack, open or implied, upon any other religious faith or denomination.

### *Scheduling & Length of Program*

All religious sponsored programs are scheduled by Mutual on Sunday morning; hence time may be bought for such programs on Sunday morning only; and they may not be broadcast, live, later than 1:00 pm EWT.

Sponsored religious programs are limited to a half-hour in duration.

### *Commercial Announcements*

No commercial announcements which involve any solicitation of funds will be accepted.

Any phrase which suggests, however indirectly, that contributions are desired from the listening audience (such as "give us your encouragement" or "support this work with your interest regularly" or any other phrase of similar purport) will not be permitted in the script of the programs.

### **E. CONTROVERSIAL SUBJECTS**

In the matter of controversial issues, defined as current issues of public interest regarding which there is substantial difference of opinion, Mutual's policy is that it does not take, advance or promote any editorial position on its own account and no person speaking over its facilities is authorized to reflect any editorial stand for Mutual.

The network does, however, recognize its responsibility, in the public interest, to safeguard and promote equal opportunity for the free discussion of controversial issues of general interest to the American people.

Mutual has always made, and will continue to make, its facilities available to responsible individuals and organized groups for the discussion of controversial issues to the fullest extent consistent with a fair balance of opinion and the maintenance of a sound program structure.

## APPENDIX F. (Exhibit Submitted by Niles Trammell, NBC)

NUMBER OF A M RADIO STATIONS AND DAILY NEWSPAPERS IN NBC NETWORK STATION CITIES

State—City	(a) Population	(b) Radio Families	(c) A M Stations		(d) Number of Daily Newspapers	(d) Largest Daily Newspaper	(e) City Zone Circulation Largest Daily Newspaper
			CP Holders and Proposed	Licenses			
ALABAMA							
Birmingham	315,000	72,370	5	3	8	News	88,908
Mobile	150,000	34,780	3	3	6	Press	44,542
Montgomery	122,000	19,810	3	1	4	Advertiser	19,835
ARIZONA							
Douglas	8,600	†	1	—	1	Dispatch	3,143*
Globe	10,000	2,040	1	—	1	—	—
Phoenix	108,000	24,520	3	2	5	Arizona Republic	31,229
Prescott	10,000	1,600	1	—	2	Courier	4,553*
Safford	2,300	400	1	—	1	—	—
Tucson	52,000	14,150	2	3	5	Arizona Star	13,298
Yuma	12,000	3,800	1	2	3	Sun & Sentinel	4,410*
ARKANSAS							
Little Rock	120,000	28,500	3	—	3	Arkansas Gazette	30,469
CALIFORNIA							
Bakersfield	32,800	10,660	4	—	4	Californian	16,387
Fresno	63,700	22,730	3	1	4	Bee	27,157
Los Angeles	1,805,700	608,160	12	—	5	Herald & Express	205,419
Sacramento	120,000	39,460	4	—	2	Bee	43,897
San Diego	362,700	107,060	4	4	3	Tribune Sun	68,998
San Francisco	827,400	237,110	7	—	4	Examiner	113,272
Santa Barbara	38,400	13,050	3	—	1	News-Press	11,723

See Notes — last page.

State—City	Population	Radio Families	A M Stations			Number of Daily Newspapers	Largest Daily Newspaper	City Zone Circulation Largest Daily Newspaper
			CP Holders	and Proposed	Grants			
			Licenses			Total		
<b>COLORADO</b>								
Denver	375,000	105,600	6	—	—	6	Post	123,508
<b>CONNECTICUT</b>								
Hartford	183,500	53,330	4	—	—	4	Times	66,625
<b>DELAWARE</b>								
Wilmington	121,500	32,470	2	1	1	3	Journal	30,760
<b>DIST. OF COLUMBIA</b>								
Washington	927,400	225,000	7	—	—	7	Times Herald	218,235
<b>FLORIDA</b>								
Jacksonville	230,300	51,150	4	—	—	4	Times Union	68,693
Lakeland	35,100	5,990	1	—	—	1	Ledger	6,224
Miami	213,300	53,180	3	2	2	5	Herald	96,649
Orlando	55,900	11,690	3	1	1	4	Sentinel	13,118
Pensacola	48,300	11,250	2	1	1	3	Journal	13,569
Tampa	138,900	32,820	3	—	—	3	Tribune	40,168
<b>GEORGIA</b>								
Atlanta	365,700	76,820	5	1	1	6	Journal	105,982
Augusta	82,500	16,440	4	—	—	4	Chronicle	14,497
Savannah	130,000	31,520	4	1	1	5	News	21,534
<b>IDAHO</b>								
Boise	34,300	9,140	2	1	1	3	Idaho Statesman	8,520
Pocatello	24,500	6,010	2	1	1	3	Tribune	7,262*
Twin Falls	16,200	3,790	3	—	—	3	Times News	4,922

See Notes—last page.

State—City	Population	Radio Families	A M Stations CP Holders and Proposed Grants		Total	Number of Daily News- papers	Largest Daily Newspaper	City Zone Circulation Largest Daily Newspaper
			Licenses	Grants				
ILLINOIS								
Chicago	3,600,000	1,000,000	15	—	15	5	Tribune	636,795
Peoria	119,700	30,090	2	3	5	2	Journal Star	40,430
INDIANA								
Elkhart	37,000	10,380	1	—	1	1	Truth	11,090
Evansville	125,000	35,530	2	2	4	2	Courier	22,102
Fort Wayne	125,000	35,340	2	3	5	2	News Sentinel	36,907
Indianapolis	420,000	130,850	4	1	5	3	News	107,613
Terre Haute	71,100	17,770	1	1	2	2	Tribune	20,043
IOWA								
Davenport	73,000	21,330	2	—	2	2	Times	21,228
Des Moines	178,000	48,750	4	1	5	2	Register	49,479
KANSAS								
Hutchinson	32,800	8,520	2	—	2	1	News Herald	10,936
Pittsburg	24,500	5,010	1	1	2	2	Sun	8,577*
Wichita	165,000	55,520	3	2	5	2	Beacon	38,719
KENTUCKY								
Louisville	375,000	109,810	4	3	7	2	Times	124,721
LOUISIANA								
Alexandria	45,000	9,140	2	1	3	1	Town Talk	10,396
Baton Rouge	35,000	12,230	2	—	2	2	State Times	19,082
Lafayette	25,500	4,520	1	—	1	1	Advertiser	7,410*
Lake Charles	33,500	7,810	1	2	3	1	American Press	7,637

See Notes—last page.

State—City	Population	Radio Families	A M Stations		Licenses	CP Holders and Proposed Grants		Total	Number of Daily News-papers	Largest Daily Newspaper	City Zone Circulation Largest Daily Newspaper
LOUISIANA (Continued)											
Monroe	35,500	7,140	2	—	2	—	2	2	2	World Times-Picayune Times	4,801
New Orleans	562,200	135,930	5	3	8	3	8	3	3		98,966
Shreveport	128,600	23,820	3	1	4	1	4	2	2		26,573
MAINE											
Augusta	20,000	4,090	2	—	2	—	2	1	1	Kennebec Journal	5,680
Bangor	30,000	7,220	3	1	4	1	4	2	2	News Press-Herald	9,809
Portland	84,000	22,940	4	—	4	—	4	2	2		18,704
MARYLAND											
Baltimore	932,900	271,280	5	1	6	1	6	2	2	News-Post Times	194,063
Cumberland	42,000	9,510	1	—	1	—	1	2	2		13,525
MASSACHUSETTS											
Boston	766,400	200,000	8	—	8	—	8	7	7	Post News	256,058
Springfield	162,500	43,660	3	—	3	—	3	4	4		52,958*
MICHIGAN											
Detroit	1,815,000	505,580	5	—	5	—	5	3	3	Free Press Journal Press News	268,642
Flint	178,000	44,190	2	3	5	3	5	1	1		53,422
Grand Rapids	174,500	46,560	3	1	4	1	4	2	2		58,500
Saginaw	95,000	24,430	1	1	2	1	2	1	1		25,804
MINNESOTA											
Duluth	110,000	26,400	2	1	3	1	3	2	2	News Tribune Tribune	16,868
Hibbing	18,000	4,070	1	—	1	—	1	1	1		4,077

See Notes — last page.



State—City	Population	Radio Families	A M Stations			Total	Number of Daily Newspapers	Largest Daily Newspaper	City Zone Circulation Largest Daily Newspaper
			Licenses	CP Holders and Proposed Grants					
MINNESOTA (Continued)									
Mankato	17,500	4,480	1	—	1	1	Free Press	5,743	
Minneapolis	525,500	152,270	5	1	6	3	Star	139,795	
St. Paul	327,500	84,700	2	—	2	2	Dispatch	93,038	
Rochester	34,000	6,130	1	1	2	1	Post-Bulletin	7,361	
St. Cloud	27,700	5,870	1	—	1	1	Times	6,280	
Virginia	13,000	3,300	1	—	1	1	Mesabi News	3,295	
MISSISSIPPI									
Greenwood	20,300	4,610	1	—	1	2	Commonwealth	4,140*	
Hattiesburg	40,000	7,740	1	—	1	1	American	12,445*	
Jackson	91,000	19,070	3	2	5	2	Clarion-Ledger	17,313	
Laurel	31,100	5,190	2	—	2	1	Leader-Call	5,585	
Natchez	25,000	3,850	1	—	1	1	Democrat	4,343*	
MISSOURI									
Kansas City	419,200	130,800	4	—	4	2	Star	222,066	
St. Louis	860,000	259,000	6	—	6	2	Post-Dispatch	204,802	
Springfield	66,000	18,090	3	—	3	2	Leader & Press	22,195	
MONTANA									
Billings	33,500	7,450	2	—	2	1	Gazette	4,919	
Bozeman	12,500	2,420	1	—	1	1	Chronicle	3,646*	
Butte	38,500	11,110	2	1	3	2	Montana Standard	10,263	
Great Falls	43,000	10,770	2	3	5	2	Tribune	9,101	
Helena	19,000	4,190	1	—	1	1	Independent Record	7,442*	

See Notes — last page.

See Notes — last page.

State—City	Population	Radio Families	A M Stations		Total	Number of Daily Newspapers	Largest Daily Newspaper	City Zone Circulation Largest Daily Newspaper
			CP Holders and Proposed	Grants				
NEBRASKA								
North Platte	16,900	3,200	1	—	1	1	Telegraph Bulletin	6,926
Omaha	252,000	66,660	5	—	5	1	World Herald	82,570
NEVADA								
Reno	31,000	7,890	3	2	5	2	Gazette	10,381
NEW JERSEY								
Trenton	125,500	33,190	2	—	2	3	Times	33,644
NEW MEXICO								
Albuquerque	50,000	10,840	2	2	4	2	Journal	13,327
NEW YORK								
Binghamton	97,500	23,710	2	1	3	2	Press	35,028
Buffalo	605,000	175,700	5	—	5	2	News	170,715
Elmira	65,000	15,160	1	1	2	2	Star Gazette	21,235
New York	7,454,600	1,998,660	17	—	17	11	News	1,642,539
Rochester	331,500	97,700	3	3	6	2	Times Union	82,856
Schenectady	105,000	30,090	2	—	2	2	Gazette	25,431
Syracuse	215,000	62,700	4	1	5	2	Herald Journal	59,166
NORTH CAROLINA								
Asheville	57,000	12,480	3	2	5	2	Citizen	8,953
Charlotte	115,000	24,480	3	—	3	2	Observer	28,692
Raleigh	59,000	11,540	2	1	3	2	News & Observer	13,697
Winston-Salem	92,000	16,610	2	1	3	2	Journal	21,335

See Notes — last page.

State—City	Population	Radio Families	A M Stations			Radio Families	Licenses	CP Holders and Proposed Grants		Number of Daily Newspapers	Largest Daily Newspaper	City Zone Circulation Largest Daily Newspaper
								Total				
NORTH DAKOTA												
Bismarck	18,000	4,460		1	—	1	1	1	1	Tribune	3,974	
Fargo	37,000	10,020		1	1	2	1	1	1	Forum	11,144	
OHIO												
Cincinnati	488,000	154,560		5	—	5	3	3	3	Enquirer	99,414	
Cleveland	900,000	262,660		4	2	6	2	2	2	Press	226,000	
Lima	53,200	16,520		1	—	1	1	1	1	News	15,958	
Toledo	305,000	82,690		3	—	3	2	2	2	Blade	108,224	
Zanesville	40,200	10,970		1	—	1	3	1	3	Times-Recorder	6,366	
OKLAHOMA												
Oklahoma City	250,000	64,170		4	2	6	2	2	2	Oklahoman	52,847	
Tulsa	178,700	48,500		4	1	5	2	2	2	World	40,021	
OREGON												
Medford	16,500	4,440		1	1	2	1	1	1	Mail Tribune	5,572	
Portland	405,000	140,060		8	—	8	2	2	2	Oregonian	89,368	
PENNSYLVANIA												
Allentown	102,700	27,170		1	2	3	2	2	2	Call	29,777	
Altoona	77,500	20,340		1	3	4	2	2	2	Mirror	24,222	
Easton	40,000	9,840		1	—	1	1	1	1	Express	22,469	
Erie	145,500	35,910		2	1	3	2	2	2	Times	33,694	
Harrisburg	86,000	26,060		3	—	3	3	3	3	News	28,821	
Hazleton	40,000	7,110		1	—	1	2	1	2	Plain Speaker	14,614*	
Johnstown	78,000	14,970		2	1	3	2	2	2	Tribune	21,639	

See Notes — last page.

State—City	Population	A M Stations			Radio Families	Licenses	CP Holders and		Number of Daily Newspapers	Largest Daily Newspaper	City Zone Circulation Largest Daily Newspaper
		Proposed	Grants	Total							
PENNSYLVANIA (Continued)											
Lancaster	72,500				18,520	2	—	2	2	New Era	26,582
Lewistown	14,600				3,780	1	—	1	1	Sentinel	4,137
Philadelphia	2,051,500				565,010	9	1	10	3	Bulletin	497,151
Pittsburgh	730,000				175,280	5	2	7	3	Post Gazette	134,287
Reading	115,000				30,170	3	—	3	2	Eagle	32,340
Wilkes-Barre	90,000				16,140	2	1	3	2	Times Leader News	31,989
Williamsport	47,200				13,430	1	—	1	2	Sun	16,164
York	60,000				17,550	2	—	2	2	Gazette	13,632
RHODE ISLAND											
Providence	260,500				69,980	3	3	6	2	Bulletin	91,786
SOUTH CAROLINA											
Charleston	95,300				25,870	3	1	4	2	News & Courier	19,977
Columbia	70,000				16,600	3	1	4	2	State	20,936
Greenville	46,000				10,190	3	—	3	2	News	16,723
Greenwood	22,000				2,980	1	—	1	1	Index Journal	6,491*
SOUTH DAKOTA											
Sioux Falls	48,000				14,460	2	1	3	1	Argus Leader	13,303
TENNESSEE											
Bristol	17,800				7,210	2	—	2	2	Herald Courier	2,544
Chattanooga	136,600				33,540	4	1	5	2	News Free Press	37,182
Kingsport	17,500				4,690	1	—	1	2	Times	8,366
Knoxville	142,000				34,570	3	2	5	2	News Sentinel	38,116

See Notes—last page.

State—City	Population	Radio Families	A M Stations			Largest Daily Newspaper	City Zone Circulation Largest Daily Newspaper
			CP Holders	Proposed Grants	Total		
TENNESSEE (Continued)							
Memphis	336,500	85,380	5	1	6	Press-Scimitar	65,498
Nashville	175,000	47,850	4	—	4	Tennessean	49,758
TEXAS							
Amarillo	70,000	16,100	2	1	3	News	10,336
Corpus Christi	115,000	19,060	3	1	4	Caller	19,033
Dallas	466,300	96,600	4	1	5	News	75,196
El Paso	122,500	24,850	2	2	4	Times	23,120
Fort Worth	246,200	64,650	3	2	5	Star-Telegram	67,152
Houston	478,500	126,710	4	3	7	Chronicle	97,764
San Antonio	350,000	70,000	6	—	6	News	51,973
Weslaco	6,900	1,070	1	—	1	—	—
UTAH							
Salt Lake City	180,000	48,700	5	—	5	Tribune	29,566
VIRGINIA							
Harrisonburg	10,000	2,600	1	—	1	News Record	2,009
Martinsville	16,000	2,390	1	—	1	Bulletin	3,300
Norfolk	200,000	55,350	2	2	4	Virginian Pilot	65,418
Richmond	228,600	50,480	5	1	6	Times Dispatch	47,853
WASHINGTON							
Seattle	550,000	162,110	8	—	8	Times	117,577
Spokane	151,000	42,970	6	—	6	Spokesman Review	29,878
See Notes — last page.							

See Notes — last page.

State—City	Population	Radio Families	A M Stations			Number of Daily Newspapers	Largest Daily Newspaper	City Zone Circulation Largest Daily Newspaper
			CP Holders and Proposed Grants	Licenses	Total			
WEST VIRGINIA								
Bluefield	23,500	6,690	1	—	1	2	Telegraph	5,713
Charleston	73,500	24,350	4	1	5	2	Gazette	27,422
Clarksburg	35,000	7,770	1	2	3	2	Telegram	9,785
WISCONSIN								
Eau Claire	44,500	8,440	1	2	3	2	Leader	1,014
La Crosse	45,000	11,770	1	1	2	1	Tribune & Leader Press	12,813
Madison	80,000	23,380	2	2	4	2	Capital Times	15,396
Marinette	15,000	3,720	1	—	1	1	Eagle Star	3,591
Milwaukee	629,600	176,940	4	3	7	2	Journal	216,271
TOTAL	42,045,400	11,397,860	483	134	617	321		9,872,654
(162 NBC Cities)								

(a) "Sales Management" Estimate, 1/1/47.

(b) BMB Estimate, 1946.

(c) Television Digest and FM Reports to May 15, 1947.

(d) N. W. Ayer & Son's Directory—1947. Morning and evening editions of a paper published under separate names have been considered as two papers.

Morning and evening editions bearing the same name have been considered as one paper.

(e) Standard Rate and Data—1/1/47.

\* City Zone circulation not shown. Figures given indicate largest daily paper total circulation.

† Not available.

# APPENDIX G (Exhibit submitted by Niles Trammell, NBC)

NBC NIGHTTIME PROGRAMS (AS OF FEBRUARY, 1947)

## SUNDAY

<i>Time</i>	<i>Program</i>	<i>Rating*</i>
7:00-7:30	Jack Benny <i>American Tobacco</i>	27.8
7:30-8:00	Fitch Bandwagon Alice Faye and Phil Harris <i>F. W. Fitch</i>	21.7
8:00-8:30	Charlie McCarthy <i>Standard Brands</i>	26.7
8:30-9:00	Fred Allen <i>Standard Brands</i>	25.9
9:00-9:30	Manhattan Merry-Go-Round <i>Sterling Drug</i>	13.3
9:30-10:00	American Album of Familiar Music <i>Sterling Drug</i>	11.8

\*Source: Hooper Report—Feb. 1-7, 1947

MONDAY

<i>Time</i>	<i>Program</i>	<i>Rating*</i>
8:00-8:30	Cavalcade of America <i>Du Pont</i>	11.9
8:30-9:00	The Voice of Firestone <i>Firestone</i>	10.7
9:00-9:30	The Telephone Hour <i>Bell System</i>	8.7
9:30-10:00	The Victor Borge Show Starring Benny Goodman <i>Socony-Vacuum</i>	8.1
10:00-10:30	The Contented Hour <i>Carnation</i>	8.2
10:30-11:00	Dr. I. Q. <i>Mars</i>	11.7

\*Source: Hooper Report—Feb. 1-7, 1947



# TUESDAY

<i>Time</i>	<i>Program</i>	<i>Rating*</i>
8:00-8:30	Rudy Vallee <i>Philip Morris</i>	11.4
8:30-9:00	A Date With Judy <i>Lewis-Howe Co.</i>	16.7
9:00-9:30	Amos 'n' Andy <i>Lever Bros.</i>	30.9
9:30-10:00	Fibber McGee & Molly <i>S. C. Johnson</i>	33.4
10:00-10:30	Bob Hope <i>Pepsodent</i>	32.9
10:30-11:00	Red Skelton <i>Brown &amp; Williamson</i>	27.6

\*Source: Hooper Report—Feb. 1-7, 1947

# WEDNESDAY

<i>Time</i>	<i>Program</i>	<i>Rating*</i>
8:00-8:30	Dennis Day <i>Colgate-Palmolive-Peet</i>	15.7
8:30-9:00	Great Gildersleeve <i>Kraft Foods</i>	18.5
9:00-9:30	Duffy's Tavern <i>Bristol-Myers</i>	22.0
9:30-10:00	Mr. District Attorney <i>Bristol-Myers</i>	21.1
10:00-10:30	Frank Morgan <i>American Cigarette &amp; Cigar</i>	11.1
10:30-11:00	Kay Kyser <i>Colgate-Palmolive-Peet</i>	11.9

\*Source: Hooper Report—Feb. 1-7, 1947

# THURSDAY

<i>Time</i>	<i>Program</i>	<i>Rating*</i>
8:00-8:30	Aldrich Family <i>General Foods</i>	15.5
8:30-9:00	Burns & Allen <i>General Foods</i>	16.8
9:00-9:30	Kraft Music Hall Eddy Duchin <i>Kraft Foods</i>	13.6
9:30-10:00	Village Store Jack Haley, Eve Arden <i>Sealtest</i>	15.2
10:00-10:30	Abbott & Costello <i>R. J. Reynolds</i>	12.2
10:30-11:00	Eddie Cantor <i>Pabst</i>	14.1

\*Source: Hooper Report—Feb. 1-7, '47—Rating for 9:30-10 P.M.—Feb. 15-21, '47

# FRIDAY

<i>Time</i>	<i>Program</i>	<i>Rating*</i>
8:00-8:30	Highways in Melody <i>Cities Service</i>	7.3
8:30-9:00	Alan Young <i>Bristol-Myers</i>	10.9
9:00-9:30	People Are Funny Art Linkletter <i>Brown &amp; Williamson</i>	15.2
9:30-10:00	Waltz Time <i>Sterling Drug</i>	10.2
10:00-10:30	The Molle Mystery Theatre <i>Centaur</i>	12.9
10:30-10:45	Bill Stern <i>Colgate-Palmolive-Peet</i>	9.5
10:45-11:00	(open time)	

\*Source: Hooper Report—Feb. 1-7, 1947

# SATURDAY

<i>Time</i>	<i>Program</i>	<i>Rating*</i>
8:00-8:30	Life of Riley Wm. Bendix <i>Procter &amp; Gamble</i>	16.6
8:30-9:00	Truth or Consequences Ralph Edwards <i>Procter &amp; Gamble</i>	14.7
9:00-9:30	Roy Rogers <i>Miles Labs.</i>	9.5
9:30-10:00	Can You Top This? <i>Colgate-Palmolive-Peet</i>	13.4
10:00-10:30	Judy Canova <i>Colgate-Palmolive-Peet</i>	14.7
10:30-11:00	Grand Ole Opry <i>R. J. Reynolds</i>	11.3

\*Source: Hooper Report—Feb. 1-7, 1947

