

# The National Association of Broadcasters

NATIONAL PRESS BUILDING \* \* \* \* \* WASHINGTON, D. C.  
 JAMES W. BALDWIN, Managing Director

## NAB REPORTS

Vol. 4 - No. 1  
 JANUARY 1, 1936

Copyright, 1935. The National Association of Broadcasters

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### NEW UTAH STATION RECOMMENDED

The Eastern Utah Broadcasting Company applied to the Federal Communications Commission for a construction permit for the erection of a new station to be located at Price, Utah, to use 1420 kilocycles, 100 watts power and unlimited time on the air.

Examiner P. W. Seward in Report No. I-172 recommended that the application be granted. The Examiner found that a need for additional "service in the area does not exist," and "that the site at which it is proposed to construct and operate the station will be in conformity with the recommendations of the Engineering Department."

### SECURITIES ACT REGISTRATIONS

The following companies have filed registration statements with the Securities & Exchange Commission under the Securities Act:

- Capps Gold Mine, Ltd., Toronto, Canada (2-1807, Form A-1)
- Oklahoma-Texas Trust, Tulsa, Okla. (2-1808, Form A-1)
- Marine Airlines, Inc., New York City (2-1809, Form A-1)
- Tip Top Gold Mines, Inc., Denver, Colo. (2-1810, Form A-1)
- American Fidelity Corp., Ltd., San Diego, Cal. (2-1811, Form G-1)
- Samuel Mundheim, et al., New York City (2-1812, Form F-1)
- Distillation Engineering Corp., Kansas City, Mo. (2-1813, Form A-1)
- Scottish-Plan Associates, Greenwich, Conn. (2-1814, Form A-1)
- Florida Towing Corp., Jacksonville, Florida (2-1816, Form C-1)
- Bank & Insurance Shares, Inc., Philadelphia, Pa. (2-1817, Form C-1)
- Columbia Crude Corporation, Salt Lake City, Utah (2-1818, Form A-1)
- Comsec Corporation, Jersey City, N. J. (2-1896, Form A-1)

### CHANGES RECOMMENDED FOR KGCX

Broadcasting station KGCX, Wolf Point, Mont., applied to the Federal Communications Commission to change its frequency from 1310 to 1450 kilocycles and to increase its power from 100 watts and 250 watts local sunset to 1,000 watts and from specified hours of operation to unlimited time.

Examiner John P. Bramhall, in Report No. I-164, has recommended that the application be granted. He found that there is need for additional service in the area proposed to be served; and that it "will serve public interest, convenience and necessity."

### NOTES TO SALES STAFF

Broadcast advertising reached nearly the \$79,000,000 mark for the first eleven months of 1935, and promises at least an \$86,000,000 total for the year as compared to slightly less than \$73,000,000 in 1934. (See Table I, page 1136.)

Salesmen of regional networks will be pleased to see that regional volume has continued at 50.0% ahead of the corresponding months of 1934. (See Table I, page 1136.)

The continued strength of live talent business in the national non-network field and the recent important increases in the use of transcriptions by local broadcast advertisers should be of interest. (See Non-network Advertising by Type of Rendition, page 1137.)

The increased use of regional networks and national non-network advertising by confectionery manufacturers should be of interest, as should be the sevenfold rise in national non-network automotive advertising. (See Sponsor Trends in October and Comparison with 1934, page 1138.)

### WEDC LICENSE RENEWAL RECOMMENDED

Broadcasting Station WEDC, Chicago, Ill., applied to the Federal Communications Commission for license renewal. The application was designated for hearing by the Commission. It operates on 1210 kilocycles, 100 watts power and specified hours.

Examiner R. H. Hyde, in Report No. I-169, recommended that the station's license be renewed. The Examiner stated that "the programs sponsored by Dr. Schyman and "Dr. Michael" did not serve the public interest but were in fact inimical to the interests of the public. The applicant's evidence affords substantial assurance that hereafter sufficient attention will be given to the selection of program matter to prevent the repetition of such broadcasts."

### PENDING RADIO LEGISLATION

The second session of the Seventy-Fourth Congress will convene on January 3. Inasmuch as this is not a new Congress but simply another session the radio bills and other bills of interest to the broadcasters are pending legislation and go ahead from their status at the last session.

In addition to bills dealing specifically with radio there is the copyright bill and the pure food and drug bill, together with several others which affect broadcasters. Following is a list of these bills showing the committee to which they were referred and any action which has been taken.

#### Senate

S. 4—Copeland, Vandenberg, Murphy bill "to prevent the promotion of fraud through interstate communication"—Committee on Commerce. No hearings held and no action.

S. 5—Copeland pure food and drug bill. Passed the Senate at the last session and now pending before the House Committee on Interstate and Foreign Commerce.

S. 541—Capper bill "to prohibit the transportation in interstate commerce of advertisements of intoxicating liquors"—Committee on Interstate Commerce. No hearings and no action.

S. 820—Neely bill "relating to costs in radio proceedings before the Federal Communications Commission"—Committee on Interstate Commerce. No hearings and no action.

S. 1336—Wheeler bill "to amend paragraph (f) of section 4 of the Communications Act of 1934"—Committee on Interstate Com-

merce. Passed by the Senate and favorably reported by the House Committee but no action by the House.

S. 2243—Wheeler bill "relating to the allocation of radio facilities"—Committee on Interstate Commerce. No hearings and no action.

S. 3047—Copyright bill. Passed Senate at last session and now pending in House Committee on Patents.

S. 3261—Walsh bill to have foreign government programs approved by State Department—Committee on Interstate Commerce. No hearings and no action.

#### House

H. R. 55—Rudd bill "to amend the Radio Act of 1927"—Committee on Interstate and Foreign Commerce. No hearings and no action.

H. R. 197—Buckbee bill "to prohibit untrue, deceptive, or misleading advertising through the use of the mails or in interstate or foreign commerce"—Committee on Interstate and Foreign Commerce. No hearings and no action.

H. R. 3252—Sauthoff bill "to prohibit the use of the mails, certain periodicals, and broadcasting stations, having a range covering more than one State, to the advertising of loans for which interest in excess of 15 per cent per annum is charged"—Committee on Post Offices and Post Roads. Hearings held March 8. No report.

H. R. 8404—Culkin bill "to prohibit advertising of alcoholic beverages in interstate commerce"—Committee on Interstate and Foreign Commerce. No hearings; no action.

H. R. 8475—Monaghan bill "to amend the Communications Act of 1934 by establishing a Radio Commission"—Committee on Interstate and Foreign Commerce. No hearings and no action.

H. R. 8852—McKeough bill to have foreign radio programs approved by the State Department—Committee on Interstate and Foreign Commerce. No hearings and no action.

H. R. 9229—Scott bill "to amend section 326 of the Communications Act of 1934," dealing with censorship—Committee on Interstate and Foreign Commerce. No hearings and no action.

H. R. 9230—Scott bill "to amend section 315 of the Communications Act of 1934" laying aside time for political and other uncensored broadcasts—Committee on Interstate and Foreign Commerce. No hearings and no action.

H. R. 9231—Scott bill "to add section 315 (a) to the Communications Act of 1934" making it obligatory for stations to keep certain records—Committee on Interstate and Foreign Commerce. No hearings and no action.

H. J. Res. 220—Sirovich resolution "providing for the establishment of an executive department to be known as the 'Department of Science, Art, and Literature'"—Committee on Patents. Extensive hearings but no report.

H. Res. 52—Dies censorship bill—House Committee on Rules. No hearings and no action.

H. Res. 370—Scott resolution providing for the establishment of a "Broadcasting Research Commission"—Committee on Interstate and Foreign Commerce. No hearings and no action.

#### NEW TEXAS GRANT RECOMMENDED

The Bell Broadcasting Company applied to the Federal Communications Commission for a construction permit to erect a broadcasting station at Temple, Texas, to use 1200 kilocycles, 100 watts and daytime operation.

Examiner Melvin H. Dalberg, in Report No. I-162 recommended that the application be granted "provided that the proposed transmitter and the erection of the antenna be in accordance with the rules and regulations of the Commission." The Examiner found that the applicant is qualified to own and operate the proposed station—no question of quota is involved and "there is no possibility of interference whatsoever either from existing stations or by reason of pending applications."

#### RECOMMENDS APPROVAL ON CONDITIONS

Paul R. Heitmeyer has applied to the Federal Communications Commission for a construction permit for the erection of a new broadcasting station at Salt Lake City, Utah, to use 1210 kilocycles, 100 watts and unlimited time.

Examiner P. W. Seward, in Report No. I-163, has recommended that "if the application in Docket No. 2715 be finally approved by the Commission that this application be denied, as it has not been shown that a need exists for two 100 watt stations in Salt Lake City; in the event said application in Docket No. 2715 be denied by the Commission, then it is recommended that this application be granted."

#### CHANGE RECOMMENDED FOR KMED

Broadcasting Station KMED, Medford, Ore., applied to the Federal Communications Commission to change its frequency from 1310 to 1410 kilocycles and power from 100 watts, 250 watts local sunset to 250 watts, and hours of operation from unlimited time to unlimited day and specified nighttime hours.

Chief Examiner Davis G. Arnold, in Report No. I-167, recommended that the application be granted. He found that "a substantial need for additional radio service in the area proposed to be served does exist," and that "the use of the applicant of the frequency 1410 kilocycles, specified hours, will be in the public interest."

#### RECOMMENDS NO CHANGE FOR KFRO

Broadcasting Station KFRO, Longview, Texas, has applied to the Federal Communications Commission for the facilities of Station KWEA, Shreveport, La., and the Oil Capital Broadcasting Association has also asked for the same facilities and a permit to construct a new station at Kilgore, Texas. KWEA operates on 1210 kilocycles with 100 watts power and unlimited time. Station KFRO now operates on 1370 kilocycles, 100 watts power daytime. KWEA asked license renewal.

Examiner George H. Hill, in Report No. I-161, has recommended that the application of Station KFRO be denied; that the application of the Oil Capital Broadcasting Association for a construction permit be granted to use the facilities of KWEA and that the application of KWEA "for renewal of license be denied, provided the application of the Oil Capital Broadcasting Association for a construction permit be granted. Otherwise the application for renewal of license of Station KWEA should be granted."

#### NEW OHIO STATION RECOMMENDED

Herbert Lee Blye filed an application with the Federal Communications Commission asking for a construction permit for a new station to be located at Lima, Ohio, to use 1210 kilocycles, 100 watts power and daytime operation.

Examiner Melvin H. Dalberg, in Report No. I-171, has recommended that the application be granted. The Examiner found that "there is considerable need in the area sought to be served for local broadcasting service and the program material which is proposed seems to be of a satisfactory nature for a station of the power requested. It does not appear that any interference with the fair and efficient service of other stations would be involved, nor that any serious interference would result by reason of pending applications."

#### RECOMMENDS DENYING PUERTO RICAN STATION

Ralph Perez Perry applied to the Federal Communications Commission for permission to erect a new broadcasting station at Santurce, Puerto Rico, to use 1340 kilocycles, 250 watts power and unlimited time on the air.

Examiner Ralph E. Walker, in Report No. I-170, has recommended that the application be denied. He found that "the record fails to disclose a need for the allocation of additional broadcast facilities in the San Juan area, especially in view of the fact that the existing facilities are not fully used." It was further found by the Examiner that "it does not appear that the qualifications of the applicant are such that a station operated by him could reasonably be expected to provide an improved program service in the area."

#### TENNESSEE GRANT RECOMMENDED

W. A. Patterson, filed an application with the Federal Communications Commission asking for a construction permit for the erection of a new broadcasting station at Chattanooga, Tenn., to use 1420 kilocycles, 100 watts power and daytime operation.

Examiner George H. Hill, in Report No. I-168, recommended that the application be granted. He found that a need exists in the proposed area for additional radio service, and he states that "the granting of this application will serve public interest, convenience and necessity, provided the application of Dudley J. Connolly and Company is denied."

#### RECOMMENDS COMMISSION AFFIRM FORMER ORDER

WJJD, Inc., Chicago, Ill., seeking authority to move the transmitter of Station WJJD from Mooseheart to Des Plaines, Ill., was

granted by the Commission. Thereafter it was reconsidered and designated for hearing on protest filed by the Chicago Federation of Labor's station WCFL.

Examiner Ralph L. Walker, in Report No. I-166, states that "the matter was called for hearing on December 16, 1935, at which time it was stated on behalf of the protestant that a continuance had been requested and denied, that counsel for the protestant was unable to be present and that the protest would be withdrawn. It is accordingly recommended that the protest be dismissed and that the Commission affirm its original action granting the application."

#### WYOMING STATION RECOMMENDATIONS

Paul R. Heitmeyer applied to the Federal Communications Commission for a construction permit for the erection of a new station at Cheyenne, Wyo., to use 1210 kilocycles, 100 watts power, 250 watts LS and unlimited time on the air. Also the Wyoming Radio Educational Association applied to the Commission for a construction permit for a new station at Cheyenne to use 630 kilocycles, 500 watts power, 1,000 watts LS and unlimited time.

Examiner P. W. Seward, in Report No. I-173, recommended that the application of Mr. Heitmeyer be granted but that the application of the Educational Association be denied.

The Examiner states that "from the evidence adduced concerning the application of the Wyoming Educational Association it is impossible to draw a definite conclusion concerning technical, financial, and other qualifications of this applicant." He found, however, that "a need for the service proposed to be rendered in the area does exist." He also found that granting of the Educational Association application would result in "serious and objectionable interference with the operation of existing licensed stations."

#### RECOMMENDS DENYING NEW TAMPA STATION

The Florida West Coast Broadcasting Company, Inc., applied to the Federal Communications Commission for a construction permit for the erection of a new station at Tampa, Florida, to use 1370 kilocycles, 100 watts power and unlimited time on the air.

Examiner John P. Bramhall, in Report No. I-165, recommended that the application be denied. He found that "the area proposed to be served by applicant is already receiving ample radio service and the evidence fails to show that the applicant would render a service or a type of service that is not now being received in this same area." The Examiner found also that the interests of Station WMBR would be adversely affected by the grant.

#### RECOMMENDS DENYING NEW STATION

The Valley Broadcasting Company filed an application with the Federal Communications Commission asking for a construction permit for a new station to be erected at Pomona, Cal., to use 1160 kilocycles, 250 watts power and daytime operation.

Examiner R. H. Hyde, in Report I-174, recommends that the application be denied. It was found by the Examiner that "the operation of the proposed new station would cause objectionable interference to existing stations and the service area of the new station would be restricted to a substantial degree by interference with other stations."

#### FEDERAL TRADE COMMISSION ACTION

##### Complaints

The Federal Trade Commission has alleged unfair competition in complaints issued against the following companies. The respondents will be given an opportunity for hearing to show cause why cease and desist orders should not be used against them.

**No. 2653.** Unfair competition in the sale of men's suits is alleged in a complaint issued against **Harry Kapust, of Chicago**, trading as **Roselile Manufacturing Co.** and as **Roselile Clothing Manufacturing Co.**

Kapust, according to the complaint, represented through salesmen that the men's suits sold by the respondent were tailored to purchasers' individual measurements, when in fact not all suits sold by the respondent were made to individual measurement and many of the orders for suits were filled from stock and the clothes altered when necessary to conform to customers' measurements.

**No. 2657.** Alleging unfair competition in the sale in interstate commerce of steel wool cleaning pads, a complaint has been issued against **Maurice Levine, of New York City**, trading as **E-Z Kleener Manufacturing Co., Red-I Pad Co., Red-Y Pad Co.,** and as **R-P Manufacturer and Distributor.**

Designating cartons in which his products were packed by phrases such as "E-Z Kleener," and "Mfd. by Red-I Pad Co., New York," the respondent represented himself to be the manufacturer of the products he sold, when, according to the complaint, he did not own or operate a factory wherein these preparations were made, but purchased them from the manufacturers.

These representations, according to the complaint, were false and misleading, and tended to deceive buyers into believing that in purchasing from the respondent they were dealing with the manufacturer, thereby gaining an advantage by saving the middleman's profits.

**No. 2658.** A complaint has been issued against **Meyer Brodie and Morris White, of 15 West 20th Street, New York City**, trading as **M & M Bag and Suit Case Company**, charging unfair competition in the sale of their products.

The complaint alleges that the respondents designated as "Warranted, Top Grain Cowhide, Leather" certain articles made of split leather, which is of inferior quality and durability as compared with top grain leather. The complaint alleges that certain pieces of luggage manufactured and sold by the respondents were made from top grain leather, while other pieces were made from split leather.

**No. 2659.** Advertising dry goods as "tub fast," when in fact they were not dyed with tub fast dye, is alleged as an unfair method of competition in a complaint issued against **H. T. Poindexter & Sons Merchandise Co., of Kansas City, Mo.**

The company is alleged to have represented certain cotton print goods as being tub fast or as containing qualities making them proof against fading when washed in the normal course of use. The complaint alleges they were not tub fast as the term is generally understood in the cotton print goods trade, and that use of this term to describe such goods tended to divert business from competitors.

**No. 2660.** Eleven companies manufacturing and selling more than 90 per cent of the total volume of zinc and copper plates used for engraving purposes and sold in interstate commerce in the United States, and their trade association, the **Photo Engravers Copper & Zinc Grinders Association**, have been served with a complaint alleging that they entered into an agreement, combination or conspiracy to restrict and suppress competition in the sale and distribution of zinc and copper plates to newspapers and other photo engraving customers.

The respondent companies are: **Edes Manufacturing Co., Plymouth, Mass.; American Steel & Copper Plate Co., Jersey City, N. J.; New York Steel & Copper Plate Co., Brooklyn; Rolled Plate Metal Co., Brooklyn; National Steel & Copper Plate Co., Chicago; Harold M. Pitman Co., Cicero, Ill.; Pacific Steel & Copper Plate Co., San Francisco; American Zinc Products Co., Greencastle, Ind.; American Nickeloid Co., Peru, Ill.; C. G. Hussey & Co., Pittsburgh; and Bridgeport Engravers Supply Co., Bridgeport, Conn.**

Headquarters of the **Photo Engravers Copper & Zinc Grinders Association** are at **Jersey City, N. J.**

The respondents are alleged to have entered into an understanding, agreement, combination or conspiracy to restrict competition in the sale of their products by agreeing to fix and maintain uniform prices, terms and discounts at which zinc and copper plates are to be sold, and to cooperate in enforcing and maintaining these prices, terms and discounts by exchanging information through the association. The association is alleged to have acted as a clearing house for such exchange of information, including reports of sales of zinc and copper plates, together with the prices, terms and discounts.

**No. 2661.** In a complaint issued against the **Chattanooga Automotive Jobbers Association, of Chattanooga, Tenn.,** and the **Tennessee Automotive Jobbers Association, of Knoxville, Tenn.,** and their officers and members, are alleged to have entered into agreements, combinations, understandings and conspiracies to fix and maintain uniform prices to be exacted by them from purchasers of automobile parts and accessories. The members of the respondent associations are charged with attempting to restrict sales of such parts and accessories by manufacturers to and through jobbers.

**No. 2662.** Sales methods involving a game of chance in the sale of candy, are alleged in a complaint issued against **Brecht Candy Co., of Denver.** The push card and punch board were among the devices used, according to the complaint. The respondent's practices are alleged to constitute unfair methods of competition and to be contrary to public policy.

**No. 2663.** Alleging unfair competition in the sale of incandescent lamps and glass lamp globes, a complaint has been issued

against **Day-Lite Illuminating Corporation**, of 100 West Chicago Avenue, Chicago.

Representations of the respondents are alleged to have had a tendency to deceive the public into believing that the respondents' lamps of equal or less watt measurement and of equal volt measurement, would give an average efficient light performance equal to that of competing lamps, and at the same time furnish more light at less cost for current than competitors' lamps.

**Nos. 2664-2665-2666.** Complaints have been issued charging two companies with misrepresenting medicinal products sold in interstate commerce, and a smoking pipe manufacturer with representations suggesting that certain of its products have been endorsed by the medical profession, when this is not the fact.

**McCambridge & McCambridge Co., Inc.**, of 12 L Street, S. E., Washington, D. C., trading as **Everfresh Products Co.**, is alleged to have advertised its "Everfresh Aspirin" so as to disparage competitors' products and tend to deceive buyers into the belief that "Everfresh Aspirin" is better and gives quicker relief than ordinary aspirin; that it relieves tired spells, and cures nerve ailments and other troubles; and other similar representations. The complaint charges that the respondent's product does not continue to remain fresh longer than any other aspirin but will decompose within the usual time in which ordinary aspirin will decompose.

**J. H. Casey, of Portland, Ore.**, trading as **J. H. Casey Co.**, and advertising "Casey's Compound" as a cure, remedy and treatment for rheumatism, arthritis and other related ailments, is alleged to have untruthfully represented that marvelous results accrue to persons afflicted with these ailments, who use the respondent's compound. The complaint alleges that the product has little if any curative value in treating these diseases.

Engaged in manufacturing smoking pipes, **S. M. Frank & Co., Inc., of New York City**, is alleged to have branded and advertised certain of its products as "Medico." The complaint charges that this practice tended to deceive buyers into believing that the pipes had been endorsed by the medical profession and were so constructed or treated as to eliminate or greatly reduce the harmful effects of ordinary pipe smoking. In fact, according to the complaint, these pipes had not been so endorsed, and were no less harmful or more healthful to the smoker than many pipes made and sold by other manufacturers.

**No. 2667.** Unfair competition through representation of cigars not made of Cuban tobacco, as "Garcia's Havana Smoker," is alleged in a complaint issued against **Havana Florida Cigar Co.**, of 501 North Madison St., Quincy, Fla.

The complaint charges that the respondent's cigar does not contain Havana tobacco nor tobacco grown on the island of Cuba, in any appreciable amount. The respondent's representation, according to the complaint, tends to deceive buyers into believing that the respondent's product is composed in whole or in large part of Havana tobacco.

**No. 2668.** Alleging unfair competition in the sale of incandescent lamps, a complaint has been issued against **Fannie Chanowitz**, of 68 Charlton St., Newark, N. J., trading as **Atlas Products Co.**

The complaint charges that the respondent's lamps were demonstrated and sold in a manner tending to deceive prospective purchasers into believing that they were of the same watt measurement and produced more light than competitors' lamps being used by such purchasers. According to the complaint, this was accomplished by marking the respondent's wattage lower than actually was the case but corresponding to the truthfully marked wattage of competitors' lamps, then comparing the amount of light given by the two, to the consequent disadvantage of competitors.

**No. 2669.** **General Tire & Rubber Co.**, of Akron, Ohio, is charged with unfair competitive methods in a complaint.

According to the complaint, this company advertised in newspapers and over the radio that its "New General Dual Balloon Tire" was "Blowout-Proof," when in fact this was not true. This practice is said to have had a tendency to deceive the tire-purchasing public, and to promote the purchase of these tires in preference to products of similar types and quality offered by other manufacturers, retail dealers and distributors, who did not misleadingly advertise their articles to be blowout-proof.

### Stipulations

The Commission has announced the following cease and desist orders:

**Nos. 0992-0998.** **Western Broadcast Co.**, operator of radio station **KNX, Hollywood, Calif.**, has entered into stipulations to abide by action taken in five cases before the Commission involving companies which advertised their products over station **KNX.**

The five companies had previously entered into stipulations with the Commission to cease and desist from certain unfair advertising practices. These companies are: **Nourishine Manufacturing Co., Los Angeles; Germania Tea Co., Minneapolis; Old Mission Tablet Co., Pasadena, Calif.; King's Better Vision Institute, Los Angeles; and Tablet Sixty-Six Co., Los Angeles.**

In its stipulations with the Commission, the radio station admits broadcasting advertisements of these companies, and agrees to observe and abide by stipulations previously signed by the advertisers and accepted and approved by the Commission.

**Truth Publishing Co., Inc.**, operator of radio station **WTRC, Elkhart, Ind.**, admits broadcasting advertisements for **Deuel's, of Centerville, Mich.**, distributor of an ointment, and agrees to abide by a stipulation previously entered into by the advertiser with the Commission.

In this group of stipulations is one between the Commission and the **Conley Co., Inc., of Rochester, Minn.**, selling a mechanical device called "**The Hemp Bodi-Massager.**" The company agrees to cease representing in published advertisements that use of its device alone will cause a reduction in fat or weight; that no other reducing or beauty building method is as effective or as safe as the method recommended by this company, and that by the use of this device, hips can be rolled away in twenty minutes a day, and other representations.

**Nos. 0999-01000-01002-01003.** Three broadcasting stations have entered into stipulations to abide by action taken in a case involving advertising matter issued by **K. A. Hughes Co., of Boston**, dealer in "Salicon," a cold remedy. The broadcasting companies are: **Shepard Broadcasting Service**, operating Station **WNAC**, Boston; **Congress Square Hotel Co.**, Station **WCSH**, Portland, Me.; and the **WGAR Broadcasting Co.**, Station **WGAR**, Cleveland.

In their stipulations with the Commission, the radio stations admit broadcasting advertisements of this company, and agree to observe and abide by a stipulation previously signed by the advertiser and accepted and approved by the Commission.

**The Eucathol Co., Inc., of Shawnee, Okla.**, dealer in a medicinal preparation, has entered into a stipulation with the Commission to cease representing its product, "Eucathol," as a competent remedy for treating skin disorders, asthma, hay fever and other diseases, and that it will check a cold by application to chest, throat and head. The respondent also agrees to discontinue assertions that "Eucathol" will stop a child from coughing in one minute; will break a cold in one night, or that it quickly relieves prickly heat, poison ivy or most skin humors or diseases, and other similar allegations.

**No. 1548.** **Arista Silk Mills, Inc., of 499 Seventh Avenue, New York City**, engaged as a jobber dealing in silks, rayons and cottons, according to the stipulation, displayed its corporate name, "Arista Silk Mills, Inc.," so including the word "Mills" on its business stationery, when in fact the company did not own, control or operate a mill wherein its products were made, but purchased these articles from others. The respondent agrees to discontinue this use of the word "Mills."

**No. 1549.** **Morris Gottsegen and David Jacoby, of 901 Broadway, New York City, co-partners, trading as Mills Sales Co. and Honor Research Laboratories**, engaged as jobbers in selling pharmaceutical preparations, used the trade name containing the words "Research Laboratories," in selling a mineral oil, when, according to the agreement, they did not own a laboratory or place devoted to experimental study in any branch of natural science. In their stipulation, they agree to stop employing the words "Research Laboratories," as part of their trade name.

**No. 1550.** **R. & K. Leather Goods Co., Inc., of 38 West 32nd St., New York City, and Perth Amboy, N. J.**, manufacturers and distributors of ladies' pocketbooks, sold their products labelled, billed and represented as "Genuine Cowhide," "Genuine D. B. Cowhide," and "Genuine Seal" (the letters "D. B." meaning, in the language of the trade, "Deep Buff"), or the first cut beneath the top grain after the leather has been split off, according to the agreement. The stipulation sets out that in fact these products consisted of split leather, and not of leather made from the entire hide of a cow or a seal, or of leather made from the top or grain cut or outer layer of the hide, so as to be properly designated as "leather," but were composed of a cut or layer other than such top or grain cut. The respondents agree to discontinue advertising such products as being manufactured from genuine leather.

**No. 1551.** **Forest City Manufacturing Co., of 1627 Washington Ave., St. Louis**, manufacturing cotton dresses, furnished its retail customers with mats which were used by them in advertising the respondents' products, according to the agreement. The stipulation says that in some of the mats, certain products were represented as made of "Limon," when in fact they were not

made of the fiber of the flax plant. The respondent company agrees to discontinue use of the word "Limon" in any way which may tend to deceive buyers into believing that the articles described are made of the fiber of the flax plant, when this is not true.

**No. 1552. Manhattan Import Co., Inc., of 861 Broadway, New York City,** importers of various novelties, is said to have distributed supplies of toothpicks in interstate commerce, advertising them as "Sliverless, Sanitary, Polished, Automatically packed." They were packed in pasteboard containers which bore the words "Perfect Toothpicks, Sliverless, Sanitary, Polished, Automatically Packed," when, according to the agreement, they were not packed by machinery, or automatically packed, and certain of the products were not properly and correctly represented as "Sanitary." The respondent agrees to cease and desist from advertising toothpicks as sanitary, and packed by machinery or automatically packed, when these are not the facts, and to discontinue advertising toothpicks of foreign manufacture without indicating clearly the country of their origin.

**No. 1553. F. J. Kirk, of 116 Market St., Philadelphia,** trading as **Franklin Sales Company and Franklin Laboratories,** and selling "Lucky Tiger Hair Tonic," agrees to stop employing the word "laboratories" as part of the trade name under which he operates his business, and from using this word in any way which may tend to confuse buyers into believing that he owns and operates a laboratory in which his product is made or compounded, when this is not true.

**No. 1554. United States Plywood Co., Inc., of 603 West 36th St., New York City,** selling and distributing plywoods or wood veneers, agrees to stop using the word "walnut," either independently or in connection with the word "Oriental," or with other words so as to imply or have a tendency to deceive buyers into believing the product to be made of wood derived from trees of the walnut family, when the same is not true.

**No. 1555. Linder Bros., Inc., of Scranton, Pa., and New York City,** manufacturers of knitted topcoats, agrees to abandon use of the word "loomed" to describe products not woven on a loom, and to discontinue use of this word in any way which may tend to deceive buyers into the belief that the products so described are woven on a loom, when this is not true.

**No. 1556. Western Coaching Bureau, Inc., with headquarters in San Francisco and branches in Oakland and Los Angeles and Chicago,** is reported in the stipulation to have displayed on its letterheads and in its various offices the words "Western Coaching Bureau" in connection with the words "Civil Service," and to have distributed an advertising catalogue entitled: "Golden Opportunities in Government Service." On the front and back covers of this, and on many inside pages, appeared the words "Civil Service," enclosed in a circular device having in the center the monogram "W.C.B.," which device, according to the stipulation, resembled the official seal of the United States Civil Service Commission. The respondent agrees to stop using the words "Civil Service" in its advertising, either independently or in connection with other words, especially in connection with a seal simulating that of the Civil Service Commission, in any way which may tend to cause the public to believe that the company represents or has an official connection with the United States Civil Service Commission, or is an agency of the Federal Government. Other similar representations will be discontinued.

**No. 1557. Koppers Products Company, with headquarters in Pittsburgh,** and having branches in various states, manufactures, among other things, coal-tar products and other materials used in making built-up roofing composed of alternate layers of rag felt and coal-tar pitch. In its stipulation, Koppers Company agrees that in selling its pitch-and-felt roofs in interstate commerce, it will cease using in advertisements allegations to the effect that the so-called "smooth top" roofings sold by competitors "fail in a few years," or that such roofings "are usually failures," or "fail by permanent cracking," or "become cheesy," when, according to the agreement, such representations are not warranted in fact.

The corporation further agrees to cease and desist from using in its advertising matter or otherwise, any misleading or exaggerated representations concerning the efficiency, durability, quality or effectiveness of the products of competitors.

**No. 1558. The Williamson Company, of Baltimore,** engaged in manufacturing wood veneers, will discontinue use of the words "African Walnut" in its printed matter or as a trade designation for its products so as to imply that its products are made of wood derived from trees of African origin and of the botanical walnut family, when this is not true.

**No. 1559. Five Star Products, Inc., of 235 West 69th St., New York City,** manufacturing a syrup product called "May-Pell," will abandon the use on its brands or labels of the coined word

"May-Pell," or any other phonetic spelling of the word maple, so as to imply or have a tendency to deceive purchasers into believing the product to be composed of maple syrup. Provision is made that when the preparation is made in substantial part of maple syrup, the coined word "May-Pell," if used to describe the maple content, shall be immediately accompanied by other words in equally conspicuous type to clearly indicate that the product is not made wholly of maple syrup.

**No. 1560. Lester A. Stern, of 229 West Jackson Boulevard, Chicago,** trading as **Progressive Medical Co.,** and **Peter S. Banff, of 1261 Argyle Street, Chicago,** formerly trading as **American Pantosept Co. (1561),** in the sale and distribution of antiseptic tablets for women's use, agree to stop advertising their products as contraceptives. Banff also agrees to cease using the word "Manufacturers," in advertising matter, when in fact he does not own or control a laboratory or factory, and to discontinue misrepresenting the purposes or results of tests of feminine hygiene products made by Prof. Dr. Baker at Oxford University.

**No. 1562. Frank W. Winne & Son, Inc., of 44 North Front Street, Philadelphia,** a wholesaler of twine, cordage and yarns, with branch offices in Maryland, Ohio and Michigan, agrees to cease and desist from using the words "Farm Bureau" on labels attached to its products, so as to imply that they are sold by one or more farm bureaus such as the Ohio Farm Bureau Service Co., of Columbus, O., the Indiana Farm Bureau Cooperative Association, Inc., of Indianapolis, or Farm Bureau Services, Inc., of Lansing, Mich., all of which are engaged in purchasing and distributing farm supplies, including binder twine, and are members of the Farm Bureau Milling Co., of Columbus, Ohio, which was organized primarily to facilitate contract negotiations for seed and other farm supplies on behalf of the individual farm bureaus.

**No. 1563. Lima Business College, and the Civil Service Institute, Inc.,** both of Lima, Ohio, agree to cease and desist from use of the words "Civil Service," as part of or in connection with a corporate or trade name under which to transact their business, either independently or in connection with the word "Institute," tending to confuse purchasers into the belief that the Civil Service Institute, Inc., is a branch of or has some official connection with the United States Government or the Civil Service Commission. The respondents agree to stop making exaggerated representations regarding the number of persons given employment annually under the Civil Service, of the salaries paid, or inaccurately representing the ages at which men and women are eligible for Civil Service appointment, and alleging that Civil Service employees have no lay-offs.

The stipulations also list as respondents Hugh W. Henry, president, and Iva B. Henry, secretary, of Lima Business College, a defacto corporation, and Harry J. Strasburg, president, and Hugh W. Henry as secretary and treasurer of The Civil Service Institute, Inc.

**No. 1564. Moses and Jack Kranish, of 219 West 38th Street, New York City,** trading as **Clinton Silk Mills,** and engaged in the business of purchasing grieger silk goods which they convert into finished products, agree to stop using the word "Mills" in connection with their trade name, or in any way which may tend to deceive buyers into believing that they own, control and operate a mill, when this is not true.

**No. 1565. Rainbow Trading Co., Inc., 327 East 5th Street, New York City,** engaged in the importation of merchandise and in the sale and distribution of both imported and domestic goods, agrees to cease selling in interstate commerce toothpicks packed in boxes or other packages the appearance of which is contrived or formed in size, color and type resembling boxes or other packages in which similar merchandise is sold by a competitor. This company is said to have sold imported toothpicks in containers simulating containers in which similar products were sold by the Estate of Charles Forster, of Strong, Maine, manufacturer of wood toothpicks. The Rainbow Trading Co. also agrees to stop use on labels or cartons or in advertisements of the word "Sanitary," to describe products not made under hygienic or sanitary conditions.

**No. 1566. Nathan Bernstein, of 31 West 26th Street, New York City,** trading as **Excel Luggage Company,** selling and distributing luggage, agrees to cease branding or labeling his products as "cowhide," and "leather," implying that they are composed of leather made from the top or grain cut of the hide; unless, when they are composed of leather made from the inner or flesh cut, the word "leather," or "cowhide," shall be accompanied by the word "split," or other suitable word in conspicuous type, to indicate clearly that the articles are not composed of leather made from the top or grain cut of the hide.

**No. 2255. The Linen Supply Association of the District of Columbia** and its officers and members have been ordered to cease

and desist from combining or cooperating among themselves or with others to control the solicitation and allocation of customers, and to fix or maintain uniform prices, discounts, and terms of supplying and distributing their service in linen coats, aprons, towels and table linen.

The order also bans the exchange of information among members or with others regarding contemplated changes in prices or terms and conditions of supply and distribution of their service, and regarding agreement as to adoption or distribution among two or more members or others of lists containing schedules of uniform prices, discounts and conditions of supply and distribution.

**No. 2296.** Resale price maintenance is prohibited in an order issued against **Cape Cod Shirt Co., Inc., of Fall River, Mass.**

This respondent is ordered to cease and desist from entering into contracts, agreements and understandings with customers or dealers, requiring or providing for the maintenance of specified resale prices on products of its manufacture.

**No. 2332.** Misleading representations in the sale of fountain pens and pencils are prohibited in an order to cease and desist issued against **Harry Sachnoff, of 206 Broadway, New York City,** formerly trading as **Park Row Pen Co.,** and against **Argo Pen-Pencil Co., Inc.,** at the same address.

The respondents are ordered to stop representing directly or indirectly that they are manufacturers of fountain pens and pencils until and unless they engage in such manufacture, or actually own and control a factory wherein the articles they sell are made.

**No. 2498.** Misleading representation of products as to their country or place of origin is prohibited in an order to cease and desist issued against **Prince Matchabelli Perfumery, Inc., of New York City.**

This respondent is directed to stop using any sign, symbol or legend upon containers or cartons of merchandise, indicating a particular country as the country of origin of such merchandise, unless, in fact, the merchandise shall have originated in the country indicated.

**No. 2527.** Selling in interstate commerce various brands of dog foods, the **Old Trusty Food Co., of Needham Heights, Mass.,** has been ordered to cease and desist from misleading representations.

The company is directed to discontinue, in the sale of "Old Trusty Bovex," from advertising that the product is "62½ per cent government inspected beef and beef products," or any other representation of like purport, unless and until this food contains 62½ per cent government inspected beef and beef products.

**No. 2589.** The **Thomasville Chair Co., of Thomasville, N. C.,** has been ordered to cease and desist from advertising as "Mahogany," "Mah," "Walnut" or "Oriental Walnut," furniture not made from wood derived from trees of the mahogany and walnut families, respectively. The respondent had waived trial of the case and consented to issuance of the order.

**No. 2590.** Using a corporate name containing the word "Manufacturing," or representing by other means that the respondent is a paper manufacturer, when such is not the fact, is prohibited in an order to cease and desist issued against **Bremner Paper Manufacturing, Inc., of New York City,** engaged in converting and printing.

The order contains the provision: "Unless and until said respondent actually manufactures the paper it sells or offers for sale, or owns or absolutely controls a mill, mills, factory or factories in which such paper is manufactured."

**No. 2604.** **Lednew Corporation, of Jersey City, N. J.,** has been ordered to cease and desist from misleading representations of the qualities of incandescent lamps sold for general lighting service.

The order prohibits representation to dealers or others that the watt measurement of lamps is other than the actual watt measurement thereof, after allowing for the tolerance recognized by industry and coinciding with that allowed in lamps purchased for the Federal government.

#### Court Fines Leavitt

**No. 1166.** The Federal Trade Commission has been advised by the United States Circuit Court of Appeals for the Second Circuit (New York City), that it has assessed a fine of \$1,000 against **Louis Leavitt, paint manufacturer, of Brooklyn, N. Y.,** for violation of a decree of that court affirming an order of the Federal Trade Commission directed against the misbranding of paint products.

A Commission cease and desist order prohibited Leavitt from designating and describing a product sold by him in interstate commerce "by means of brands, labels, or otherwise, by use of the terms 'Gold Seal Combination White Lead,' or 'Combination

White Lead,' unless the product so designated and described actually contained sulphate of lead or carbonate of lead or the two in combination as its principal and predominant ingredient to the extent of not less than fifty per cent by weight of the product." He was also forbidden from "using and employing any other designation, brand or label, upon the containers of products" sold by him in interstate commerce "which falsely represent the relative quantity of genuine white lead contained in said products."

### BROADCAST ADVERTISING IN NOVEMBER

#### Developments of the Month

Broadcast advertising during November amounted to \$8,211,349, a decrease of 2.2% as compared to the preceding month. A decline of this proportion is the usual trend at this season. Local broadcast advertising, however, went counter to the usual seasonal trend and increased 8.8% as compared to October.

Gains continued to be experienced as compared with the corresponding period of the preceding year. Total broadcast advertising during the month exceeded the November 1934 level by 13.6%. National network advertising rose 3.8%, regional network advertising 20.5%, national non-network volume 27.0%, and local broadcast advertising 30.0%. Broadcast advertising during the first eleven months of 1935 exceeded the preceding year's level by 19.8%.

Total non-network advertising in November was 9.4% greater than during the preceding month and 28.2% above November 1934 volume. Non-network advertising over local stations continued to show the greatest relative gains, as did non-network volume in the Southern and Pacific areas.

Live talent business continued to show the greatest strength in the national non-network field, while the recent increased use of transcriptions in local broadcast advertising also continued throughout November.

National and local non-network automotive advertising, national non-network cosmetic, food, radio set and tobacco volume, local clothing, housefurnishings and financial advertising, regional network pharmaceutical and clothing volume, and national network radio set advertising were among the fields to show the greatest increase in volume as compared to November 1934. The miscellaneous sponsor group rose materially in the national and regional network and national non-network fields. Broadcast advertising by retail establishments increased 47.5% as against November 1934.

#### The First Eleven Months of 1935

Broadcast advertising during the first eleven months of 1935 amounted to \$78,837,579, as compared to \$65,711,598 during the corresponding period of the preceding year, a gain of 19.8%. Gains with regard to various portions of the medium were as follows: national networks 18.1%, regional networks 50.0%, national non-network advertising 24.8%, and local broadcast advertising 18.6%.

Total non-network advertising during the first eleven months of the year rose 21.7% as against the previous year. Clear channel and high-powered regional station non-network volume increased 23.1%, regional station volume 17.8%, and local station advertising 31.6%.

Transcription volume rose 16.5% during the period under consideration, live talent business 23.4%, records 80.9%, and announcements 19.8%.

#### Total Broadcast Advertising

Broadcast advertising over stations and networks during November were as follows:

TABLE I  
TOTAL BROADCAST ADVERTISING

Class of Business	1935 Gross Time Sales		
	October	November	Cumulative Jan.-Nov.
National networks	\$5,017,900	\$4,533,774	\$45,123,241
Regional networks	132,748	128,715	983,565
National non-network	1,504,970	1,652,680	15,356,638
Local	1,739,280	1,896,180	17,374,135
Total	\$8,394,898	\$8,211,349	\$78,837,579

Total broadcast advertising was 2.2% less than during October, a usual seasonal decline. National network volume declined 10.0%, and regional network advertising dropped 3.0%. National non-network business rose 9.8%, while local advertising increased 8.8%. Network declines were more than the usual seasonal downswing. Local advertising, on the other hand, rose contrary to its usual behavior in November.

### Comparison with Previous Years

Broadcast advertising continued to show gains over the corresponding period of 1934. Total volume rose 13.6% as against the preceding November. National network advertising increased 3.8%, regional network volume 20.5%, national non-network volume 27.0% and local broadcast advertising 30.0%.

Compared to November 1933, national network advertising experienced an increase of 31.6%, regional network volume 74.3%, national non-network business 51.8% and local broadcast advertising 36.4%.

### Comparison with Other Media

National magazine advertising rose 14.3% as compared to October. Farm paper advertising declined 8.9%. Newspaper lineage remained unchanged in volume, as compared with the usual November decline.

November national magazine volume was 15.1% greater than during the corresponding month of 1934. Farm paper advertising showed a gain of 4.4% and newspaper advertising an increase of 12.3%.

Advertising by major media is found in Table II.

TABLE II

### ADVERTISING BY MAJOR MEDIA

Advertising Medium	1935 Gross Time and Space Sales		
	October	November	Cumulative Jan.-Nov.
Radio broadcasting	\$8,394,898	\$8,211,349	\$78,837,579
National magazines <sup>1</sup>	10,603,241	12,118,920	115,390,736
National farm papers <sup>1</sup>	525,337	481,501	5,112,146
Newspapers <sup>2</sup>	48,650,000	48,765,000	468,343,000
<b>Total</b>	<b>\$68,173,476</b>	<b>\$69,576,770</b>	<b>\$667,683,461</b>

<sup>1</sup> Publishers' Information Bureau.

<sup>2</sup> Estimated.

### Non-network Advertising

General non-network advertising increased 9.4% as compared to October and reached a level 28.2% higher than that of November 1934. Clear channel and high-powered regional station non-network volume increased 20.8% as compared to October. Regional station non-network business rose 2.2% while local station volume remained practically unchanged.

Non-network advertising over clear channel and high-powered regional stations exceeded the previous November's level by 28.0%. Regional station non-network volume gained 24.2% and local station advertising increased 44.8%.

Non-network advertising by size of station is found in Table III.

TABLE III

### NON-NETWORK ADVERTISING BY POWER OF STATION

Power of Station	1935 Gross Time Sales		
	October	November	Cumulative Jan.-Nov.
Over 1,000 watts	\$1,290,740	\$1,561,600	\$14,880,655
250-1,000 watts	1,391,650	1,423,160	13,077,305
100 watts	561,860	564,100	4,772,813
<b>Total</b>	<b>\$3,244,250</b>	<b>\$3,548,860</b>	<b>\$32,730,773</b>

Non-network advertising in the New England-Middle Atlantic area increased 2.2% as compared to October. Advertising in the South Atlantic-South Central States rose 19.8%. The Mountain and Pacific area experienced an increase of 26.7% over the preceding month while North Central non-network advertising remained comparatively unchanged. Non-network advertising in various geographical districts is indicated in Table IV.

TABLE IV

### NON-NETWORK ADVERTISING BY GEOGRAPHICAL DISTRICTS

Geographical District	1935 Gross Time Sales		
	October	November	Cumulative Jan.-Nov.
New England-Middle Atlantic Area	\$750,110	\$766,520	\$8,180,782
South Atlantic-South Central Area	611,120	730,610	5,344,828
North Central Area	1,295,300	1,305,830	12,520,437
Pacific and Mountain Area	587,720	745,900	6,684,726
<b>Total</b>	<b>\$3,244,250</b>	<b>\$3,548,860</b>	<b>\$32,730,773</b>

Compared to the corresponding month of 1934, non-network advertising gained in all parts of the country except the New England-Middle Atlantic area, where it decreased 14.4%. Rising network volume undoubtedly has been responsible for this trend. Gains in other portions of the country, as compared to November 1934, were as follows: South Atlantic-South Central states, 83.2%; North Central states, 37.8%; Mountain and Pacific states, 44.4%.

### Non-network Advertising by Type of Rendition

In the national non-network field, live talent volume rose most markedly as compared to the preceding month. Non-network advertising of this type increased 18.8%. National transcription business rose 2.0% during the month, while announcement volume increased 1.1%.

Compared to November 1934, national non-network transcription business registered an increase of 5.3%, live talent volume 45.4% and announcements 26.7%.

Transcriptions and live talent business both gained markedly in the local broadcast advertising field as compared to October. Transcription volume rose 13.7% and live talent business 18.0%. Record volume increased 5.7%, while announcements declined 4.6%. The latter is a normal seasonal trend, while the other gains represent a movement contrary to the usual seasonal decline.

Local transcription volume continued to show the marked gains experienced during the past several months, rising 72.1% as compared to November of the previous year. Live talent volume rose 24.7%, records 113.0% and announcements 25.1%. Non-network broadcast advertising by type of rendition during November is found in Table V.

TABLE V

### NON-NETWORK BROADCAST ADVERTISING BY TYPE OF RENDITION

Type of Rendition	National Non-network		1935 Gross Time Sales				
	October	November	Local		Total		Cumulative Jan.-Nov.
			October	November	October	November	
Electrical transcriptions	\$524,660	\$534,900	\$156,960	\$178,680	\$681,620	\$713,580	\$6,833,878
Live talent programs	696,900	828,940	877,760	1,040,160	1,574,660	1,869,100	15,806,630
Records	7,510	9,990	60,240	63,610	67,750	73,600	763,301
Announcements	275,900	278,850	644,320	613,730	920,220	892,580	9,326,964
<b>Total</b>	<b>\$1,504,970</b>	<b>\$1,652,680</b>	<b>\$1,739,280</b>	<b>\$1,896,180</b>	<b>\$3,244,250</b>	<b>\$3,548,860</b>	<b>\$32,730,773</b>

Sponsor Trends in November

Comparison with 1934

National network advertising by various sponsoring industries during November either remained at approximately the preceding month's level or showed slight declines with the exception of beverage advertising, which rose 12.5%, housefurnishing advertising, which increased 6.4%, financial advertising volume, which rose 9.1% and the miscellaneous group, which gained 18.1% over the preceding month. The principal gain in the regional network field was in confectionery, which more than doubled its advertising.

In the national non-network field, gains were as follows: accessories and gasoline, 38.7%; confectionery, 96.8%; and tobacco, 58.8%. Gains in local broadcast advertising as compared with the previous month included the following: drugs and pharmaceuticals, 35.8%; foodstuffs, 25.3%; confectionery, more than double.

Principal declines during the month were a 52.6% decrease in network automotive advertising, a decline of 11.3% in network food advertising and a general decrease in the soap and kitchen supply field.

Principal gains as compared to November of the preceding year, were as follows: national non-network and local automotive advertising, 721.0% and 122.1% respectively; local clothing advertising, 104.6%; national non-network cosmetic volume 69.1% and food advertising 39.3%; local housefurnishing advertising 68.3% and financial volume 56.1%; national non-network radio set advertising, 600.0%, and tobacco volume 106.0%. Regional network tobacco volume increased sevenfold while regional confectionery volume gained approximately six and one-half times. Candy, rather than chewing gum, was responsible for the national non-network and regional network confectionery increases.

Details as to Sponsor Trends

Detailed data regarding radio broadcast advertising by various industrial and service groups is found in Table VI.

TABLE VI  
RADIO BROADCAST ADVERTISING BY TYPE OF SPONSORING BUSINESS  
(November, 1935)

Type of Sponsoring Business	Gross Time Sales				
	National Networks	Regional Networks	National Non-networks	Local	Total
1a. Amusements	—	—	\$1,485	\$30,500	\$31,985
1-2. Automobiles and accessories:					
(1) Automobiles	\$314,329	—	230,420	95,700	640,449
(2) Accessories, gas and oils	387,977	\$19,328	103,930	92,830	604,065
3. Clothing and apparel	38,105	6,223	42,620	315,215	402,163
4-5. Drugs and toilet goods:					
(4) Drugs and pharmaceuticals	515,457	12,370	334,190	91,350	953,367
(5) Toilet goods	867,689	1,740	101,700	32,950	1,004,079
6-8. Food products:					
(6) Foodstuffs	884,536	26,412	339,735	239,475	1,490,158
(7) Beverages	293,846	4,082	59,100	97,170	454,198
(8) Confections	119,286	13,646	30,620	11,240	174,792
9-10. Household goods:					
(9) Household equipment and furnishings	32,429	5,455	55,655	184,330	277,869
(10) Soap and kitchen supplies	243,382	5,368	42,247	9,170	300,167
11. Insurance and financial	36,444	796	13,980	64,440	115,660
12. Radios	118,496	—	23,930	30,700	173,126
13. Retail establishments	—	—	7,023	162,670	169,693
14. Tobacco products	357,454	15,672	39,475	7,100	419,701
15. Miscellaneous	324,344	17,623	226,570	431,340	999,877
Total	\$4,533,774	\$128,715	\$1,652,680	\$1,896,180	\$8,211,349

1a. **Amusements.** Decline 37.1% as against October. Volume unchanged from corresponding month of last year.

1. **Automotive.** National network down 52.6% compared to October. National non-network up 12.3% and local down 7.1%. National network business 18.1% ahead of November last year. National non-network volume up 721.0% and local 122.1%.

2. **Gasoline and accessories.** National network volume unchanged from preceding month. Regional network business down 20.0%. National non-network business up 38.7% and local 3.0%. Compared to November 1934, national network business up 13.5%, regional networks 31.6%, and local 8.1%. National non-network down 25.0%.

3. **Clothing.** National non-network volume unchanged from preceding month. Regional network business up 20.1%, national non-network 7.5%, and local 5.3% as against October. National network advertising 11.4% ahead of November 1934, regional networks 343.0%, national non-network business 30.3%, and local 104.6%.

4. **Drugs and pharmaceuticals.** National network volume same as previous month. Regional network advertising up 12.1%, national non-network business up 3.0%, and local 35.8%. National network business 17.8% above November 1934. Regional network business increased from \$950 to \$12,370. National non-network advertising down 8.8% and local up 56.8%.

5. **Toilet goods.** National non-network business up 13.3% as compared to October, and local up 75.2%. National network business down 4.8%. Gains as follows when compared to November of preceding year: National networks 1.8%, regional networks 20.0%, national non-network 69.1%, and local 37.5%.

6. **Foodstuffs.** National network business down 11.3% and

regional networks 5.0%. National non-network business up 5.0% as compared to October. Local up 25.3%. National network advertising 4.2% below November 1934 level. Regional network business up 4.0%, national non-network business 39.3%, and local 17.8%.

7. **Beverages.** National network volume increased 12.5% compared to previous month. Local up 12.7%. Regional network advertising down 50.0% and national non-network business down 7.8%. National network advertising 19.2% above last November. Regional volume down 55.0%. National non-network advertising up 25.5% and local more than double.

8. **Confectionery.** National network business 10.3% below October, regional networks up 144.6%, national non-network 96.8%, and local more than double. National network business 30.0% below November 1934. Regional network volume up six and one-half times, national non-network advertising 12.4%, and local broadcast advertising 24.0%.

9. **Household equipment.** National network advertising 6.4% above preceding month, national non-network business up 3.7%, and local 3.3%. Regional network advertising down 39.7%. Compared to preceding November, gains as follows: National networks 11.7%, regional networks 6.0%, national non-network advertising 13.4%, and local 68.3%.

10. **Soaps and kitchen supplies.** General declines as compared to the preceding month: National networks 6.8%, regional networks 46.3%, national non-network 5.3%, and local 10.0%. Compared to November 1934, national network advertising unchanged, regional network business increased from \$360 to \$5,368, national non-network business down 22.2%, and local up 28.7%.

11. **Insurance and financial.** National network business 9.1%



ahead of October. National non-network volume down 17.0%, and local up 14.6%. Compared to November of preceding year, national network volume down 10.0% and national non-network advertising 38.9%. Local up 56.1%.

12. **Radios.** National network advertising down 4.1% compared to October, and national non-network down 29.1%. Local up 14.8%. National network volume up 30.0% as compared to last November. National non-network business up 600.0% and local up 19.1%.

13. **Department and general stores.** National non-network down 41.0% as against October. Local up 10.7%. National non-network business down 34.3% as compared to November of last year. Local up 30.4%. Total volume for this group 25.9% ahead of 1934.

14. **Tobacco products.** National network advertising 4.3% under October. Regional network volume unchanged, national non-network business up 58.8% and local 16.7%. National network tobacco advertising 18.7% above November 1934 level. Regional network volume increased from \$2,123 to \$15,622. National non-network advertising up 106.0% and local 11.2%.

15. **Miscellaneous.** National network business 18.1% ahead of previous month. Regional network gain 65.4%, national non-network 24.8%, and local 5.6%. Gains as follows, compared to November of last year: National networks 50.7%, regional networks 77.8%, and national non-network advertising 21.7%. Local business down 14.8%.

### Retail Broadcast Advertising

General retail broadcast advertising increased 5.2% as compared to the preceding month and showed a gain of 47.5% when compared to November 1934. The increase over October was contrary to the usual seasonal trend.

Increases over the previous month were experienced in the following retail establishment fields: clothing, 10.0%; beauty parlors, 54.0%; grocery and delicatessen stores, 1.6%; restaurants, 11.2%; beverage retailers, more than double; confectionery stores, \$760 in October to \$3,870 in November; radio dealers, 20.0%; department stores, 13.1%, and miscellaneous, 19.3%.

Declines during the month were as follows: automotive, 6.7%; gasoline and accessory retailers, 12.5%; drug stores, 2.0%; house-furnishing establishments, 8.2%, and hardware stores, 30.0%.

Principal increases, compared to November 1934, were as follows: automotive, 133.0%; clothing, 193.7%; drug stores, 23.8%; beauty parlors, 62.0%; food retailers, 28.3%; beverage retailers, 25.0%; housefurnishing dealers, more than double; furniture stores, 52.6%; and department stores, 25.9%. Principal declines were as follows: hardware stores, 33.3%; gasoline and accessory dealers, 52.0%.

Broadcast advertising by retail establishments during November was as follows:

TABLE VII

### RETAIL BROADCAST ADVERTISING OVER INDIVIDUAL STATIONS

Type of Sponsoring Business	1935 Gross Time Sales	
	October	November
<b>Automobiles and accessories:</b>		
Automobile agencies and used car dealers	\$105,110	\$97,670
Gasoline stations, garages, etc.	47,610	41,660
Clothing and apparel shops	295,940	326,230
<b>Drugs and toilet goods:</b>		
Drug stores	27,720	25,550
Beauty parlors	5,110	7,840
<b>Food products:</b>		
Grocery stores, meat markets, etc.	60,820	62,070
Restaurants and eating places	17,370	20,150
Beverage retailers	2,330	5,000
Confectionery stores	760	3,870
<b>Household goods:</b>		
Household equipment dealers	51,820	47,540
Furniture stores	90,000	89,355
Hardware stores	16,200	11,670
Radio retailers	19,700	24,750
Department and general stores	158,740	169,693
Tobacco shops	120	—
Miscellaneous	94,000	112,547
<b>Total</b>	<b>\$993,350</b>	<b>\$1,045,595</b>

## FEDERAL COMMUNICATIONS COMMISSION ACTION

### HEARING CALENDAR

Monday, January 6

Further Hearing and Argument Before the Commission En Banc

In the Matter of the Petition of the American Telephone and Telegraph Company and the New York Telephone Company in connection with the installation of experimental coaxial cable between New York, N. Y., and Philadelphia, Pa.

### Hearing Before an Examiner

KMTR—KMTR Radio Corporation, Los Angeles, Calif.—Renewal of license, 570 kc., 1 KW, unlimited time.

KGCU—Mandan Radio Association, Mandan, N. Dak.—Renewal of license, 1240 kc., 250 watts, specified hours.

NEW—Pacific Acceptance Corporation, San Diego, Calif.—C. P., 1200 kc., 100 watts, daytime.

NEW—California Sales Contract Co., San Francisco, Calif.—C. P., 1280 kc., 500 watts, 1 KW-LS, unlimited time.

Tuesday, January 7

NEW—Sioux Falls Broadcast Association, Inc., Sioux Falls, S. Dak.—C. P., 1200 kc., 100 watts, unlimited time.

KOB—New Mexico College of Agriculture and Mechanic Arts, Albuquerque, New Mex.—Renewal of license, 1180 kc., 1 KW, simultaneous day, shares night with KEX.

Wednesday, January 8

NEW—Springfield Newspapers, Inc., Springfield, Ohio—C. P., 1120 kc., 250 watts, daytime.

KGDE—Charles L. Jaren, Fergus Falls, Minn.—Renewal of license, 1200 kc., 100 watts, 250 watts LS, unlimited time.

Thursday, January 9

WTEL—Foulkrod Radio Engineering Co., Philadelphia, Pa.—C. P., 1230 kc., 250 watts, 500 watts LS, unlimited time. Present assignment: 1310 kc., 100 watts, shares with WHAT and WCAM.

WFBR—The Baltimore Radio Show, Inc., Baltimore, Md.—Modification of license, 1270 kc., 1 KW, unlimited time. Present assignment: 1270 kc., 500 watts, unlimited time.

WOOD—Kunsky-Trendle Broadcasting Corp., Grand Rapids, Mich.—C. P., 1270 kc., 1 KW, share with WASH. Present assignment: 1270 kc., 500 watts, shares with WASH.

WASH—Kunsky-Trendle Broadcasting Corp., Grand Rapids, Mich.—C. P., 1270 kc., 1 KW, share with WOOD. Present assignment: 1270 kc., 500 watts, shares with WOOD.

NEW—Carl S. Taylor, Dubois, Pa.—C. P., 780 kc., 250 watts, daytime.

NEW—A. W. Hayes, Erie, Pa.—C. P., 1270 kc., 500 watts, 1 KW LS, unlimited time.

NEW—Watertown Broadcasting Corp., Watertown, N. Y.—C. P., 1270 kc., 250 watts, daytime.

Friday, January 10

NEW—The Press Company, Inc., Schenectady, N. Y.—C. P., 1210 kc., 100 watts, daytime.

WEAN—The Shepard Broadcasting Service Inc., Providence, R. I.—C. P., 780 kc., 1 KW, unlimited time.

### APPLICATIONS RECEIVED

#### First Zone

NEW—I. L. G. W. Radio Corp., New York, N. Y.—Construction 970 permit for a new station to be operated on 970 kc., 1 KW, unlimited time.

WVFW—Paramount Broadcasting Corp., Brooklyn, N. Y.—Construction permit to make changes in equipment.

#### Second Zone

WFIL—WFIL Broadcasting Co., Philadelphia, Pa.—License to use 560 Western Electric 6-B transmitter (transmitter licensed to WLIT 2-P-B-1947, granted 2-3-31) as an auxiliary transmitter.

WRAX—WRAX Broadcasting Co., Philadelphia, Pa.—Modification of license to increase power from 250 watts, 500 watts

day to 1 KW day and night, using directional antenna at night.

WPEN—Wm. Penn Broadcasting Co., Philadelphia, Pa.—Modification of license to increase power from 250 watts, 500 watts day to 1 KW day and night, using directional antenna at night.

NEW—Hyman Altman, Detroit, Mich.—Construction permit for a new station to be operated on 1140 kc., 250 watts, daytime. Amended: To change frequency from 1140 kc. to 1120 kc.

WHIS—Daily Telegraph Printing Co., Bluefield, West Va.—Construction permit to install new equipment, increase power from 250 watts, 500 watts day to 500 watts, 1 KW day and move transmitter from West Virginian Hotel, Federal Street, Bluefield, West Virginia, to near Bluefield, West Virginia. Amended: To omit request for increase in power.

WWSW—Walker & Downing Radio Corp., Pittsburgh, Pa.—Construction permit to make changes in equipment and move transmitter from Frankstown Road, R. F. D. No. 1, Wilkesburg, Pennsylvania, to Bounded by Miami—Burrows—Mohawk, Pittsburgh, Pennsylvania.

### Third Zone

WREC—WREC, Incorporated, Memphis, Tenn.—Modification of construction permit (B-P-161) for increase in power, changes in equipment and move of transmitter, requesting extension of completion date from 1-30-36 to 2-29-36.

NEW—Ruth W. Adcock & S. E. Adcock, d/b as General Broadcasters, Johnson City, Tenn.—Construction permit for a new station to be operated on 600 kc., 250 watts, daytime. Amended: To change frequency from 600 kc. to 880 kc., and make changes in antenna.

NEW—Ruth W. Adcock & S. E. Adcock, d/b as General Broadcasters, Rossville, Ga.—Construction permit for a new station to be operated on 580 kc., 250 watts, daytime. Amended: To change frequency from 580 kc. to 1120 kc. and make changes in antenna.

WMAZ—Southeastern Broadcasting Co., Inc., Macon, Ga.—License 1180 to cover construction permit (B3-P-785) for equipment changes.

NEW—Wilton Harvey Pollard, Huntsville, Ala.—Construction permit for a new station to be operated on 1200 kc., 100 watts, unlimited time. Amended: To change transmitter site from Twickenham Hotel, Cor. Washington & Clinton Sts., Huntsville, Alabama, to 500 ft. due west of Highway U. S. No. 241, outside city limits of Huntsville, Alabama, and make changes in antenna system. (Requests all facilities of WBHS.)

NEW—The Metropolis Co., Jacksonville, Fla.—Construction permit for a new station to be operated on 1200 kc., 100 watts, unlimited time.

NEW—Ted R. Woodard, Kingsport, Tenn.—Construction permit for a new station to be operated on 1210 kc., 100 watts, daytime. Amended: To change transmitter site from approximately 1 mi. from town, Lee Hi-Way, Kingsport, Tenn., to Lee Hi-Way (not numbered), Kingsport, Tenn.

WGCM—WGCM, Incorporated, Mississippi City, Miss.—Modification of construction permit (B3-P-421) authorizing change in frequency, change hours of operation and increase power, requesting extension of commencement date from 7-28-35 to 1-28-36 and completion date from 1-28-36 to 7-28-36.

WRDW—Augusta Broadcasting Co., Augusta, Ga.—Construction permit to make changes in equipment, move transmitter from 309 Eighth St., Augusta, Ga., to Satcher estate on the edge of the city, North Augusta, South Carolina, change frequency from 1500 kc. to 1240 kc., and increase power from 100 watts to 250 watts, 1 KW day, using directional antenna at night if necessary.

NEW—The Sherman Broadcasting Assn. (J. B. Knight, Pres.), Sherman, Tex.—Construction permit for a new station to be operated on 1310 kc., 100 watts, daytime.

NEW—Bay County Publishers, Inc., Panama City, Fla.—Construction permit for a new station to be operated on 1420 kc., 100 watts, unlimited time.

NEW—WDOD Broadcasting Corp., Chattanooga, Tenn.—Construction permit for a new general experimental station to be operated on frequencies 31600, 35600, 38600, 41000 kc., 100 watts.

### Fourth Zone

KSD—The Pulitzer Publishing Co., St. Louis, Mo.—Authority to determine operating power by direct measurement of antenna power.

KSD—The Pulitzer Publishing Co., St. Louis, Mo.—License to cover construction permit (4-P-B-3285) for new equipment and increase in power.

KWTO—Ozarks Broadcasting Co., Springfield, Mo.—Modification of construction permit (B4-P-230) authorizing changes in equipment and increase in power, requesting extension of commencement date from 7-21-35 to 1-1-36 and completion date from 1-21-36 to 7-21-36.

KFEQ—KFEQ, Incorporated, St. Joseph, Mo.—Construction permit to install new equipment, increase power from 2½ KW day to 5 KW day, and move transmitter site to be determined. Amended: To make changes in equipment.

KFAB—KFAB Broadcasting Co., Lincoln, Nebr.—Extension of special experimental authorization to operate synchronously with WBBM, from local sunset at Lincoln, Nebraska, to midnight CST, from 2-1-36 to 8-1-36.

WBBM—WBBM Broadcasting Corp., Chicago, Ill.—Extension of special experimental authorization to operate synchronously with KFAB from local sunset (KFAB) to midnight for period from 2-1-36 to 8-1-36.

WHO—Central Broadcasting Co., Davenport, Iowa.—Construction permit to install new equipment and increase power from 50 KW to 500 KW.

NEW—Harry J. Grant, Milwaukee, Wisc.—Construction permit for a new station to be operated on 1010 kc., 1 KW, unlimited time.

NEW—Albert Lea Broadcasting Corp., Albert Lea, Minn.—Construction permit for a new station to be operated on 1200 kc., 100 watts, unlimited time.

NEW—J. T. Bilben & N. G. Barnard, Walker, Minn.—Construction permit for a new station to be operated on 1310 kc., 100 watts, unlimited time.

WGES—Oak Leaves Broadcasting Station, Inc., Chicago, Ill.—Modification of license to change hours of operation from share-WSBT to unlimited and reduce daytime power Sunday from 1 KW to 500 watts. Contingent upon the granting of WSBT's application for change in frequency.

KABR—Aberdeen Broadcast Co., Inc., Aberdeen, South Dak.—License to cover construction permit (B4-P-839) for move of transmitter locally.

WHBF—Rock Island Broadcasting Co., Rock Island, Ill.—Construction permit to make changes in equipment, install directional antenna, change frequency from 1210 to 1450 kc., increase power from 100 watts, 250 watts day to 1 KW day and night and move transmitter from 102 18th St., Rock Island, Ill. to site to be determined.

NEW—Joliet Printing Co., Joliet, Ill.—Construction permit for a new station to be operated on 1500 kc., 100 watts, 250 watts day, unlimited time.

W9XAL—The First National Television Corp., Kansas City, Mo.—Consent to assignment of license to First National Television, Inc.

NEW—Head of the Lakes Broadcasting Co., Superior, Wisc.—Construction permit for a new general experimental station to be operated on 31600, 35600, 41000 kc., 80 watts. Amended: To add frequency 38600 kc.

### Fifth Zone

NEW—The Tribune, Great Falls, Mont.—Construction permit for a new station to be operated on 550 kc., 1 KW, 5 KW day, unlimited time. All facilities of KFYR.

KHQ—Louis Wasmer, Inc., Spokane, Wash.—Construction permit to make changes in equipment.

KIEV—Cannon System, Ltd., Los Angeles, Calif.—Modification of construction permit (5-P-B-3268) for changes in equipment, increase in power and move of transmitter, requesting extension of commencement date from 10-30-35 to 2-1-36 and completion date from 12-29-35 to 4-1-36.

NEW—Earle Yates, Las Cruces, New Mex.—Construction permit for a new station to be operated on 930 kc., 1 KW, daytime.

NEW—Peninsula Newspapers Inc., Palo Alto, Calif.—Construction permit for a new station to be operated on 1160 kc., 250 watts, daytime. Amended: To omit name of Merced Star Publishing Co. from name.

NEW—Struble, Strong & Fagan (Carl C. Struble, Curtis T. Strong, Jane M. Fagan), The Dalles, Ore.—Construction permit for a new station to be operated on 1200 kc., 100 watts, un-

limited time. Amended: To change transmitter site from 112 West Second Ave., The Dalles, Oregon, to site to be determined, The Dalles, Oregon, and antenna system to be determined.

NEW—Democrat News Co., Inc., Lewiston, Mont.—Construction permit for a new station to be operated on **1200 kc.**, 100 watts, 250 watts day, unlimited time. Amended: To make changes in equipment.

KOL—Seattle Broadcasting Co., Seattle, Wash.—Authority to determine operating power by direct measurement of antenna.

NEW—A. W. Mills, Gallup, New Mex.—Construction permit for a new station to be operated on **1500 kc.**, 100 watts, daytime and limited. Amended: To change frequency from **1500** to **1310 kc.**, hours of operation from daytime and limited time to unlimited and make changes in equipment.

KIDW—The Lamar Broadcasting Co., Lamar, Colo.—Voluntary assignment of license from The Lamar Broadcasting Co. to The Southwest Broadcasting Co.

NEW—Ellwood W. Lippincott, Pendleton, Ore.—Construction permit for a new station to be operated on **1500 kc.**, 100 watts, daytime.

NEW—Southwest Broadcasting Co., Prescott, Ariz.—Construction permit for a new station to be operated on **1500 kc.**, 100 watts, 250 watts day, unlimited time. Amended: Re Stockholder.

NEW—W. P. Stuart, Prescott, Ariz.—Construction permit for a new station to be operated on **1500 kc.**, 100 watts, unlimited time. Requests facilities of KPJM. Amended: To make

changes in equipment and giving studio and transmitter sites as Union & Cortez Sts., Prescott, Arizona.

KRNR—Southern Oregon Publishing Co., Eugene, Ore.—License **1500** to cover construction permit (B5-P-434) as modified for a new station.

#### No Zone

WPRP—Julio M. Conesa, Ponce, Puerto Rico—Modification of construction permit (1-P-B-2940) for approval of transmitter site at No. 1 Trujillo St., Ponce, Puerto Rico, move studio from Plaza Principal, Ponce, P. R., to Trujillo St. (about 160' from transmitter), Ponce, P. R., and extend completion date from 1-18-35 to 180 days after grant. Also make changes in specified hours.

#### EFFECTIVE DATE EXTENDED

The Federal Communications Commission has extended the effective date of the Broadcast Division's Order of October 1, 1935 (Minute No. 239), in the so-called Brooklyn cases, Dockets Nos. 1780, 1936, 2039, 2641, 1882, 2013, 2014, 1967, 2643, 1883, 1968, 2642, 2259, 2411, 2343, 2463, 2462 and 2543, to January 22, 1936, pending its consideration of the petition of Paramount Broadcasting Corporation (WVFW) for rehearing on said Order under the provisions of Section 405 of the Communications Act of 1934, as to its application.



# The National Association of Broadcasters

NATIONAL PRESS BUILDING \* \* \* \* \* WASHINGTON, D. C.  
JAMES W. BALDWIN, Managing Director

## NAB REPORTS

Vol. 4 - No. 2  
JANUARY 8, 1936

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### POWER INCREASE RECOMMENDED FOR KFPY

Broadcasting station KFPY, Spokane, Wash., operating on a frequency of 890 kilocycles, with unlimited time applied to the Federal Communications Commission to increase its daytime power from 1,000 to 5,000 watts with 1,000 watts at night as at present.

Examiner George H. Hill in Report No. I-176 has recommended that the application be granted. The Examiner found that no interference will be caused by the granting of the application and that "there is a definite need for the service of Station KFPY in the area not now being served by the station nor by any other station broadcasting Columbia Broadcasting System programs during daytime hours."

### CASE DISMISSED AGAINST FCC

On motion of the Federal Communications Commission, the District Court of the United States for the Northern District of Illinois has dismissed the case against it by Peter B. Schyman.

Schyman asked the court to restrain the Commission from publishing certain information developing at a hearing before an Examiner of the Commission. Schyman claims that he is a doctor and that the publication of the information would hurt his professional reputation.

### HOUSE PASSES FCC AMENDMENT

The House of Representatives this week without any discussion passed an amendment to the Communications Act of 1934 dealing with salaries of personnel of the Federal Communications Commission. The bill has already passed the Senate and it now remains merely to be signed by the President to become effective. The bill as passed provides: That paragraph (f) of section 4 of the Communications Act, 1934, is hereby amended by adding after the words "a chief engineer and not more than three assistants," the words "a chief accountant and not more than three assistants," and by adding after the words "and the chief engineer", the words "and the chief accountant", and by adding after the word "engineers" the word "accountants", so that paragraph (f) of section 4, as amended, will read as follows:

"(f) Without regard to the civil-service laws or the Classification Act of 1923, as amended, (1) the Commission may appoint and prescribe the duties and fix the salaries of a secretary, a director for each division, a chief engineer and not more than three assistants, a chief accountant and not more than three assistants, a general counsel and not more than three assistants, and temporary counsel designated by the Commission for the performance of special services; and (2) each commissioner may appoint and prescribe the duties of a secretary at an annual salary not to exceed \$4,000. The general counsel and the chief

engineer and the chief accountant shall each receive an annual salary of not to exceed \$9,000; the secretary shall receive an annual salary of not to exceed \$7,500; the director of each division shall receive an annual salary of not to exceed \$7,500; and no assistant shall receive an annual salary in excess of \$7,500. The Commission shall have authority, subject to the provisions of the civil-service laws and the Classification Act of 1923, as amended, to appoint such other officers, engineers, accountants, inspectors, attorneys, examiners, and other employees as are necessary in the execution of its functions."

### FCC MAKES FIRST ANNUAL REPORT

The Federal Communications Commission this week made its first annual report to Congress. No recommendations were included. It is expected that if the Commission sees the necessity of further changes in the law that it will later transmit its recommendations to the appropriate committees of Congress. The report covers the fiscal year ending June 30, 1935.

The report shows that on June 30 of last year there were 623 broadcasting stations and that during the fiscal year nine stations were deleted and 39 new stations were authorized. Of this number, 31 were authorized under the provisions of section 307 of the Communications Act and were not charged to quota. Also during the fiscal year the Commission received 3,652 applications from broadcasting stations and authorizations were issued for 3,434 changes.

Merging of the old Federal Radio Commission are taken up in the report and details are given on the work of all of the departments and divisions of the Commission.

During the fiscal year the Commission spent \$1,125,599 for salaries and expenses in addition to \$13,518 for printing and binding.

A whole section of the report under the engineering department is devoted to broadcasting. In this section are discussed regular broadcast, modification of the rules, the operation of 500 kilowatt stations, experimental high fidelity broadcast, experimental relay broadcasting, experimental visual broadcasting, very high frequency experimental broadcasting and technical developments in regular broadcasting. Dealing with the allocation survey the Commission's report says: Since the allocation of 1928 no specific or basic changes have been made in regulation of the Commission governing the allocation of regular broadcast frequencies. There has been much public and engineering sentiment toward making certain basic changes rather than continuing granting of various applications that did not comply with this basic plan as originally adopted. While much engineering data have been taken by the Field Section of the Commission and at the numerous hearings held before the Commission, and the leading radio engineers throughout the United States have introduced large amounts of data, the Engineering Department was not convinced that it had sufficient information available on which to base a recommendation to the Commission to change the present allocation or to fully substantiate it.

The licensees of 13 clear-channel stations petitioned the Commission that it carry forward a survey in cooperation with them for the purpose of gaining further information. While the petition exactly as made was not accepted, the Commission did decide to carry forward the survey in cooperation with all broadcast licensees. Several informal conferences with all interested parties invited to be present were held when the extent and plan of survey, the prorating of the work, and the setting up of an organization to purchase equipment and management of the survey were decided. During January the survey actually began and the taking of data was closed on May 30, 1935.

The survey was divided into four principal parts, namely:

1. One hundred and sixteen thousand questionnaires were sent to the fourth-class postmasters and to a list of representative rural listeners furnished by the Agricultural Adjustment Admini-

stration requesting their preferences in radio stations with respect to satisfaction of reception.

2. The field personnel of the Commission made extended trips and interviewed radio listeners throughout various sections of the United States to obtain their opinions.

3. Continuous recordings were made of the signal received from broadcast stations in 10 different locations of the United States. The number of continuous recorders located at each of these points was from 4 to 8. This is the greatest number of field-intensity recordings heretofore taken and should give reliable information on the signal to be expected at distances from stations of various powers.

4. The radiating efficiency and primary service areas of several representative stations were determined by means of field-intensity equipment located in the Commission's test cars.

The data were all accumulated during the fiscal year 1934-35; however, the analysis, summary, conclusions, and recommendations to the Commission based on the survey were just begun at the close of the fiscal year.

### FCC APPROPRIATION

The Appropriation Committee of the House of Representatives provided an appropriation of \$1,450,000 for the coming fiscal year for the Federal Communications Commission compared with its present appropriation of \$1,500,000 for the present year, a saving of \$50,000. An additional appropriation of \$25,000 is also made for printing and binding which is the present appropriation. This, of course, is in addition to the \$750,000 appropriation which the Commission has for the telephone investigation. The bill is now pending before the House for action.

### SECURITIES ACT REGISTRATIONS

The following companies have filed registration statements with the Securities & Exchange Commission under the Securities Act:

- American Wringer Company, Inc., Woonsocket, R. I. (2-1819, Form E-1)
- Berkey & Gay Furniture Co., Grand Rapids, Mich. (2-1820, Form A-1)
- Coastal Minerals Development, Inc., New Orleans, La. (2-1821, Form A-1)
- Sunray Oil Corporation, New York City. (2-1822, Form A-2)
- Protective Committee of Mobile Bay Bridge Co., Buffalo, N. Y. (2-1823, Form D-1)
- Fundamental Investors, Inc., Jersey City, N. J. (2-1824, Form A-1)
- Benjamin Franklin Foundation, Inc., Philadelphia, Pa. (2-1826, Form C-1)
- Allen Industries, Inc., Detroit, Mich. (2-1827, Form A-2)
- Continental Steel Corporation, Kokomo, Ind. (2-1828, Form A-2)
- Continental Steel Corporation, Kokomo, Ind. (2-1829, Form A-2)
- East Belt Gold Mining Co., Reno, Nev. (2-1830, Form A-1)
- Oklahoma-Southern Trust, Tulsa, Okla. (2-1831, Form A-1)
- Can Industries Corporation, Chicago, Ill. (2-1832, Form A-1)
- Committee of Trenton Mortgage & Title Co., Trenton, N. J. (2-1833, Form D-1)
- Vimy Gold & Metals, Ltd., Montreal, Canada. (2-1834, Form A-1)
- El Callao Mining Co., Ltd., Toronto, Canada. (2-1836, Form A-1)
- Newman Dick Mining & Developing Co., Kirkland Lake, Canada. (2-1837, Form A-1)
- Navajo Gold Mines, Inc., Mancos, Canada. (2-1838, Form A-1)
- Columbia Pictures Corp., New York City. (2-1840, Form A-2)
- Harry Cohn et al., New York City. (2-1841, Form F-1)
- Republic Investors Fund, Inc., Jersey City, N. J. (2-1842, Form A-1)
- Republic Investors, Inc., Jersey City, N. J. (2-1843, Form A-1)
- Brockert Brewing Co., Inc., Worcester, Mass. (2-1844, Form A-1)
- Illinois Consolidated Telephone Co., Mattoon, Ill. (2-1845, Form A-2)

Arrowhead Petroleum Corp., St. George, Utah. (2-1846, Form A-1)

Twin Coach Company, Kent, Ohio. (2-1847, Form A-2)

El Crest Mining Co., Denver, Colo. (2-1848, Form A-1)

Sparta Foundry Company, Salt Lake City, Utah. (2-1849, Form A-2)

Utah-Idaho Sugar Company, Salt Lake City, Utah. (2-1850, Form A-2)

Campana Gold Mines, Inc., Chicago, Ill. (2-1852, Form A-1)

Wabash Telephone Co., Bloomington, Ill. (2-1853, Form A-2)

Eastern Life Insurance Co., of New York. (2-1854, Form A-1)

### NEW STATION DENIAL RECOMMENDED

The Wisconsin Broadcasting Company applied to the Federal Communications Commission for a permit for the erection of a new broadcasting station at Oshkosh, Wis., to use 1310 kilocycles, 100 watts and 250 watts LS, and unlimited time on the air.

Examiner John P. Bramhall in Report No. I-177 recommended that the application be denied. The Examiner found that the applicant is "not financially qualified to construct and operate the proposed station." Also "the evidence fails to show need for additional service in the area proposed to be served." It was found also by the Examiner that the erection of the proposed station would cause interference with certain existing stations.

### RECOMMENDS NEW PENNSYLVANIA STATION DENIAL

E. L. Clifford applied to the Federal Communications Commission for a construction permit for the erection of a new station at Pottsville, Pa., to use 580 kilocycles, 250 watts and day-time operation.

Examiner Melvin H. Dalberg in Report No. I-178 recommended that the application be denied. The Examiner states that "there is obviously an insufficient showing that the applicant himself is qualified for the management and operation of a radio station and proof with respect to those with whom he would be associated or that those whom he had it in mind to employ are technically qualified by experience and background to warrant such application is lacking."

### NEW CALIFORNIA STATION RECOMMENDED

The Golden Empire Broadcasting Company has filed an application with the Federal Communications Commission asking to erect a new broadcasting station at Redding, Cal., to use 1200 kilocycles, 100 watts and unlimited time on the air.

Examiner Melvin H. Dalberg in Report No. I-175 recommends that the application be granted. The Examiner states that "it is apparent that there exists in the Redding, Cal., area a genuine need for local broadcasting facilities and the program material which is proposed seems to be of a satisfactory nature for a station of the power requested. The equipment proposed to be installed is satisfactory and meets all the engineering requirements of the Commission." The Examiner found that granting of the application would not cause any interference.

### NEW QUOTA FACILITIES

The Federal Communications Commission has announced the following quota facilities due and assigned to broadcast stations as of January 2.

State	First Zone—Night			
	Due	Assigned	Units Over or Under	Percent Over or Under
Conn. . . . .	2.13	1.92	— 0.21	— 10
Del. . . . .	0.32	0.20	— 0.12	— 38
D. C. . . . .	0.64	0.60	— 0.04	— 6
Maine . . . . .	1.06	0.99	— 0.07	— 7
Md. . . . .	2.16	1.98	— 0.18	— 8
Mass. . . . .	5.63	5.51	— 0.12	— 2
N. H. . . . .	0.62	0.43	— 0.19	— 31
N. J. . . . .	5.36	4.105	— 1.255	— 23
N. Y. . . . .	16.69	18.53	+ 1.84	+ 11
R. I. . . . .	0.91	0.90	— 0.01	— 0
Vt. . . . .	0.48	0.56	— 0.08	+ 17
<b>Total</b>	<b>36.00</b>	<b>35.725</b>	<b>— 0.275</b>	<b>— 1</b>

First Zone—Day

State	Due	Assigned	Units Over or Under	Percent Over or Under
Conn.	3.85	3.44	- 0.41	- 11
Del.	0.57	0.33	- 0.24	- 42
D. C.	1.16	0.90	- 0.26	- 22
Maine	1.91	1.42	- 0.49	- 26
Md.	3.91	4.10	+ 0.19	+ 5
Mass.	10.17	7.35	- 2.82	- 28
N. H.	1.11	0.80	- 0.31	- 28
N. J.	9.67	5.055	- 4.615	- 48
N. Y.	30.14	21.46	- 8.68	- 29
R. I.	1.65	1.00	- 0.65	- 39
Vt.	0.86	0.86	- 0.00	- 0
<b>Total</b>	<b>65.00</b>	<b>46.715</b>	<b>-18.285</b>	<b>- 28</b>

Second Zone—Night

State	Due	Assigned	Units Over or Under	Percent Over or Under
Ky.	3.38	3.95	+ 0.57	+ 17
Mich.	6.25	5.05	- 1.20	- 19
Ohio	8.58	9.83	+ 1.25	+ 15
Pa.	12.43	12.38	- 0.05	- 0
Va.	3.13	4.65	+ 1.52	+ 49
W. Va.	2.23	2.19	- 0.04	- 2
<b>Total</b>	<b>36.00</b>	<b>38.05</b>	<b>+ 2.05</b>	<b>+ 6</b>

Second Zone—Day

State	Due	Assigned	Units Over or Under	Percent Over or Under
Ky.	6.10	4.25	- 1.85	- 30
Mich.	11.28	7.09	- 4.19	- 37
Ohio	15.50	12.31	- 3.19	- 20
Pa.	22.45	14.85	- 7.60	- 34
Va.	5.64	6.19	+ 0.55	+ 10
W. Va.	4.03	4.30	+ 0.27	+ 7
<b>Total</b>	<b>65.00</b>	<b>48.99</b>	<b>-16.01</b>	<b>- 25</b>

Third Zone—Night

State	Due	Assigned	Units Over or Under	Percent Over or Under
Ala.	3.32	2.735	- 0.585	- 18
Ark.	2.32	2.67	+ 0.35	+ 15
Fla.	1.84	3.65	+ 1.81	+ 98
Ga.	3.64	4.26	+ 0.62	+ 17
La.	2.63	5.40	+ 2.77	+ 105
Miss.	2.52	1.32	- 1.20	- 48
N. Car.	3.97	4.45	+ 0.48	+ 12
Okla.	3.00	3.51	+ 0.51	+ 17
S. Car.	2.18	1.30	- 0.88	- 40
Tenn.	3.28	6.05	+ 2.77	+ 84
Texas	7.30	11.14	+ 3.84	+ 53
<b>Total</b>	<b>36.00</b>	<b>46.485</b>	<b>+10.485</b>	<b>+ 29</b>

Third Zone—Day

State	Due	Assigned	Units Over or Under	Percent Over or Under
Ala.	5.99	4.685	- 1.305	- 22
Ark.	4.19	4.75	+ 0.56	+ 13
Fla.	3.32	5.30	+ 1.98	+ 60
Ga.	6.58	5.20	- 1.38	- 21
La.	4.75	5.60	+ 0.85	+ 18
Miss.	4.55	2.42	- 2.13	- 47
N. Car.	7.17	4.85	- 2.32	- 32
Okla.	5.42	5.30	- 0.12	- 2
S. Car.	3.93	2.70	- 1.23	- 31
Tenn.	5.92	7.75	+ 1.83	+ 31
Texas	13.18	14.06	+ 0.88	+ 7
<b>Total</b>	<b>65.00</b>	<b>62.615</b>	<b>- 2.385</b>	<b>- 4</b>

Fourth Zone—Night

State	Due	Assigned	Units Over or Under	Percent Over or Under
Ill.	10.14	11.14	+ 1.00	+ 10
Ind.	4.30	3.64	- 0.66	- 15
Iowa	3.28	5.37	+ 2.09	+ 64
Kans.	2.50	2.49	- 0.01	- 0
Minn.	3.41	4.18	+ 0.77	+ 23
Mo.	4.82	5.24	+ 0.42	+ 9
Nebr.	1.83	2.21	+ 0.38	+ 21
N. Dak.	0.90	0.90	+ 0.00	+ 0
S. Dak.	0.92	0.86	- 0.06	- 7
Wisc.	3.90	3.47	- 0.43	- 11
<b>Total</b>	<b>36.00</b>	<b>39.50</b>	<b>+ 3.50</b>	<b>+ 10</b>

Fourth Zone—Day

State	Due	Assigned	Units Over or Under	Percent Over or Under
Ill.	18.30	15.82	- 2.48	- 14
Ind.	7.77	5.89	- 1.88	- 24
Iowa	5.93	8.26	+ 2.33	+ 39
Kans.	4.51	3.77	- 0.74	- 16
Minn.	6.15	5.77	- 0.38	- 6
Mo.	8.70	9.64	+ 0.94	+ 11
Nebr.	3.30	6.02	+ 2.72	+ 82
N. Dak.	1.63	1.35	- 0.28	- 17
S. Dak.	1.66	2.13	+ 0.47	+ 28
Wisc.	7.05	6.46	- 0.59	- 8
<b>Total</b>	<b>65.00</b>	<b>65.11</b>	<b>+ 0.11</b>	<b>+ 0</b>

Fifth Zone—Night

State	Due	Assigned	Units Over or Under	Percent Over or Under
Ariz.	1.32	1.37	+ 0.05	+ 4
Calif.	17.18	19.67	+ 2.49	+ 14
Colo.	3.13	4.61	+ 1.48	+ 47
Idaho	1.35	1.50	+ 0.15	+ 11
Mont.	1.63	2.15	+ 0.52	+ 32
Nev.	0.27	0.30	+ 0.03	+ 11
N. Mex.	1.28	1.13	- 0.15	- 12
Ore.	2.89	4.12	+ 1.23	+ 42
Utah	1.54	3.30	+ 1.76	+ 114
Wash.	4.73	7.53	+ 2.80	+ 59
Wyo.	0.68	0.40	- 0.28	- 41
<b>Total</b>	<b>36.00</b>	<b>46.08</b>	<b>+10.08</b>	<b>+ 28</b>

Fifth Zone—Day

State	Due	Assigned	Units Over or Under	Percent Over or Under
Ariz.	2.38	1.69	- 0.69	- 29
Calif.	31.02	23.57	- 7.45	- 24
Colo.	5.66	5.25	- 0.41	- 7
Idaho	2.43	2.05	- 0.38	- 16
Mont.	2.94	2.95	+ 0.01	+ 0
Nev.	0.49	0.30	- 0.19	- 39
N. Mex.	2.31	2.95	+ 0.64	+ 28
Ore.	5.21	6.19	+ 0.98	+ 19
Utah	2.78	3.30	+ 0.52	+ 19
Wash.	8.54	9.39	+ 0.85	+ 10
Wyo.	1.24	0.40	- 0.84	- 68
<b>Total</b>	<b>65.00</b>	<b>58.04</b>	<b>- 6.96</b>	<b>- 11</b>

FEDERAL TRADE COMMISSION ACTION

Complaints

The Federal Trade Commission has alleged unfair methods of competition in complaints issued against the following companies. The respondents will be given an opportunity for hearing to show cause why cease and desist orders should not be issued against them.

**No. 2237.** A cease and desist order issued against **Paul F. Reich Co.**, a corporation, with its principal office and place of business at **Bloomington, Ill.**, has been vacated and an amended and supplemental complaint issued against that respondent and directed the taking of testimony on such amended complaint.

The respondent is charged in the amended and supplemental complaint with selling to wholesale and retail dealers packages or assortments of candy, so packed and assembled as to involve the use of a lottery scheme when sold and distributed to consumers.

**No. 2670.** Unfair competition by the representation of a dealer as a manufacturer, is alleged in a complaint issued against **M. and A. Berger**, of 82 Orchard St., New York, trading as **Wearwell Knitting Mills**.

In addition to the trade name containing the word "Mills", the respondents, according to the complaint, advertised knitted garments by means of the phrase "Manufacturers of High Grade Sweaters, Bathing Suits and Knitted Novelties", implying that they own or control a mill or mills, when in fact they have not manufactured these articles and have not owned or controlled a factory in which such products are knitted.

**No. 2671.** **Ross Knitting Mills, Inc.**, a corporation, trading under that corporate name and also as **Ross Sportswear Co.**, and **Nathan Hirsch**, also trading as **Ross Sportswear Co.**, of New York City, are named as respondents in a complaint charging violation of Section 5 of the Federal Trade Commission Act.

The respondents are engaged in selling and distributing knitted garments and other apparel in interstate commerce. It is alleged in the complaint that **Ross Knitting Mills, Inc.**, and **Nathan Hirsch**, in the sale of the products mentioned, falsely represent that they are manufacturers, when in fact they have not manufactured and do not manufacture the products they sell, nor do they own or control a mill in which such products sold by them are manufactured. It is set out in the complaint that use of the words "Manufacturers of", on the respondents' letterheads, business cards, invoices and otherwise, falsely implies that they are manufacturers.

**No. 2672.** **William W. Babcock**, doing business under the name and style of **National Civil Service Training Bureau**, with office and principal place of business in **Los Angeles, Calif.**, is named as respondent in a complaint charging violation of Section 5 of the Federal Trade Commission Act.

It is alleged in the complaint that the name "National Civil Service Training Bureau", used by the respondent in conducting his business, implies to persons solicited to pursue the respondent's course of study, that the said Bureau is a part of or is connected with, or is an agency of the United States government. The complaint sets out that in truth and in fact neither the respondent, his school, nor anyone connected therewith, has any connection whatever with the Federal government, and that the sale of the respondent's course of study in the manner complained about, is unfair competition within the meaning of the Federal Trade Commission Act.

**No. 2673.** **H. Will Elders**, seller and distributor of a medicinal preparation known as "Dr. H. Will Elders' Filled Prescription for Women," with his place of business at **St. Joseph, Mo.**, is named as respondent in a complaint alleging violation of Section 5 of the Federal Trade Commission Act. The respondent is charged with making false and misleading representations in advertising matter of the respondent's medicinal preparation.

**No. 2674.** A complaint has been issued charging **Griffith Piano Co.**, of **Newark, N. J.**, with unfair competition through imitation of advertisements of the **Mathushek Piano Manufacturing Co.** of New York City, and through disparagement of the **Mathushek** company's product, the "Spinet Grand" piano.

The "Spinet Grand", a small, square type instrument with only four legs, has acquired a valuable good-will, according to the complaint, and has been advertised as occupying "only the space of a lounge". The complaint alleges that the respondent company advertised its "Colonial Grand Piano" by altering a picture of a conventional grand piano so that it appeared to be square or rectangular, similar to the Spinnet Grand, with the fifth leg eliminated. It was advertised as occupying "no more space than a lounge or sofa."

**No. 2675.** A complaint has been issued alleging unfair competition on the part of **Joseph Weidenhoff, Inc.**, of **Chicago**, said to be the largest manufacturer of automobile testing devices in the United States. The complaint charges the respondent with executing an unlawful plan to control and restrain interstate commerce in testing devices.

Obtaining a patent for the special use of a vacuum gauge, the respondent is alleged to have manufactured testing devices consisting of a large number of separate and unrelated parts and items, including the vacuum gauge, assembled into one apparatus and sold to garage owners and others at prices ranging from \$175 to \$1,000 a device.

**No. 2676.** A complaint has been issued against **Dennison Bros.**,

**Inc.**, of 437 Eleventh Ave., **New York City**, alleging unfair competition through representation to the public that a large percentage of its profits are for the use and benefit of a charitable institution, the **Bethlehem Orphan and Half-Orphan Home**, of **New York City**.

The respondent is charged with utilizing the representation about its gifts to a charitable institution so as to increase its sales and obtain patronage which otherwise would be unavailable.

### Stipulations

The Commission has announced the following cease and desist orders:

**Nos. 1567-1568.** **Louis and Isadore Kaplin**, of 228 **Cherry Street, Philadelphia**, trading as **Metropolitan Bag & Suitcase Co.**, manufacturing luggage, including gladstone bags and suit cases, and **Standard Traveling Goods Co.**, 331 **Race Street, Philadelphia**, manufacturing men's and women's hand luggage, agree to discontinue misleading representations of their products. **Louis and Isadore Kaplin** stipulate that they will cease and desist using the word "leather" alone or in connection with the phrase "warranted genuine," and **Standard Traveling Goods Co.**, that it will stop using the word "leather," alone or in connection with the phrase "Guaranteed Genuine," to brand or label their products so as to imply that they are made of leather from the top or grain cut of the hide; unless, when the products are composed of leather made from the inner or flesh cut of the hide, the word "leather," if used to designate them, shall be accompanied by the word "split" in conspicuous type to clearly indicate that the products are not made of leather from the top or grain cut.

**No. 1569.** **The Wilson-El-Bart Corporation**, 70 **West 40th Street, New York City**, is engaged in distilling American-made alcoholic beverages, including gin and whiskey, and has agreed to abandon use in its advertising matter of representations to the effect that Canadian, or "over-the-border" whiskies are impractical or are not suitable for use in the blending of distilled spirits, or that blended whiskey prepared with imported Canadian whiskey is a product inferior to a mixture made of American straight whiskey. The respondent agrees also to stop making other representations of equivalent meaning when such are not the facts, and when such allegations amount to disparagement of imported Canadian whiskies of competitors.

**No. 1570.** **Binks Manufacturing Co.**, of 3105 **Carroll Avenue, Chicago**, manufacturer of painting and finishing equipment, including a spray gun designated "Thor Model 2," agrees to cease and desist from use in advertising of the representation that certain automobile and body manufacturers have ordered or purchased a total of 11,750 or more of Binks products, when this is not true. The stipulation shows that this company advertised that General Motors ordered over 4,000 of its products; Chrysler more than 3,050; Studebaker in excess of 1,500; Briggs Body in excess of 2,000, and Fisher Body over 1,200. The stipulation points out that this allegation in the respondent's advertising was greatly exaggerated, and much in excess of the actual number of the devices ordered or purchased by these manufacturers.

**No. 1571.** **Jennings B. Momsen**, of 838 **North 13th Street, Milwaukee**, trading as **Temple Airway Bureau**, and engaged in the sale of alleged data and information by direct mail relating to the United States Air Corps, agrees to cease and desist advertising his business in periodicals under the classification, "Help Wanted," and representing in such advertisements that men are wanted for the United States Air Corps; that the alleged information concerning the corps which he sends applicants in return for a fee has any monetary value, or that this is information which could not readily be obtained by such applicants from official sources without cost. He also agrees to cease alleging that the **Temple Airway Bureau** is a flying school or that it is in a position to assist an applicant applying for admission and training in the air corps.

**No. 1572.** **Adolph Hauptman**, of 1123 **Broadway, New York City**, importer and factory representative in the wholesaling of a variety of products, agrees to stop selling in interstate commerce, toothpicks packed in cartons or packages of a dress or appearance approximately the same as that of cartons or packages in which similar merchandise is sold by a competitor. **Hauptman** is said to have imitated the cartons in which toothpicks were packed and sold by the Estate of **Charles Forster**, of **Strong, Me.**

**No. 1573.** **Morris Senderowitz** and **Morris H. Senderowitz**, 645 **Jordan St.**, **Allentown, Pa.**, manufacturing men's underwear, agree to stop marking, branding or labeling goods with price markings in excess of the usual and customary selling value thereof.



**No. 1574. J. C. Winter & Co., Inc.,** Red Lion, Pa., cigar manufacturer, agrees to discontinue use of the expressions "Hand Made," "Havana," and "Sumatra," to describe the process, filler and the wrapper respectively of cigars not made wholly by hand, with fillers not made from Havana tobacco or tobacco grown on the island of Cuha, and wrappers not raised in Sumatra. The company also agrees to cease certain misleading assertions regarding its prices.

**No. 1575. Duplex Silk Mills, Inc.,** 1410 Broadway, New York City, engaged in purchasing raw silk which it causes to be "thrown" or spun, and of rayon yarn, and having the silk and rayon yarn woven into fabrics according to its specifications, agrees to stop using the word "mills" as part of its trade name, or in any way which may tend to deceive buyers into believing that it owns and controls mills wherein its products are made, when this is not true.

**No. 1576. B. R. Stone and J. W. Hogan, of 620 Kasota Building, Minneapolis, trading as Rogers Publicity Department,** formerly engaged in the sale of coupons and advertising matter for use by retailers in selling their merchandise, and in the redemption of such coupons by exchanging them for silverware. The respondents agree to cease using the phrase "Rogers Publicity Department" as a trade name under which to transact their business, or of any other words having a tendency to deceive buyers into believing that they are a department of, or connected with William A. Rogers, Limited, manufacturer of silver-plated ware, when this is not true. The respondents agree to cease certain other representations in the conduct of their business.

**No. 1577. New England Woolen Mills Co.,** 1420 West 6th St., Cleveland, agrees to abandon use of the word "mills" as part of its trade name, and to stop using this word in any way which may imply that it owns and controls the mill in which its products are made, when this is not true.

**No. 1578. M. L. and Marsell Fernandez, 2007 11th St., Tampa, Fla., trading as M. L. Fernandez and Brother,** in the manufacture and sale of cigars, agree to forego use on brands or labels affixed to their products, of the words "Vuelta Abajo," independently or in connection with other words implying that the products are made entirely of tobacco grown in Cuba or in the Cuban province of Vuelta Abajo, when this is not true.

**No. 1579. J. A. Begin and A. C. Herbert, copartners, trading as J. A. Begin & Co.,** of Beebe Plain, Vt., engaged in the quarrying of granite from quarries located at Beebe, Quebec, agree to stop the use in their advertisements of the words "Near Barre," to designate products which are not, in truth and in fact, made of granite produced or quarried near Barre, Vt., and within the Barre district. The stipulation points out that the Barre district of Vermont produces a granite of high quality which has developed a reputation and good-will in the use of the word "Barre."

**No. 2465. Joseph M. Guerra, of 16 E. Tupper St., Buffalo, N. Y.,** engaged as a printer of social and business stationery under the name **Benton Novograph Co.,** has been ordered to cease and desist from certain misrepresentations in the sale of his product.

Guerra is directed to cease using the words "engraved," "engraving," and "engravers" in advertising his business or his products on which the lettering or designs have been printed from ink typed faces, electrotypes, or similar devices, and given a raised letter effect by an embossing process.

**No. 2517. The General Implement Co. of America, Inc., of Cleveland, and its subsidiary, The General Implement Manufacturing Co., Inc., of Liberty, Ind.,** have been ordered to discontinue certain unfair competitive methods in the sale under the trade name "Soil Fitter," of certain farm implements and tools purchased as bankrupt stock of the former Dunham Co., of Berea, O.

The order prohibits the respondents from advertising the "Soil Fitter" line as the most complete line of farm implements and tools made, and that they will furnish repair parts for use with tools and implements listed on special price sheets, until they actually do furnish such parts. Other representations regarding the "Soil Fitter" line are banned under the order.

**No. 2545. Philip Wong, Cambridge, Mass.,** dealer in "Soft Corn Valuable," has been ordered to discontinue advertising this preparation as a cure or proper treatment for various named diseases, or as harmless or non-poisonous.

Findings are that the product will not cure the diseases enumerated, including corns, callouses, skin diseases, goiter, cancer, consumption, and others, and is not harmless, hut, on the contrary, is poisonous and dangerous to be taken internally.

**No. 2555. Speidel Corporation, of 70 Ship Street, Providence,**

**R. I.,** has been served with an order to cease and desist prohibiting certain unfair competitive methods in the sale of jewelry.

Use of the term "gold shell" or words of similar import to describe gold covered products manufactured by an electroplating or electrolytic process, is banned in the Commission's order. The respondent is directed to stop representing that jewelry produced by any process other than the "gold filled" or "rolled gold plate" process, possesses a "gold shell" or contains a deposit of a substantial quantity of gold on the exterior. Provision is made that this part of the order shall be effective unless the gold deposit is comparable by weight and thickness with the amount and quality of gold deposit contained on the exterior of articles correctly designated "gold filled," or "rolled gold plate."

**No. 2577. In an order issued against Frank Livingston, trading as Berkshire Textile Co., at Brattleboro, Vt., and Greenfield, Mass.,** he is required to cease and desist from certain practices held by the Commission to be in violation of Section 5 of the Federal Trade Commission Act.

Among other things, the respondent is required to cease and desist from advertising, in the sale and distribution of dress goods, that he gives goods free to customers who make purchases, unless he in fact does so; from representing that the respondent is the owner or operator of or controls a factory at which the goods he sells are made; from representing that the respondent guarantees satisfaction to his customers; from representing that the prices at which the goods are offered are special bargain prices, when this is not the fact, and from certain other practices alleged by the Commission to be in violation of law.

#### NEW CHAIRMAN OF FTC

Col. Charles H. March has been designated to serve as Chairman of the Federal Trade Commission for the fiscal year 1936, effective January 1. He succeeds Commissioner Ewin L. Davis, who has served in that capacity during the last year. Under the Commission's custom, the Chairmanship rotates annually.

This will be Col. March's second term as Chairman of the Federal Trade Commission. He was appointed to that Commission in 1929 for a term expiring September 25, 1935, and was reappointed by President Roosevelt last September for a full term of seven years, expiring in 1942. Col. March served as Chairman during 1933.

#### FTC CASE CLOSED

**No. 2587. The Federal Trade Commission** has closed its proceeding against the Associated Lobster Dealers of Massachusetts, Boston, and its officers and members.

Conspiracy to fix prices of lobsters obtained from Canadian and American waters had been alleged in the Commission's complaint.

The Commission, however, closed the case without prejudice to its right to reopen it "should conditions hereafter arising require such action in the public interest."

#### FEDERAL COMMUNICATIONS COMMISSION ACTION

No meeting of the Broadcast Division of the Commission was held at the usual time this week owing to the fact that the Commission was hearing testimony in the coaxial cable application of the American Telephone & Telegraph Company.

#### HEARING CALENDAR

Monday, January 13

#### HEARING BEFORE AN EXAMINER (Broadcast)

- KVSO—The Ardmoreite Publishing Co., Inc., Ardmore, Okla.—C. P., 1210 kc., 100 watts, 250 watts LS, unlimited time. Present assignment: 1210 kc., 100 watts, daytime.
- NEW—J. Laurance Martin, Tucumcari, N. Mex.—C. P., 1200 kc., 100 watts, unlimited time.
- NEW—Huhert H. Hall, Erie, Pa.—C. P., 1420 kc., 100 watts, unlimited time (requests facilities of WLEU).
- WLEU—Leo J. Omelian, Erie, Pa.—Renewal of license, 1420 kc., 100 watts, 250 watts LS, unlimited time.

Tuesday, January 14

- NEW—Struble, Strong & Fagan, The Dalles, Ore.—C. P., 1200 kc., 100 watts, unlimited time.
- NEW—James R. Doss, Jr., Tuscaloosa, Ala.—C. P., 1200 kc., 100 watts, daytime.

Thursday, January 16

- NEW—Thames Broadcasting Corp., New London, Conn.—C. P., 1500 ke., 100 watts, daytime.  
WMEX—The Northern Corp., Boston, Mass.—C. P., 1470 ke., 5 KW, unlimited time. Present assignment: 1500 ke., 100 watts, 250 watts LS, unlimited time.

**FOR FURTHER HEARING AND ORAL ARGUMENT  
BEFORE THE BROADCAST DIVISION**

- KFYR—Meyer Broadcasting Co., Bismarck, N. Dak.—Renewal of license, 550 ke., 1 KW, 5 KW LS, unlimited time.

Friday, January 17

- NEW—Alfred C. Matthews, Cape May, N. J.—C. P., 1420 ke., 100 watts night, 100 watts day, specified hours.  
WPAR—Ohio Valley Broadcasting Corp., Parkersburg, W. Va.—C. P., 1420 ke., 100 watts, 250 watts LS, unlimited time. Present assignment: 1420 ke., 100 watts, unlimited time.

**APPLICATIONS RECEIVED**

**First Zone**

- WHDH—Matheson Radio Co., Inc., Boston, Mass.—Construction 830 permit to make equipment changes.  
WJAR—The Outlet Co., Providence, R. I.—Extension of special 890 authorization to use additional power of 250 watts night for period from 3-1-36 to 9-1-36. (Gives 500 watts power day and night.)  
WESG—Cornell University, Elmira, N. Y.—Extension of special 1040 experimental authorization to operate on 850 ke., daylight to sunset at New Orleans, Pa., for period from 2-1-36 to 8-1-36.  
WTIC—The Travelers Broadcasting Service Corp., Hartford, Conn. 1040.—Extension of special experimental authorization to change frequency from 1060 ke. to 1040 ke.; time from S-WBAL to simultaneous operation with KRLD (unlimited) for period 2-1-36 to 8-1-36.  
WBAL—The WBAL Broadcasting Co., Baltimore, Md.—Extension 1060 of special experimental authorization to change time from S-WTIC to daily simultaneous operation on 1060 ke. with KTHS from 6 a. m. to local sunset at Hot Springs, Ark., from local sunset to 9 p. m., operation unlimited on 1060 ke. from 9 p. m. on. Will synchronize with WJZ on 760 ke., with power of 2½ KW, until end of license period from 2-1-36 to 8-1-36.  
WNRI—S. George Webb, Newport, R. I.—Modification of construction 1200 permit (1-P-B-2815) for new station requesting extension of completion date from 2-4-36 to 6-4-36.  
WMFF—Plattsburg Broadcasting Corp., Plattsburg, N. Y.—Modification 1310 of license to change hours of operation from daytime to 7:30 p. m., using 100 watts power at night.  
WBNY—Roy L. Albertson, Buffalo, N. Y.—Modification of construction 1370 permit (B1-P-402) for approval of antenna, and transmitter site at Kenmore Ave., 250 feet east of Starin Ave., Buffalo, N. Y., and studio at 485 Main St., Buffalo, N. Y. Amended to give transmitter site from Kenmore Ave., 250 feet east of Starin Ave., Buffalo, N. Y., to 154 E. Eagle St., Buffalo, N. Y.  
WVFW—Paramount Broadcasting Corp., Brooklyn, N. Y.—Transfer 1400 of control of corporation from Paramount Broadcasting Corp. to Brooklyn Council, Kings County Dept. of N. Y. Veterans of Foreign Wars of the United States, 51 shares of common stock.  
NEW—Connecticut State College, Storrs, Conn.—License to cover construction permit for a new general experimental station.

**Second Zone**

- WKRC—WKRC, Inc., Cincinnati, Ohio.—Extension of special experimental 550 authorization to operate with 1 KW power for period from 3-1-36 to 9-1-36.  
NEW—Berks Broadcasting Co., Pottsville, Pa.—Construction 640 permit to erect a new broadcast station on 640 ke., 250 watts, daytime operation.  
WQAN—E. J. Lynett (Prop., The Scranton Times), Scranton, Pa.—880 Voluntary assignment of license from E. J. Lynett (Prop. of The Scranton Times) to The Scranton Times (co-partnership), E. J. Lynett, Wm. R. Lynett, Elizabeth R. Lynett, and Edward J. Lynett, Jr.  
WDAS—WDAS Broadcasting Station, Inc., Philadelphia, Pa.—1370 Construction permit to install auxiliary transmitter.

- NEW—Miami Valley Broadcasting Corp., Dayton, Ohio.—Construction permit for a new general experimental station for 31600, 35600, 38600, 41000 ke., 100 watts.  
NEW—WBNS, Inc., Columbus, Ohio.—Construction permit for a new general experimental station on 31600, 35600, 38600, 41000 ke., 1 KW.

**Third Zone**

- WTJS—The Sun Publishing Co., Inc., Jackson, Tenn.—Construction 920 permit to install new equipment, increase power from 100 watts, 250 watts day, to 250 watts, 500 watts day; move transmitter from Hall St., Jackson, Tenn., to 350 feet east of Hollywood Cemetery, northwest of city limits, exact site to be determined, Tennessee, using directional antenna. Amended to give frequency as 920 ke.  
KRLD—KRLD Radio Corp., Dallas, Tex.—Extension of special 1040 experimental authorizations to operate simultaneously with WTIC for period from 2-1-36 to 8-1-36.  
KTHS—Hot Springs Chamber of Commerce, Hot Springs National 1060 Park, Ark.—Extension of special experimental authorization to change frequency from 1040 ke. to 1060 ke.; time from S-KRLD to simultaneous WBAL from 6 a. m. to local sunset daily, suspend until 8 p. m., and unlimited from then until midnight, for period to 8-1-36.  
KWKH—International Broadcasting Corp., Shreveport, La.—Extension 1100 of special authorization to operate on 1100 ke., unlimited time, with directional antenna at night, for period 2-1-36 to 8-1-36.  
NEW—State Capitol Broadcasting Assn. (R. B. Anderson, President), Austin, Tex.—Construction permit for new station on 1120 ke., 500 watts, 1 KW day, specified hours (all hours not used by WTAW), using directional antenna.  
WPAX—H. Wimpy, Thomasville, Ga.—Modification of construction 1210 permit (B3-P-386) for changes in equipment and increase in power, requesting approval of transmitter site at 117 Remington Ave., Thomasville, Ga., and approval of antenna system; extend commencement date from 7-14-35 to 10 days after grant and completion date from 1-14-36 to 30 days after grant.  
KTRH—KTRH Broadcasting Co., Houston, Tex.—License to cover 1290 construction permit (B3-P-880) for changes in equipment.  
KTRH—KTRH Broadcasting Co., Houston, Tex.—Authority to 1290 determine operating power by direct measurement of antenna.  
KPDN—Pampa Daily News, Inc., Pampa, Tex.—Modification of 1310 construction permit (B3-P-382) for a new station for changes in equipment, approval of transmitter site at .8 of a mile east of city limits on highway 33, Pampa, Tex., studio site at 212 No. Ballard, Pampa, Tex., and approval of antenna.  
WSGN—R. B. Broyles, tr/as R. B. Broyles Furniture Co., Birmingham, Ala.—Voluntary assignment of license from R. B. Broyles, tr/as R. B. Broyles Furniture Co., to The Birmingham News Co.  
NEW—Albert E. Davis, Brownwood, Tex.—Construction permit 1420 for a new station on 1420 ke., 100 watts, daytime operation. Amended: Transmitter site to be determined, Brownwood, Tex.  
W4XBT—Radio Station WSOC, Inc., Portable-Mobile.—License to cover construction permit for new general experimental station.  
NEW—WKY Radiophone Co., Oklahoma City, Okla.—Construction permit for a new experimental relay station for 6020, 9510, 11810, 15170, 17760, 21480 ke., 5 KW.  
NEW—Tri-State Broadcasting System, Inc., Portable-Mobile.—Construction permit for broadcast pickup station for 1606, 2020, 2102, 2760 ke., 50 watts.  
NEW—Tri-State Broadcasting System, Inc., Portable-Mobile.—License to cover the above.

**Fourth Zone**

- WEDC—Emil Denmark, Inc., Chicago, Ill.—Modification of license 1210 to change specified hours from daily, 8:30-10:00 a. m., 3:30-5:00 p. m., 7:00-8:00 p. m., 10:00-11:00 p. m., 1:00-3:00 a. m.; to daily, 8:30-10:00 a. m., 3:30-5:00 p. m., 7:00-8:00 p. m., 10:00 to 11:00 p. m., midnight to 6:00 a. m. (requesting 1 hour used by WCRW, from midnight to 1:00 a. m.).  
KLPM—John B. Cooley, Minot, N. Dak.—Modification of license 1240 to change hours of operation on Sundays from 9:00 a. m. to 11:45 a. m., 1:30 p. m. to 2:30 p. m., 5:00 p. m. to 8:00 p. m., CST, to 9:00 a. m. to 11:45 a. m., 7:00 p. m. to 11:00 p. m.

WBOW—Banks of Wabash, Inc., Terre Haute, Ind.—License to 1310 cover construction permit (B4-P-377) for changes in equipment and increase in power  
W9XAF—The Journal Co. (The Milwaukee Journal), Milwaukee, Wis.—Renewal of license.  
W9XID—Donald A. Burton, Portable-Mobile.—License to cover construction permit for general experimental station.  
NEW—Racine Broadcasting Corp., Portable-Mobile.—Construction permit for a general experimental station on 31100, 34600, 37600, 40600 kc., 10 watts.  
NEW—Racine Broadcasting Corp., Portable-Mobile.—License to cover above.

#### Fifth Zone

KVOS—KVOS, Inc., Bellingham, Wash.—Consent to transfer of 1200 control of corporation from Wescoast Broadcasting Co. to Rogan Jones, 147 shares of common stock.

KVOR—S. H. Patterson, Colorado Springs, Colo.—License to cover 1270 construction permit (B5-P-580) to move transmitter and make equipment changes.  
NEW—Donald A. Wike and H. E. Studebaker, Baker, Ore.—Construction permit for new station on 1370 kc., 100 watts, 250 watts day, unlimited time, requesting frequency of KUJ contingent upon KUJ being granted another frequency as applied for. Amended to give name as Donald A. Wike and H. E. Studebaker, d/b as Wike and Studebaker.  
KABD—Don Lee Broadcasting System, Los Angeles, Calif.—License to cover construction permit for broadcast pickup station.  
W10XFZ—Don Lee Broadcasting System, Portable-Mobile.—License to cover construction permit for general experimental station.  
W6XB—Earl A. Meilsen, Portable-Mobile.—License to cover construction permit.



# The National Association of Broadcasters

NATIONAL PRESS BUILDING \* \* \* \* \* WASHINGTON, D. C.

JAMES W. BALDWIN, Managing Director

## NAB REPORTS

Vol. 4 \* \* \* No. 3  
JANUARY 13, 1936

Copyright, 1936. The National Association of Broadcasters

# COPYRIGHT

## Tentative Program of Activity in Behalf of the NAB

### FOREWORD

On Friday, January 10, 1936, after a long day of arduous labor, the Managing Director and his Advisory Committee discussed and agreed upon the following tentative program of activity in the field of copyright.

Late that evening they were informed, through newspaper sources and not by any communication from ASCAP, that a wire had gone out from ASCAP to all stations saying in substance that stations have until January 15, 1936 to accept the offer of a five-year contract contained in Mr. Buck's telegram of December 30, 1935 and those that do not accept are to be deemed infringers. This wire appears to be intended and to operate as a cancellation of the temporary arrangement under which most stations have been operating, based on Mr. Buck's letter, dated December 30, 1935, given to and accepted by the Managing Director.

This is not the time or place to comment on the precipitous action thus taken by ASCAP. Until it was taken, the Managing Director had every reason to believe that ASCAP would not exercise its right of cancellation of the temporary arrangement without first having further negotiations with him and his Committee and without having exhausted all possibilities of reaching an amicable settlement of the issues that have arisen. That hope, it seems, was without foundation.

At present writing it would seem that stations needing ASCAP music have no alternative but to accept the five-year contract by January 15, 1936. To this extent, the course of events has outrun a part of the tentative program which appears below. These events, of course, place increased obstacles in the way of future negotiations with ASCAP but the Managing Director and his Advisory Committee refuse to regard these obstacles as insuperable. Even if they are insuperable, that is all the more reason for bending every effort to carry out the rest of the program.

This report is to advise the members of the National Association of Broadcasters of a tentative program of activity in the field of copyright, agreed on by the Managing Director and his Advisory Committee<sup>1</sup> (selected pursuant to a resolution adopted by a majority of the Board of Directors, December 17, 1935). It is of the utmost importance that every broadcaster immediately acquaint himself with this program. For convenience, the activities proposed will be considered under the following four headings:

- A. License arrangements between broadcasters and organizations controlling performing rights on copyrighted music.
- B. Compiling and distribution of information to broadcasters and the taking of any proper steps to assist them in protecting themselves against exorbitant or unreasonable demands.
- C. The copyright bill now pending in Congress, known as the Duffy Copyright Bill.
- D. The suit now pending in the Federal Court, instituted by the government against ASCAP.

The problems referred to, and intended to be covered by the foregoing are, for the most part, such as to call for immediate decision and determination of a course of action to be pursued promptly and effectively.

#### A. LICENSE ARRANGEMENTS BETWEEN BROADCASTERS AND ORGANIZATIONS CONTROLLING PERFORMING RIGHTS ON COPYRIGHTED MUSIC.

From the point of view of number of copyrighted compositions controlled and their value to the average American broadcaster, the principal organizations controlling performing rights are:

1. American Society of Composers, Authors and Publishers (ASCAP).

2. Music Publishers Holding Corporation (MPHC), being the Warner Brothers group of music publishers.
3. Associated Music Publishers, Incorporated (AMP).
4. European Society of Stage Authors and Composers (SESAC).
5. Ricordi of Milan.

There are, of course, other important organizations, especially in the foreign field, and an unknown number of small independent music publishers and music copyright owners in this country. For the sake of simplicity, however, they will be disregarded in this discussion although they cannot and should not be ignored in fact or in practice.

It is unnecessary to state that the forms and terms of the license agreements of these several organizations, and the bases for calculating compensation to be paid by Licensees, conform to no standard. They are bewildering in their variations, not only as between the several organizations but also as between outstanding contracts and classes of contracts of the same organization. With reference to the bases for compensation, the principal classifications are:

1. A fixed amount (usually called a sustaining fee) calculated arbitrarily, plus a percentage of the Licensee's total net receipts.  
*e. g.*, the ASCAP contract held by the great majority of broadcasters.
2. A fixed amount calculated arbitrarily, plus a percentage of the Licensee's gross actual receipts from programs containing music.  
*e. g.*, the ASCAP contract held by WCAU.
3. A minimum guarantee calculated arbitrarily, plus a percentage of the Licensee's net receipts from programs containing Licensor's music.  
*e. g.*, the ASCAP contract held by about 48 newspaper stations.

<sup>1</sup> The members of the Advisory Committee who participated in and approved this report are Messrs. Allen, Caldwell, Carpenter, Clark, Craig, Damm, and Loucks.

4. A fixed amount calculated arbitrarily, plus a percentage of the Licensee's net receipts excluding a portion of the network receipts on network programs.  
*e. g.*, the ASCAP contract held by the network owned or controlled stations.
5. A fixed amount calculated arbitrarily.  
*e. g.*, the ASCAP contracts held by certain nonprofit stations; also the SESAC contracts.
6. A fixed amount calculated according to some standard.  
*e. g.*, the MPHC contract based on a monthly payment of X times the station's highest quarter hour rate; the AMP contract based on a monthly payment of one times the station's highest day-time quarter hour rate; and the Ricordi contract based on gross receipts of stations.
7. A fixed amount, whether calculated according to some standard or not, covering not only the Licensee's station or stations but also other stations (network affiliates) to whom Licensee furnishes programs, with respect to such programs.  
*e. g.*, the SESAC and AMP contracts with the two national network companies; the MPHC contract contemplated with MPHC and said companies.
8. Compensation calculated on a per-piece or per-use basis, with or without a guarantee minimum.  
*e. g.*, the future MPHC contracts as contemplated in the present three months contracts.

There are undoubtedly other varieties than the foregoing, and many sub-varieties of the foregoing.

In view of the complexities raised by the fact that with respect to two of the organizations (ASCAP and MPHC) there is a pressing and immediate need for negotiations, and by the further fact that such negotiations will necessarily be closely related with present and future negotiations with the other organizations, it seems advisable to subdivide this discussion into appropriate sub-headings.

1. *The ideal objectives sought to be accomplished.*

(a) *No discrimination.* At the earliest possible date all discriminations by any such organization as between Licensees must be completely and finally eliminated. The terms and the compensations must be based upon some reasonable standard, applicable to all alike, and the contracts must contain clauses binding the Licensor to give the benefit of any more favorable contract of one Licensee to all Licensees. This, of course, does not mean that more favorable contracts may not be accorded to small stations as a class, or to bona fide non-profit stations as a class, provided that the line drawn is reasonable and all within the class are similarly treated.

Any contract between a broadcaster and a copyright owner by which the broadcaster gets the exclusive right for any period to broadcast one or more compositions is to be considered a form of discrimination and is not to be tolerated, and any license agreements should be drawn so as to eliminate, so far as possible, any such form of discrimination.

(b) *Basis for calculating compensation.* This Managing Director and his Advisory Committee have little discretion in this matter. The membership of the NAB at three successive annual conventions have endorsed the per-piece or measured service basis for compensation and have left no discretion except as to the detailed method of giving it effect. As noted below, there are several possible varieties of per-piece plans, and some present practical difficulties and burdens far greater than do others. Subject to this qualification only, the Managing Director and his Advisory Committee unqualifiedly endorse the per-piece basis as the only just and equitable basis for compensation, and will insist upon it as an immediate or eventual indispensable term of any contract.

In view of the fact that there is a substantial minority in the NAB which, while conceding the theoretical desirability of the per-piece basis, believes the practical difficulties are too great to put it into effect immediately, and in view of the further fact that a certain number of the smaller stations are not equipped or staffed to do so immediately, and in view of the further fact that certain outstanding contracts (particularly ASCAP) may prove to be a temporary insurmountable obstacle, it is recognized—

- (a) that the putting of such a plan into effect may have to be gradual, but in no event should it await five years or any substantial portion thereof,
- (b) that it may have to be accompanied by temporary alternative forms of contracts, available to all stations on equal terms, and
- (c) that a permanent alternative may have to be offered to the smaller stations,  
*e. g.*, a flat license fee.

No temporary or permanent alternative should be accepted, however, which is in anyway discriminatory or which is not based on some reasonable and easily intelligible standard. In particular, compensation should in no event be based on a percentage of Licensee's revenue.

(c) *Nature of licensing organization.* If the benefits of price competition between copyright owners (or groups thereof) could be secured and preserved, the ideal licensing medium for a per-piece system would be a single organization, conducted in a fashion analogous to certain well known patent licensing pools. The organization would act simply as the repository and trustee of performing rights, with power to issue licenses. It would have no power to fix, or to participate in the fixing of any price per-piece; this would be done by the copyright owner who registers his compositions, and the compensation he expects, with the organization. It would, however, have to be bound by certain agreed classifications with respect to stations, and, with respect to compositions. The organization would be responsible for collecting the compensation from Licensees and for distributing the proceeds (less expenses) to the copyright owners on a per-piece basis. It would be open to any and all copyright owners without discrimination.

As a practical matter, this ideal does not seem likely of realization, at least in the immediate future, and perhaps never without compelling legislation or judicial decree. The possibilities and the desirability of such legislation have not been canvassed by the Managing Director or his Advisory Committee, and, in any event, the legislative process is too slow to meet the immediate problem. On the other hand, such possibility should not be ignored in any long range plan on the subject.

Several years ago ASCAP might be said to have come close to meeting one of the essential features of such an organization but to have been completely lacking in another essential feature. On most of the important musical compositions, it held or claimed to hold, the performing rights, and, while it is said that the proceeds were inequitably distributed by it among its members and that the conditions of admission to membership were such as to be unfair to outsiders, it did seem to furnish most of the convenience of a single licensing organization. The bad features which counter-balanced this convenience was that, being virtually a monopoly, it had power to exercise, and did exercise, an unrestrained power to fix prices. There was no price competition between the copyright owners, nor was there any other form of competition between them.

Since then, separate licensing organizations have made their appearance, notably AMP, SESAC, and, most recently, MPHC. It cannot yet be said that there is any evidence of price competition between them. Probably there will be no such competition until the broadcaster is on a basis of bargaining equality. In this connection the subject matter of parts B, C, and D becomes of prime importance.

The present existence of several licensing organizations has potential advantages for the broadcaster, so long as those organizations have price-fixing power, for the sake of securing some measure of the competition to which buyers are entitled. The Managing Director and his Advisory Committee conclude, therefore, that, pending the advent of an ideal such as previously described, it should be their aim to prevent by any proper means within their power the elimination of any potential competition by the merger of the more important licensing organizations.

(d) *Clearance of copyright at the source.* It is indispensable that performing rights be cleared at the source. By "source" is meant the originating station, or the originating station or network studio, in the United States. The terms is not intended to cover remote control orchestras and the like (although certain exceptions should be made in such situations where the broadcaster has no voice in what is performed), since it cannot be expected that the Licensor will accept such a responsibility.

Reference is had primarily to network programs. The network company should be exclusively responsible for obtaining licenses from, and paying compensation to, the licensing organization, and the affiliate station should not bear any portion of this responsibility. The network company may, of course, pass on a share of the cost to the affiliate; this will depend on contract arrangements between network and affiliate.

In no other way can responsibility be laid where it belongs. The originator of the program is in a position to commit or to avoid infringements; the affiliate is not. The originator collects the revenue from the advertiser out of which, directly or indirectly, the performing fees must ultimately be paid. Finally, if the practice becomes prevalent of passing on the cost to the advertiser,

the originator is the person having contact with and collecting revenue from the advertiser.

The same principles apply to electrical transcriptions, and should be insisted on.

(e) *Compulsory furnishing of lists of compositions.* Henceforth, no licensing agreements should be entered into which do not obligates the Licensor to furnish to Licensee a complete list of the compositions covered by the license, and to maintain such lists up-to-date by additions furnished at stated intervals. In large measure this was accomplished for the first time in the current temporary MPHC contract.

The importance of such lists is obvious. They are a necessary prerequisite to any per-piece system of compensation. Without them, an indemnity agreement is so easily evaded as to be almost worthless. Eventually such lists will put an end to the confusion of overlapping and conflicting claims of the principal licensing organizations.

It cannot be emphasized too strongly that the copyright notice printed on musical compositions gives no trustworthy indication as to who controls the *performing rights* with respect to that composition. This information can be obtained in no other way than by lists furnished by the licensing organizations.

(f) *An adequate guarantee of indemnity.* Henceforth, every license agreement should contain an adequate guarantee of indemnity, protecting the Licensee against infringement claims by all third parties based on performance of compositions covered by the license agreement. Such a guarantee is not adequate if it is limited in amount (as in the current temporary MPHC contract), or if it is not referable to a definite and easily accessible list of compositions, or if accompanied by any other qualification detracting from the protection to which the Licensee is entitled.

(g) *The reasonableness of requirements as to records and periodical reports.* It must be conceded at the outset, that if either a per-piece plan or any form of measured service plan is to be adopted, fairness to the Licensor demands reasonable obligations on the part of the Licensee to keep adequate records and to make periodical reports to the Licensor. Once this is conceded, it makes little difference whether such reports are made on a weekly or a monthly basis.

Requirements as to records and reports should, however, be confined to what is reasonably necessary to accomplish the purpose, and should not extend merely to prying into the Licensor's business. No reason is perceived, for example, for requiring the Licensee to report performances of compositions not covered by the license agreements; the Licensor will be adequately protected by a right to audit Licensee's lists and by any other means of checking Licensor may have. The reporting of all compositions is an undue burden, and will be all the worse if it must be done to each Licensor.

Only limited records and reports can be expected or required with respect to phonograph records, electrical transcriptions, and network programs (so far as affiliates are concerned), because of the impossibility of giving the complete information.

In all cases where only a flat fee (e. g., a fee based on card rates) is required, the burden of records and reports should not be as great.

(h) *Miscellaneous.* The foregoing are intended to cover only the principal features of license agreements, and are not intended to exclude consideration of other features which are or may be objectionable. For example, license agreements should not be required to be personal to the Licensee, and their benefits and objections should go with the sale or transfer of control of the station. Furthermore, license agreements should be drawn so as to leave no doubt as to the right of the broadcaster to make any arrangement or adaptation of a musical composition reasonably incidental to the broadcasting of such composition.

(i) *Uniformity.* Uniformity of arrangement and phraseology of license agreements is an end worthy of consideration in itself. It helps to avoid conflicting and confusing interpretations. To this end, study of the forms and agreements now in use by the several licensing organizations should be made and their differences and objectionable features should be noted. There is no reason, for example, why a model guarantee clause can not be drafted, agreed upon, and used in all contracts.

It is to be noted that to date little or no attention has been paid by broadcasters to the forms used by AMP, SESAC, and many other licensing organizations.

## 2. Means and methods for establishing a per-piece system of compensation.

As already stated, the NAB is committed to securing the adoption of a per-piece or measured service system of compensation.

The subject cannot, however, be intelligently approached without giving due weight to practical difficulties since they have a definite bearing on which of several plans should be sought, as well as on the steps which must be taken by broadcasters to prepare themselves for the carrying out of any such plans.

The furnishing to each Licensee of authentic lists by the licensing organization is an indispensable prerequisite to any acceptable plan. At the present date no such list is available, and the only lists promised for the future are the MPHC lists to be furnished not later than February 1, 1936, and those informally assured by AMP. It is obvious that considerable expense is involved in making such lists available to broadcasters. Nevertheless, in the opinion of the Managing Director and his Advisory Committee, it is only logical and just that the Licensor furnish such a list at its own expense, since otherwise, as already pointed out, any indemnity agreement is virtually worthless (whether or not a per-piece plan is adopted) and every Licensee is in the ridiculous position of not knowing what he has bought or how to protect himself against infringement.

A second very substantial difficulty is the fact that some broadcast stations are neither equipped nor staffed to put a per-piece plan (or even a measured service plan such as the ASCAP newspaper form of contract) into effect immediately. If it were offered tomorrow, such stations are unprepared to accept it. Consequently, it is clear that for some, and perhaps for all, stations, a transition period is necessary, and that for the smaller stations a per-piece plan may prove impracticable. These are not to be construed as arguments against its adoption; they are simply realities which cannot be ignored. The discussion which follows must be understood as being subject to a working out of these realities in a practical way.

There are several methods or standards for establishing a per-piece plan, among which a choice must be made:

(a) *The Licensor might set opposite each composition the price per performance.* Manifestly the price cannot be the same for a 50 kilowatt full-time clear channel station as it is for a 100-watt local daytime station. Such a system requires that stations be somehow classified, and that a ratio of each class to the figure specified be worked out. Such a ratio cannot scientifically be based on net or gross receipts, or on the character of the station's assignment with respect to frequency and power, or on the population within its service area. The practical difficulties and the possibilities of error and injustice are too great. The only acceptable basis for classification of stations would seem to be some unit taken from the station's card rates.

Even then, however, the total number of musical compositions furnishes an obstacle in itself. If they are all to be separately priced, then the burden of the necessary records and reports might prove to be disproportionately great for the average Licensee.

(b) *The Licensor might divide all compositions into classes, and set a price per performance for any composition of each class.* This method would still require a ratio such as already described, based on card rates.

Much would depend on the number of classes found necessary, and the ease with which the several classes might be distinguished one from the other (and this, in turn, would depend largely on how the lists furnished to the Licensee are classified, arranged and indexed). It is said that 20 classifications are recognized in Great Britain. It has also been said that as many as 40 might be necessary for the purpose of equitable operation of a per-piece plan, from the point of view of the copyright owners.

If a simple and practicable classification can be worked out, without an undue burden on the Licensee, the Managing Director and his Advisory Committee are disposed to regard this method as feasible.

(c) *The Licensor might agree to charge a uniform price for each composition, expressed not in dollars and cents but on a percentage of the station's card rate for a given time unit.* This method has the advantage of simplicity and of least burden to the Licensee. It has the disadvantage, however, of eliminating competition between musical compositions controlled by the same licensing organization.

A variation of this method would consist in providing that the price thus calculated serve as a maximum, leaving Licensor free from time to time to establish lower prices (similarly calculated) on particular compositions or classes of compositions. The more this is done, obviously, the greater become certain of the burdens already referred to, but possibilities along this line cannot be overlooked.

### 3. Negotiations with Licensing Organizations.

What has been stated under earlier sub-headings sufficiently covers the objectives to be achieved, if possible, in future negotiations with any licensing organization. It is necessary, however, to take note of particular problems raised in connection with certain of them, so that the objectives may be interpreted with regard to the practical situation.

**ASCAP.** As matters now stand, the overwhelming majority of broadcasters are dependent on the bare authority of an arrangement effective after December 31, 1935, subject to cancellation by ASCAP on two days' notice. This arrangement is based on a letter from Mr. Buck, President of ASCAP, to the Managing Director, dated December 30, 1935, and accepted by the Managing Director on that date. Network affiliates have the similar protection of an analogous assurance with respect to network programs. These arrangements are, of course, subject to a qualification not contained in the previous contracts; they cover the repertoire of ASCAP only as of January 1, 1936.

Under Mr. Buck's telegram of December 30, 1935, any ASCAP Licensee is privileged, of course, to obtain a five-year extension subject to this qualification as to repertoire. The Managing Director and his Advisory Committee trust, however, that the members of NAB that have not already accepted five-year renewals will content themselves with the temporary arrangement accorded by Mr. Buck's letter. This will leave them perfectly free to avail themselves of any advantages that may be secured as the result of further negotiations. It is believed that Mr. Buck and the other direct officials of ASCAP are, and will remain, fair, and will not take advantage of the two day cancellation clause to the detriment of any independently owned station.

It must be frankly recognized that the principal obstacle to satisfactory negotiations with ASCAP proceeds from its outstanding contracts with the two network companies and certain individual broadcasters. Early in June, 1935, as already stated, unconditional five-year renewals were obtained by about fifty-five stations including the network-owned or controlled units. Between June, 1935, and December, 1935, some 70 additional stations sought and obtained five-year renewals, with the condition (already mentioned) as to diminution of ASCAP's repertoire. During the closing days of 1935, some additional stations (the exact number of which is not known) availed themselves of five-year renewals conditioned on ASCAP's repertoire as of January 1, 1936.

It cannot be denied that the fact that such contracts are outstanding presents a serious problem in any future negotiations, particularly since some of the contracts (*e. g.*, those of the two networks) contain material advantages which will not lightly be surrendered. The Managing Director and the Advisory Committee believe, however, that the early elimination of these discriminatory advantages is an indispensable condition precedent to a stable solution of the copyright problem.

**The Temporary MPHC Contracts.** In the light of what has already been stated under earlier sub-headings, little need be said as to what should be sought in any future MPHC contracts. For the first time the temporary contracts now outstanding offer substantial hope of the accomplishment of certain of the broadcasters' prime objectives, such as the furnishing of complete lists, the clearing of copyright at the source, and the relation of compensation to card rates rather than to receipts.

There remains, of course, the working out of a satisfactory per-piece plan of compensation. Even here, however, broadcasters have for the first time the written assurance of what is believed to be a bona fide intention on the part of a licensing organization to cooperate in working out such a plan.

This is hardly the place in which to note minor defects in contracts. Mention should be made, however, of the necessity of changes in the MPHC contract in at least two important respects (in addition to working out a per-piece plan) as follows:

- (a) The guaranty of indemnity should not be limited in amount.
- (b) The burden of records and reports is still unduly and unnecessarily burdensome.

**Miscellaneous Contracts.** Space does not permit separate consideration of the various other contracts now in force between licensing organizations and broadcasters, such as the AMP, the SESAC, and the Ricordi contracts. All of these require immediate study, and demand that every effort be made to bring them into harmony with the principles already set forth.

### B. THE COMPILING AND DISTRIBUTION OF INFORMATION TO BROADCASTERS AND THE TAKING OF ANY PROPER STEPS TO ASSIST THEM IN PROTECTING THEMSELVES AGAINST EXORBITANT OR UNREASONABLE DEMANDS.

Broadcasters are virtually as far as ever from achieving one result which would be of infinite value in protecting themselves against the power of monopoly in copyrighted music, *i. e.*, the marshalling and the making available of music in the public domain. The Radio Program Foundation, founded for this purpose as the result of the NAB Convention of 1932 at St. Louis, Missouri, failed because of lack of cooperation. For the immediate present, however, available music in the public domain cannot be relied upon as an effective weapon by itself with which to combat exorbitant or unreasonable demands, although encouraging possibilities are now in sight and are under consideration.

The fact is that, with the exception of comparatively few stations, broadcasters are not equipped to take advantage of their unquestionable legal rights in the controversies with which they are faced. The first and indispensable condition to becoming so equipped is the establishing of adequate records in their music libraries, preferably by card index, showing with reference to each active musical composition used by them, the name of the composition, the composer, the author, the publisher, the date of publication, and the performing rights of the licensing organization. It cannot be too strongly urged that during the immediate future all broadcasters become thus equipped, so as to be prepared to avoid infringements of the rights of any licensing organization from whom they have no real need of a license, or whose demands they may regard as unjustified.

The Managing Director and his Advisory Committee agree that one of their first duties is to do all in their power to provide members of the NAB with detailed directions for the establishment by them of records which will thus enable them to protect themselves.

### C. THE COPYRIGHT BILL.

At its last annual meeting, the NAB endorsed the copyright bill now pending in Congress, known as the Duffy Copyright Bill. Its principal features have been summarized in the NAB BULLETINS and need not be discussed in detail here. Among other things, the bill, if enacted, would eliminate the unjust threat of a minimum penalty of \$250 for every infringement, whether guilty or innocent. It is not free from defects but is so great an improvement over the statute now in force (the Copyright Act of 1909) as to demand support.

The Managing Director and his Advisory Committee agree that every effort should be devoted to securing enactment of this legislation.

Closely related to the Duffy Copyright Bill is the impending international conference on the copyright treaty, known as the Berne Convention, and the proposed adherence of the United States thereto. The conference was to have been held at Rome in the recent past but, because of international complications, has been indefinitely postponed. Sooner or later this conference will be held and, since the Duffy Copyright Bill contemplates that the United States shall become a party to this Convention, it is important that these developments be closely observed and that, if necessary, the NAB take a part in them. Among other things, it is being vigorously urged that the new Convention recognize a copyright in the manufacturer of phonograph records as such so that, in addition to payment of royalties to the person controlling copyright in the composition, the broadcasters would be obligated to pay royalties to the manufacturers to a far greater extent than they would be under the Duffy Copyright Bill.

### D. THE GOVERNMENT SUIT AGAINST ASCAP.

This suit, instituted by the Government against ASCAP on the charge that it is an illegal combination in restraint of trade, is still pending in the Federal Court. In the opinion of the Managing Director and his Advisory Committee this suit is as important now as it has been at any time in the past and its prosecution should be pursued with vigor.

It would be of questionable propriety in this statement to comment on the issues or the merits of the Government's case. The Managing Director and his Advisory Committee confine themselves to stating that they regard it as their duty to keep the Department of Justice fully informed of their every activity and of every development in the pending controversies.

### CONCLUSION

Lengthy as is the foregoing statement the Managing Director and his Advisory Committee have felt that there is due to the membership of the NAB as complete an account as is possible from time to time of their activities, actual and proposed.



# The National Association of Broadcasters

NATIONAL PRESS BUILDING \* \* \* \* \* WASHINGTON, D. C.

JAMES W. BALDWIN, Managing Director

## NAB REPORTS

Vol. 4 . . No. 4  
JANUARY 16, 1936

Copyright, 1936. The National Association of Broadcasters

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### INCREASED POWER RECOMMENDED FOR WSPD

Station WSPD, Toledo, Ohio, applied to the Federal Communications Commission to increase its power from 1,000 watts night and 2,500 watts to local sunset to 1,000 watts night and 5,000 watts local sunset. The station operates unlimited time on 1340 kilocycles.

Examiner P. W. Seward, in Report No. I-179, recommends that the application be granted. The Examiner states that there is a need for additional daytime service in the area and "that the interests of existing radio stations will not be adversely affected by reason of interference by the granting of this application."

### PENSACOLA COMPLAINT AGAINST A. T. & T.

The Telephone Division of the Federal Communications Commission has directed that the American Telephone and Telegraph Company be served with the complaint of the Pensacola Broadcasting Company, filed by its attorney, former Senator Dill, on December 18, 1935, with reference to overcharges over circuits from Mobile via Flomaton to Pensacola, and that the American Telephone and Telegraph Company be given 30 days from receipt of notice within which to satisfy the complaint. If the complaint is not satisfied, the case will be set for hearing before the Telephone Division at the earliest practicable date, the date to be fixed by the Docket Clerk and the Law Department.

### WHERE IS J. J. MOORE?

A member is very anxious to get in touch with J. J. Moore. Anyone knowing his correct address will please communicate with the Managing Director.

### SECURITIES ACT REGISTRATIONS

The following companies have filed registration statements with the Securities & Exchange Commission under the Securities Act:

Joliet Heating Corporation, Joliet, Ill. (2-1856, Form A-1)  
16 Court Street, Inc., New York City (2-1857, Form E-1)  
Delacroix Corporation, New Orleans, La. (2-1859, Form A-1)  
Wilbert L. Smith et al., New York City (2-1860, Form F-1)

### CONNERY ASKS RADIO INVESTIGATION

Representative Connery of Massachusetts on Wednesday introduced a resolution in the House "to appoint a select committee to investigate the charges of irregularities in the granting and renewals of radio licenses; the broadcasting of alleged obscene and indecent utterances by radio stations; the charges of alleged monopolies and to investigate and report on charges made or which may be made as to charges of alleged misconduct and alleged corruption on the part of certain persons officially connected with said Commission and investigate the acts and activities of said Commission." The resolution is as follows:

Whereas, on April 5, 1935, sixteen Members of the House of Representatives, whose attention having been directed to a broadcast over the N. B. C. network which broadcast contained alleged obscene and indecent utterances, and which program was in the interest of and paid for by a foreign government, filed with the Federal Communications Commission a protest against such programs and, in addition, petitioned said Federal Communications Commission for an immediate investigation of the charges contained in said protest and, further, requested a public hearing on the results of such investigation, and

Whereas, the Federal Communications Commission, in reply to said petition, stated that an investigation was being made, and

Whereas, the Federal Communications Commission later replied to the petitioners setting forth that said program was not obscene within the rule laid down in a court decision cited by said Commission, which citation quoted language which is not to be found in the specific decision cited, and,

Whereas, the Congressional Record of July 31, 1935, contains a full and factual history of this failure on the part of the Federal Communications Commission to properly enforce the Communications Act of 1934, and, in addition, contains excerpts from affidavits which alleged that competent officials of the said N. B. C. admitted that the program complained of contained obscene and indecent utterances, and

Whereas, the Chairman of the said Federal Communications Commission, in testifying before the House Appropriations Committee, admitted that the property of the Government, namely, radio broadcasting licenses or franchises, were the subject of profiteering on the part of individuals and others, and

Whereas, charges have been made that certain vested interests are alleged to be receiving large sums of money due to the leasing to others of licenses or franchises issued by said Federal Communications Commission, and

Whereas, it is well known that a monopoly exists wherein a few control all of the valuable franchises or licenses issued by said Commission, while educational, labor, religious and other non-profit making organizations are denied opportunities of securing favorable consideration for radio broadcasting facilities from said Federal Communications Commission, and

Whereas, the said Commission, as a result of charges apparently placed before it by the chairman of said Commission, has now created a committee of five of its seven members to investigate charges of alleged misconduct and alleged corruption on the part of certain persons officially connected with the said Commission, and

Whereas, it is in the public interest that a thorough and exhaustive investigation be made of these and other alleged irregularities,

Therefore, be it

Resolved, that a committee of five members of the House of Representatives shall be appointed by the Speaker, which committee is hereby authorized and directed to inquire into and investigate the allegations and charges that have been or may be made relative to irregularities in the granting and renewal of licenses and other matters coming within the jurisdiction of the Federal Communications Commission or pertaining in whole or in part to the functions of the said Federal Communications Commission; be it further

Resolved, that the said committee shall make a thorough and exhaustive investigation of all allegations and charges that have been or may be made in connection with any and all matters pertaining to the Federal Communications Commission and shall report in whole or in part at any time to the House of Representatives together with such recommendations as it deems advisable; and be it further

Resolved, that for the purpose of this resolution the said committee is authorized to hold such hearings, to sit and act during the sessions and the recesses of the present Congress at

such time and places, either in the District of Columbia or elsewhere, and to employ such expert, clerical and stenographic services as may be found necessary and to require by subpoena or otherwise the attendance of witnesses; to administer oaths; to compel the production of books, papers and documents by government or private agencies and to take and record such testimony as the committee may deem advisable or necessary to the proper conduct of the investigation directed by this resolution.

#### LICENSE RENEWAL RECOMMENDED FOR WFEA

Broadcasting Station WFEA, Manchester, N. H., applied to the Federal Communications Commission for a license renewal. The station operates on a frequency of 1340 kilocycles, 500 watts and 1,000 watts LS unlimited time.

Examiner P. W. Seward, in Report No. I-180, recommends that "this application be granted on condition that the applicant will complete and place in operation the new antenna and ground system now being constructed and that they make field intensity measurements not less than five consecutive nights under ordinary conditions in the Toledo area, to determine the strength of the signal of the applicant at that point, and report such findings to the Commission. If the tests in the Toledo area show the applicant to be laying down a signal less than 50 microvolts per meter, then it is recommended that this application be granted unconditionally."

#### BROOKLYN PETITION DENIED BY FCC

At a session of the full membership of the Federal Communications Commission the petition and supplemental petition was denied of the Paramount Broadcasting Corporation, Station WVFW, Brooklyn, N. Y., for a rehearing in the matter of its applications for modification of license and license renewal. A dissenting opinion was filed by Commissioner Stewart.

The Commission in its decision in this case will take off the air as of January 22 Stations WARD, WLTH and WVFW, all of Brooklyn. Station WBBC will get half time and the Brooklyn (N. Y.) Daily Eagle will get the other half time to be used following the erection of a new station.

Commissioner Stewart in his dissent in this case said:

I regret that I am not able to support in its entirety the decision of the Broadcast Division in these cases. I believe, however, that the record is incomplete in some respects and that the matter should be reopened for the further consideration of certain points mentioned hereafter. It is possible that further information on those points would lead me to the same conclusions reached by the Division, but I shall be more nearly convinced of the soundness of those conclusions when the points mentioned have been more thoroughly covered.

1. As respects the denial of the applications of WARD, WLTH, and WVFW, I believe the decision is sound. That they were not operating in the public interest, convenience and necessity seems beyond reasonable doubt. The denial of the application of WEVD and the granting of the applications of WHAZ, WFAB and WBBR were likewise sound.

2. The denial of the application of Arde Bulova and Norman K. Winston is sound on the record, on the assumption that the Division considered the fact that Mr. Bulova already owned one-half interest in a station serving Brooklyn. That fact is mentioned in the decision although not specifically stated as a ground for the decision.

3. Station WBBC appears from the record to have been slightly better than the three stations deleted. Judging from its past operations, it might have suffered the fate prescribed for them without any material loss to the public. Because of its slightly better performance, however, the Division may be correct in sparing the stations at this time—although I am at a loss to understand what there is in the history of the station to have led to the doubling of its time on the air. With the increased time and consequently with a possibly increased efficiency, the station may be able to justify itself.

4. I am unable to agree that the record shows any need for a new station on this frequency in Brooklyn. Certainly Brooklyn is not without broadcast service. Commission records show that some or all of the borough is at all times within the good service area of at least eleven stations, exclusive of those involved in the present cases. This figure is higher than for the remainder of the first zone and far higher than for most of the country. There is no justification for placing a new station in Brooklyn unless it is to serve a need peculiar to that borough which is not served by some other station within whose service area it lies.

5. The decision of the Division grants half time to the Brooklyn Daily Eagle Broadcasting Company, Inc., which heretofore has not been engaged in broadcasting. Mr. Prestin Goodfellow, President of the Brooklyn Daily Eagle, which is to be the principal stockholder in the Brooklyn Daily Eagle Broadcasting Company, Inc., testified:

"My idea of a broadcasting station would be to cater to the type of reader that the New York Times and the Brooklyn Daily Eagle and the Sun and papers of that calibre have." (Transcript, Dec. 6, 1934, p. 587.)

Mr. Goodfellow further testified that the Daily Eagle "is known as a class newspaper in that it does not attempt to reach the masses. It is a paper that is outstanding in its advertising volume." (Ibid. p. 515.) His testimony does not give us any reason to believe that he contemplates any important service not already rendered by one or more of the stations serving Brooklyn. It may be noted in passing that the Daily Eagle did not carry for the information of its readers the programs of the four Brooklyn stations whose facilities it is seeking, although it did carry the programs of other stations serving the Brooklyn area.

In the absence of a showing that the proposed station will be used to meet needs peculiar to Brooklyn, I am unwilling to approve another station in the overquota New York metropolitan area when there is a serious need for the facilities in other parts of the country less well served with broadcast facilities.

6. It is not clear from the opinion that consideration was given to the matter of the public interest involved in the granting of a broadcast station license to an applicant controlled by a newspaper. Broadcast stations and newspapers are the two principal sources of current public information and enlightenment; in a more mundane field they are the two principal media of local advertising and two of the principal media of national advertising in any community. Combining the two under the same control inevitably presents a problem of major moment which should be squarely faced by the Commission in its determination of "public interest, convenience and necessity." I do not believe that it was sufficiently considered by the Broadcast Division in the present instance.

7. The decision gives half time each to two stations in the same community. On its face such an arrangement is most uneconomical. To have two transmitters, two sets of studios, two staffs and a duplication of everything which goes into a broadcast station of the first class involves a duplication of expense which must inevitably be reflected in programs and service sooner or later. Such a duplication, incident to half-time operation, should be required only where positive advantages of a substantial nature will flow from the arrangement. Where both stations are designed to serve the same community, the duplication seems unwarranted in the absence of a record showing weighty reasons in support of such an anomalous arrangement. The opinion shows no such reasons. In connection with its decision on WBBC, the Broadcast Division traces the difficulty of that station to its quarter-time operation. The uneconomic nature of quarter-time operation is thus recognized. The uneconomic nature of half-time operation should at least merit consideration, especially in a decision which by authorizing a new station creates, rather than merely continues, part-time operation.

8. In my opinion the matter should be reopened for further testimony on the points covered in paragraphs numbered 3, 4, 5, 6 and 7.

#### FEDERAL TRADE COMMISSION ACTION Complaints

The Federal Trade Commission has alleged unfair competition in complaints issued against the following companies. The respondents will be given an opportunity for hearing to show cause why cease and desist orders should not be used against them.

**No. 2677.** A complaint has been issued charging the **Fall River Wholesale Grocers' Association** and its members, of **Fall River, Mass.**, with concerted action and conspiracy tending unduly to suppress competition in the food and grocery trade in the Fall River area, which also includes part of Rhode Island.

According to the complaint, the respondents' plan prevented sales by manufacturers direct to retailers in the Fall River area and out of pool car shipments to wholesalers who were not association members. This is alleged to have been accomplished by methods such as personal intimidation, threats of boycott, and actual boycott.

**No. 2678.** Alleging unfair competition in the use of the word "distillery" in its corporate name, a complaint has been issued

against "Old Colonel Distillery, Inc.," also "Old Colonel Distributing Co.," and Joseph Schiff, of Louisville, Ky., owner and operator of the two companies. According to the complaint, the respondents are rectifiers and wholesalers of liquors, and are not distillers.

**No. 2679.** A complaint has been issued against **Bleeker-Foster, Inc.**, 253 East 4th St., **St. Paul, Minn.**, engaged in the manufacture and sale of food-flavoring products, charging the use of false and misleading advertising, in violation of Section 5 of the Federal Trade Commission Act.

Through the medium of such advertising, the complaint alleges, the respondent has been able to divert a substantial amount of business from its competitors, who do not resort to unfair trade practices. As typical of the methods in which the respondent allegedly lures salesmen and agents, the complaint cites the following advertisement:

"I want 500 more men—to earn up to \$25.00 a day! Be a branch manager for George F. Foster.

"C. Angel, of Milwaukee, secured 25,000 G. F. Foster customers in six months.

"Mr. Angel had been hard hit by the depression; savings gone, debts piling up, reduced to a humble, poorly-paid job, he was down but not out. In six months the G. F. Foster fast-selling products and plan put Angel out of debt and established him in a business so big, so profitable, that it was almost unbelievable.

"Thousands of other G. F. Foster agents, distributors and branch managers can tell similar stories of amazing earnings and success."

Salesmen of the respondent company can not make the earnings advertised, the complaint alleges, and competitors are injured and deprived of the benefits of free competition in interstate commerce because their own agents and salesmen are attracted from them by such advertisements.

**No. 2680.** Unfair methods of competition in commerce, in violation of Section 5 of the Federal Trade Commission Act, are alleged in a complaint issued against the **Consolidated Trading Corporation, New York City**, engaged in the sale and distribution of a variety of merchandise.

According to the complaint, the respondent solicits business and sells its products in foreign countries, using the trade name "Modex Mills" on its letterheads, bill heads and in advertising matter, implying that it is a manufacturer, whereas it neither owns nor operates the mills in which its merchandise is manufactured. Use of the word "Mills" gives the respondent unfair advantage over those competing exporters who do not falsely represent themselves as manufacturers, as well as over those who actually do manufacture and sell their own products, the complaint sets forth.

**No. 2681.** Charging unfair representations in the sale of a beverage, a complaint has been issued against **John J. Kane**, of 2777 Frankford Avenue, **Philadelphia**, trading as **La Pep Health Beverage Co.**

Advertising in periodicals and over the radio, the respondent is alleged to have represented his product, a mixture of fruit juices, herbs and lactic acid, as a competent remedy for skin eruptions, sluggish blood, constipation and heart troubles, and that it would guide a person to health and act as a body disinfectant. These assertions are not true, according to the complaint, and their use constitutes unfair competition with beverage manufacturers who truthfully represent the ingredients and healing value of their products.

**No. 2682.** Alleging unfair competition in the sale of clocks in interstate commerce, a complaint has been issued against the **Sessions Clock Co., of Forestville, Conn.**, charging that its clock cases made of woods other than mahogany are represented as being mahogany cases.

This practice is alleged to have caused diversion of trade to the respondent from competitors who truthfully advertise their clocks.

**No. 2683.** A complaint has been issued against **Dr. S. B. Heininger**, of 440 Huron St., **Chicago**, charging unfair competition in the sale of dental plates by mail order, in violation of the Federal Trade Commission Act.

Heininger's advertising is alleged to have had a tendency to mislead purchasers into believing they could make correct impressions of their own teeth and gums, and from such impressions the respondent could make satisfactory artificial teeth.

## Stipulations

The Commission has announced the following cease and desist orders:

**No. 01001.** **Evans Publishing Corporation**, 400 Madison Avenue, **New York City**, published in its magazine, *The Family Circle*, advertisements for "Malt-O-Meal," sold by the Campbell Cereal Co., of Northfield, Minn. The publisher agreed to abide by the terms of a stipulation signed by the Campbell Cereal Co., to discontinue the use of false and misleading advertising.

**No. 01004.** **B. T. Babbitt, Inc.**, of 886 Fourth Ave., **New York**, dealer in a cleanser for pots, basins and bathtubs, called "Bab-O," agrees to stop asserting that "Bab-O" banishes dull film, water-lines or the most stubborn dirt "instantly"; that its use ends all scouring and scrubbing; that it will not harm nail polish, and will soften hands; and that "Bab-O" was discovered by scientists, or that it is a new discovery.

**Nos. 01005-01006-01007.** Three publishing companies printing the advertisements for "Holford's Famous Inhaler" have entered into stipulations agreeing to abide by provisions of the stipulation entered into by William J. Fink, the advertiser. These companies are: **S. Rosenthal & Co., Inc.**, of Cincinnati, publisher of Independent Salesman Magazine; **How to Sell, Inc.**, of Mt. Morris, Ill., publisher of How to Sell Magazine; and **Opportunity Publishing Co.**, Chicago, publisher of Opportunity Magazine.

**No. 01008.** **William J. Fink**, operating as **The Holford Company**, agrees to cease representing that "Holford's Famous Inhaler" is a proven winner or a competent remedy in treating colds, catarrh, headaches and other ailments; that at one deep breath a wave of soothing, healing warmth penetrates every part of the head and lungs; that this treatment retains its strength from six months to two years, or that it is a health protection, and other similar representations. The respondent also agrees not to make unmodified representations of salesmen's earnings.

**Nos. 01009-01010-01011-01012.** Operating as the **Flying Intelligence Bureau**, **E. M. Welch**, 401 Judson Jay Rives Building, **Los Angeles, Calif.**, has entered into a stipulation to discontinue false and misleading advertising of his booklet, which purported to give complete information on entrance requirements and a course of training for the United States Air Service.

According to the stipulation, the booklet, sold by the respondent at \$1 a copy, contained inaccurate and inadequate information concerning the air service training.

The respondent agrees to stop use of the terms "Bureau," "Intelligence Bureau," and "United States Air Corps," implying that his business had some connection with the United States Government.

The respondent inserted advertisements in **Topnotch Magazine**, **Complete Stories**, and **Best Detective Magazine**, all published by the **Street and Smith Publishing Corporation**, 79 7th Avenue, **New York City**. That publishing company, in separate stipulations, agrees to abide by the terms of the stipulation signed by Welch.

**No. 01013.** **Western Broadcast Co.**, **Hollywood, Calif.**, operator of radio station KNX, admitted broadcasting advertisements for Sterling Royal Remedies, sold by John D. Myers, trading as John Sterling Remedy Co., Kansas City, Mo. The broadcasting company agreed to abide by the terms of a stipulation previously signed by the John Sterling Remedy Co., to discontinue misleading advertising.

**No. 01014.** **Specialty Salesman Magazine, Inc.**, 307 North Michigan Ave., **Chicago**, published advertisements for the Holford Co., 14 North 6th Street, Minneapolis, Minn., dealer in a treatment for colds and catarrh, which had previously entered into a stipulation to discontinue misleading advertising. The publisher agrees to abide by the terms of this stipulation.

**No. 01015.** **Journal Printing Co.**, **Minneapolis, Minn.**, publisher of the Minneapolis Sunday Journal, also carried advertisements for "Malt-O-Meal"; and entered into a similar stipulation.

**Nos. 1580-1581.** In two related cases, involving the branding of shoes with the label "Doctor," three companies have entered into stipulations to stop unfair trade practice in the manufacture and sale of their products.

**The Bridgewater Workers Co-Operative Association, Inc.**, **Bridgewater, Mass.**, and the **International Shoe Company**, 1509 Washington Ave., **St. Louis, Mo.**, manufactured and sold in interstate commerce shoes, branded with the words, "Dr. Moses Arch Form Shoes," to the Family Shoe Corporation, New York City, which retailed and wholesaled the products.

The three respondents agreed to desist from cooperating directly or through subsidiaries in the production and sale of shoes stamped with the word "Doctor" or the abbreviation "Dr."

when the shoe is not manufactured in accordance with the design or under the supervision of a doctor and does not contain orthopedic features which are the result of medical advice or services.

**No. 1582.** Bay Ridge Specialty Co., Inc., Trenton, N. J., and T. J. Holmes Co., Inc., of Chartley, Mass., have entered into stipulations to cease and desist from unfair trade practices in interstate commerce.

Engaged in the manufacture of vitreous, high fired china bathroom fixtures, the Trenton company agrees to stop the use of advertising having the effect of disparaging the products of competitors manufacturing decorated china fixtures. Specifically, the Bay Ridge company agrees to cease representing that extremes of temperature in firing cause the glaze on decorative fixtures to craze or crack when climatic conditions change. According to the stipulation, these representations had a tendency to deceive buyers into believing that such fixtures were unstable and would not hold up under climatic changes, when this was not true.

**No. 1583.** T. J. Holmes Co., Inc., manufacturer of atomizers, agrees to discontinue advertising that its product "is the only atomizer on the market which will successfully handle silver preparations," when this is not true. The company will cease other representations implying that its atomizer is the only one on the market capable of use successfully or with safety in the spraying of silver preparations.

**Nos. 1584-1585-1586.** Two companies manufacturing burial caskets and a third firm selling wood for manufacture of such products, have entered into stipulations to discontinue misrepresenting the wood content of their products. The respondents are: R. J. Evans and Al Thornton, of Kansas City, Mo., trading as Rex Art Casket Co.; Owen and W. J. McCarty, George Chinnery and W. A. Hufnagle, of Kansas City, Mo., trading as Midland Valley Casket Co., and Hammond Lumber Co., Inc., of Samoa, Calif., and Chicago.

Each company agree to cease and desist from representing in guarantees furnished to purchasers that redwood is unsurpassed by any other wood from the standpoint of durability or resistance to decay, and that it is immune to the destructive work of white ants, when in fact, according to the agreement, redwood is equalled by the bald cypress, the cedar and the poplar, and is surpassed by the eastern red cedar, locust, mulberry, and Osage orange, and is not immune to the ravages of the white ant.

**No. 2261.** Unfair competition through misleading use of a well-known trade name is prohibited in an order to cease and desist issued against Real Products Corporation, of 10-25 46th Avenue., Long Island City, N. Y., and Realflex Products Corporation, Brooklyn, manufacturers and dealers in automotive and metal specialties, including spark plug cable sets.

The order directs the respondents to discontinue representing that their products, including spark plug cable sets, are made by the Champion Spark Plug Co., of Toledo, O., and to stop using the word "Champion," either alone or in connection with any other word, to advertise their products, thus implying that they are made by the Champion company.

**No. 2647.** An order has been issued against the Shapiro Felt Rug Co., of Newark, N. J., directing it to cease and desist from selling baseball caps made from second-hand and discarded felt hats, unless and until they are marked to indicate that they were not made from new and unused felts.

Other respondents are William, Morris and Sarah Shapiro, individuals, trading as Esta Hat Co. They did not contest the Commission proceeding, and consented to issuance of the order to cease and desist.

## FEDERAL COMMUNICATIONS COMMISSION ACTION

### HEARING CALENDAR

Monday, January 20

#### HEARING BEFORE AN EXAMINER (Broadcast)

NEW—Clyde E. Britton, Lima, Ohio.—C. P., 950 kc., 250 watts, daytime.

Tuesday, January 21

KFEQ—KFEQ, Inc., St. Joseph, Mo.—C. P., 680 kc., 5 KW, daytime. Present assignment: 680 kc., 2½ KW, daytime.

Thursday, January 23

## ORAL ARGUMENT BEFORE THE BROADCAST DIVISION

### Examiner's Report No. I-108:

NEW—Robert K. Herbst, Moorhead, Minn.—C. P., 1310 kc., 100 watts, unlimited time.

### Examiner's Report No. I-104:

KGCC—The Golden Gate Broadcasting Co., San Francisco, Calif.—Modification of license, 1420 kc., 100 watts, unlimited time. Present assignment: 1420 kc., 100 watts, specified hours.

### Examiner's Report No. I-102:

KPPC—Pasadena Presbyterian Church, Pasadena, Calif.—C. P., 1210 kc., 100 watts, 250 watts LS, share with KFXM. Present assignment: 1210 kc., 50 watts, share with KFXM.

KPPC—Pasadena Presbyterian Church, Pasadena, Calif.—Modification of license, 1210 kc., 100 watts, share KFXM. Present assignment: 1210 kc., 50 watts, share with KFXM.

## HEARING BEFORE AN EXAMINER (Broadcast)

NEW—Mason City Broadcast Co., Emmons L. Abeles, Secy., Mason City, Iowa.—C. P., 1420 kc., 100 watts, unlimited time.

NEW—Northern Iowa Broadcasting Co., Inc., Mason City, Iowa.—C. P., 1420 kc., 100 watts, unlimited time.

NEW—Mason City Globe Gazette Co., Mason City, Iowa.—C. P., 1210 kc., 100 watts, unlimited time.

## APPLICATIONS GRANTED

WWJ—The Evening News Assn., Inc., Detroit, Mich.—Granted modification of C. P. approving transmitter site at intersection of Meyers and 8th mile road, Oak Park, Mich.

WHBB—Dr. Wm. J. Reynolds and Wm. J. Reynolds, Jr., Selma, Ala.—Granted modification of C. P. to change type of equipment and approving antenna system.

WMBD—Peoria Broadcasting Co., Peoria, Ill.—Granted modification of C. P. approving antenna and transmitter site; make changes in equipment; extend commencement date to 30 days after grant and completion date to 180 days thereafter.

WJR—WJR, The Goodwill Station, Detroit, Mich.—Granted license to use old 10-KW transmitter as auxiliary at same location as main transmitter.

KPOF—Pillar of Fire (a corp.), Belleview College, near Denver, Colo.—Granted license to cover C. P. authorizing installation of new transmitter and changes in equipment; 880 kc., 500 watts, shares KFKA.

WHBB—Dr. Wm. J. Reynolds and Wm. J. Reynolds, Jr., Selma, Ala.—Granted license to cover C. P., 1500 kc., 100 watts, daytime.

WCAE—WCAE, Inc., Pittsburgh, Pa.—Granted license to cover C. P. authorizing new equipment and increase in power to 1 KW night, 5 KW day; 1220 kc., unlimited time.

WCAE—WCAE, Inc., Pittsburgh, Pa.—Granted license for auxiliary transmitter equipment; 1220 kc., 1 KW night and day, unlimited. Also granted authority to determine operating power by direct measurement of antenna input in compliance with Rule 137.

WMPC—The First Methodist Protestant Church of Lapeer, Mich.—Granted license to cover C. P. authorizing equipment changes; 1200 kc., 100 watts night, 250 watts day, S.H.

WJAX—City of Jacksonville, Fla.—Granted license to cover C. P. authorizing changes in equipment; increase in day power to 5 KW, with transmitter site to be determined.

KABC—Alamo Broadcasting Co., Inc., San Antonio, Tex.—Granted license to cover C. P. authorizing changes in equipment and increase in day power; 1420 kc., 100 watts night, 250 watts day, unlimited.

KIUP—C. Guy Shepard, Durango, Colo.—Granted license to cover C. P. authorizing erection of new station, 1370 kc., 100 watts, unlimited time.

WMT—Waterloo Broadcasting Co., Cedar Rapids, Iowa.—Granted consent to voluntary assignment of license to Iowa Broadcasting Co.

KSO—Cedar Rapids Broadcast Co., Des Moines, Iowa.—Granted consent to voluntary assignment of license to Iowa Broadcasting Co.

WMT—Waterloo Broadcasting Co., Cedar Rapids, Iowa.—Granted modification of special experimental authorization to make changes in equipment and to operate with 1 KW night with directional antenna, 2½ KW day with non-directional.

WOW—Woodmen of the World Life Ins. Asso., Omaha, Nebr.—Granted authority to determine operating power by direct measurement of antenna input.

KQV—KQV Broadcasting Co., Pittsburgh, Pa.—Granted authority to determine operating power by direct measurement of antenna input.

WSAI—The Crosley Radio Corp., Cincinnati, Ohio.—Granted C. P. to make changes in equipment and move transmitter from Mason to Cincinnati, Ohio.

National Broadcasting Co., Inc., New York City.—Granted authority to transmit selected recorded programs to four Canadian broadcast stations—CJOR, CFAC, CJOC, CJCA.

NEW—The Evening News Asso., Portable-Mobile.—Granted C. P. (gen. exp. miscl.), frequencies 31600, 35600, 38600, 41000 kc., 100 watts.

NEW—WCBS, Inc., Portable-Mobile, Springfield, Ill.—Granted C. P. (gen. exp. broadcast pickup station), frequencies 31100, 34600, 37600, and 40600 kc., 2 watts.

NEW—The Attala Broadcasting Corp., Kosiusko, Miss.—Granted C. P., frequencies 31600, 35600, 38600 and 41000 kc., 100 watts.

NEW—Memphis Commercial Appeal, Inc., Memphis, Tenn.—Granted C. P. (gen. exp. miscl.), frequencies 31600, 35600, 38600 and 41000 kc., 50 watts.

WMBC—Michigan Broadcasting Co., Detroit, Mich.—Granted C. P. to make changes in equipment.

WNYC—City of New York, Dept. of Plant and Structures, New York City.—Granted C. P. to erect auxiliary transmitter at 29 Ft. Green Place, Brooklyn, to be used principally while moving main transmitter from New York City to foot of Greenpoint Ave. and East River, Brooklyn.

KWTO—Ozarks Broadcasting Co., Springfield, Mo.—Granted modification of C. P. to extend commencement date to 1-1-36 and completion date to 7-21-36.

WCCM—WCCM, Inc., Mississippi City, Miss.—Granted modification of C. P. to extend commencement date to 1-28-36 and completion date to 7-28-36.

KLZ—The Reynolds Radio Co., Inc., Denver, Colo.—Granted modification of C. P. approving transmitter site near Denver, approving antenna, extending commencement date to 60 days after grant and completion date to 180 days thereafter.

KRNR—Southern Oregon Pub. Co., Roseburg, Ore.—Granted license to cover C. P. authorizing erection of new station, 1500 kc., 100 watts, daytime.

WFIL—WFIL Broadcasting Co., Philadelphia, Pa.—Granted license to use auxiliary transmitter which was licensed to WLIT, at same location as main transmitter of WFIL.

WMAZ—Southeastern Broadcasting Co., Inc., Macon, Ga.—Granted license to cover C. P. authorizing installation of new equipment.

WIND—Johnson-Kennedy Radio Corp., Gary, Ind.—Granted license to cover C. P. authorizing changes in equipment and increase in day power to 5 KW; 560 kc., 1 KW night, unlimited.

WABI—Community Broadcasting Service, Bangor, Maine.—Granted consent to transfer of control of the Community Broadcasting Service, Inc., licensee of WABI, from the First Universalist Society of Bangor, to an individual, Frederick B. Simpson. Present assignment: 1200 kc., 100 watts, S.H.

KSD—The Pulitzer Publishing Co., St. Louis, Mo.—Granted license to cover C. P. authorizing increase in night power to 1 KW, day power to 5 KW, and special authority to operate 1 KW night with directional antenna; 550 kc., S-KFUO.

KFNF—KFNF, Inc., Shenandoah, Iowa.—Granted authority to transfer control of KFNF, Inc. (licensee of station KFNF), from Henry Field Co. to Henry Field (890 kc., 500 watts night, 1 KW day, S-WILL and KUSD).

WCAE—WCAE, Inc., Pittsburgh, Pa.—Granted transfer of control of WCAE, Inc. (licensee of station WCAE), to Pitt Publishing Co., a Pennsylvania corporation (1220 kc., 1 KW, unlimited).

KFPL—C. C. Baxter, Dublin, Tex.—Granted extension of C. P., heretofore issued to C. C. Baxter, upon a temporary basis only, specifically subject to whatever action may be taken by the Commission upon the application for renewal of license and for modification of permit, as well as the application for modification of permit, which were designated for hearing, in any event not to extend beyond June 16, 1936.

NEW—WDOD Broadcasting Corp., Chattanooga, Tenn.—Granted C. P. (exp. gen. exp.), frequencies 31600, 35600, 38600, 41000 kc., 100 watts.

NEW—Head of the Lakes Broadcasting Co., Superior, Wis.—Granted C. P. (exp. gen. exp.), frequencies 31600, 35600, 38600, 41000 kc., 80 watts.

WIEF—Miami Broadcasting Co., Portable-Mobile (Miami, Fla.)—Granted C. P. (temporary broadcast pickup) to make changes in equipment, increase power from 15 to 50 watts.

W8XH—WBEN, Inc., Buffalo, N. Y.—Granted license to cover C. P. (exp. gen. exp.), frequencies 31600, 35600, 38600, 41000 kc., 100 watts.

W10XAP—National Broadcasting Co., Inc., Portable-Mobile (New York City)—Granted C. P. and license (exp. gen. exp.) to increase power from 7.5 watts to 25 watts and for additional power amplifier.

## RENEWAL OF LICENSES

The following stations were granted renewal of licenses for the regular period:

KDKA, and alternate, Pittsburgh, Pa.; KEX, Portland, Ore.; KFEQ, St. Joseph, Mo.; KFI, Los Angeles, and auxiliary; KFVD, Los Angeles; KGDM, Stockton, Calif.; KGO and auxiliary, San Francisco; KIEV, Glendale, Calif.; KJBS, San Francisco; KJR, Seattle, Wash.; KOA, Denver; KPO and auxiliary, San Francisco, Calif.; KRLD, Dallas, Tex.; KSL, Salt Lake City; KSOO, Sioux Falls, S. Dak.; KVOO, Tulsa, Okla.; KYW, Philadelphia; WABC-WBOQ, New York City; WAPI, Birmingham, Ala.; WATR, Waterbury, Conn; WBAL, Baltimore, Md.; WBT, Charlotte, N. C.; WBZ, Boston; WBZA, Boston; WDGY, Minneapolis, Minn.; WEA and auxiliary, New York City; WENR and auxiliary, Chicago; WEW, St. Louis, Mo.; WGN, Chicago; WGY, Schenectady, N. Y., and auxiliary; WHAM and auxiliary, Rochester, N. Y.; WHEB, Portsmouth, N. H.; WJJD, Chicago, Ill.; WJZ and auxiliary, New York City; WKAR, E. Lansing, Mich.; WLW, Cincinnati, Ohio; WMAQ, Chicago, Ill.; WMAZ, Macon, Ga.; WMBI, Chicago, Ill.; WOR and auxiliary, Newark, N. J.; WOWO, Fort Wayne, Ind.; WPTF, Raleigh, N. C.; WRUF, Gainesville, Fla.; WRVA, Richmond, Va.; WSB and auxiliary, Atlanta, Ga.; WSM and auxiliary, Nashville, Tenn.; WTAM, Cleveland, Ohio; WTBO, Cumberland, Md.; WTIC, Hartford, Conn.; WPTF auxiliary, Raleigh, N. C.

## SET FOR HEARING

NEW—Wolverine Broadcasting Co. (John E. Fetzer), Ann Arbor, Mich.—Application for C. P. for new station, 800 kc., 1 KW, day, daytime operation only. Site to be determined.

NEW—Star-Chronicle Publishing Co., St. Louis, Mo.—Application for C. P. for new station, 1250 kc., 1 KW, unlimited.

NEW—The Times Dispatch Pub. Co., Inc., Richmond, Va.—Application for C. P. for new station, 1500 kc., 100 watts, unlimited. Exact transmitter site and type of antenna to be determined with Commission's approval.

NEW—W. T. Knight, Jr., Savannah, Ga.—Application for C. P. for new station, 1310 kc., 100 watts, unlimited.

NEW—Douglas G. Doozer and Jack Richards, Brunswick Radio Broadcast Station, Brunswick, Ga.—Application for C. P. for new station, 1420 kc., 100 watts, daytime.

NEW—Gomer Thomas, Bellingham, Wash.—Application for C. P. for new station, 1420 kc., 100 watts, unlimited. Transmitter site to be determined with the Commission's approval.

NEW—B. A. Thompson, Santa Cruz, Calif.—Application for C. P. for new station, 1310 kc., 100 watts night, 250 watts day, unlimited.

NEW—Springfield Newspapers, Inc., Springfield, Mo.—C. P. amended so as to request 790 kc., 1 KW, daytime operation only. Exact transmitter site to be determined with Commission's approval.

NEW—Hunt Broadcasting Assn., Fred Horton, Pres., Greenville, Tex.—C. P. amended so as to request 1200 kc., 100 watts, daytime only.

WIOD—WMBF—Isle of Dreams Broadcasting Corp., Miami Beach, Fla.—Application for C. P. to make changes in equipment and move transmitter from approximately 3 miles from Collins Island, Miami Beach, to 600 Biscayne Blvd, Miami, Fla.

WCOL—WCOL, Inc., Columbus, Ohio.—Application for C. P. to make changes in equipment and increase day power from 100 watts to 250 watts (contingent upon the granting of application to WALR for move to Toledo, Ohio).

WLBL—State of Wisconsin, Department of Agriculture and Markets, near Ellis, Wis.—Application for C. P. to make changes in equipment and increase power from 2½ to 5 KW day.

WSBT—The South Bend Tribune, South Bend, Ind.—Application for C. P. to make changes in equipment, install directional antenna; change frequency from 1360 kc. to 1010 kc.; increase power from 500 watts to 1 KW; and move transmitter to site to be determined at South Bend; change hours of operation from S-WGES to unlimited.

WELL—Patrick J. Goode, New Haven, Conn.—Application for modification of license to change frequency from 900 kc. to 930 kc., hours of operation from 500 watts daytime only to 250 watts night, 500 watts day; hours of operation from daytime to unlimited.

WEHS—WEHS, Inc., Cicero, Ill.—Application for modification of license to increase day power to 250 watts and change antenna contingent upon granting C. P. of station WHFC.

WKBI—WKBI, Inc., Cicero, Ill.—Application for modification of license to increase day power from 100 watts to 250 watts and change antenna contingent upon granting C. P. of station WHFC.

WHFC—WHFC, Inc., Cicero, Ill.—C. P. amended so as to request authority to install new equipment and a vertical radiator, and increase day power from 100 to 250 watts.

NEW—Continental Radio Co., Columbus, Ohio.—C. P., already in hearing docket, amended to make changes in equipment; 1310 kc., 100 watts, unlimited time. Site to be determined.

NEW—John E. Fetzer, Saginaw, Mich.—C. P., already in hearing docket, amended to read: 630 kc., 1 KW, daytime. Site to be determined.

KFPM—Voice of Greenville, Greenville, Tex.—Application for C. P. to make changes in equipment; increase power from 15 to 100 watts, and hours of operation from specified to daytime only.

NEW—Ralph E. Smith, San Diego, Calif.—C. P., already in hearing docket, amended to read: 1200 kc., 100 watts, daytime.

KFOX—Nicholas & Warinner, Inc., Long Beach, Calif.—Application for voluntary assignment of license from Nichols & Warinner, Inc., to Hal Nichols, Inc.

KFDY—South Dakota State College, Brookings, S. Dak.—Application for modification of license to make changes in specified hours of operation.

NEW—Burlington Broadcasting Co., Burlington, Iowa.—C. P., already in hearing docket, amended to read: 1310 kc., 100 watts, unlimited time.

NEW—The Herald Publishing Co., Denison, Tex.—C. P., already in hearing docket, amended to read: 1200 kc., 100 watts, unlimited time. Site to be determined.

The Ogdensburg Advance Co., Inc., Ogdensburg, N. Y.—Application for authority to maintain a studio in Ogdensburg, N. Y., for production of programs to be transmitted by land wires of the N. Y. Tel. Co. and of the Bell Tel. Co. of Canada, to Station CFLC, at Prescott, Ontario, Canada.

#### APPLICATIONS DENIED

WSVA—Shenandoah Valley Broadcasting Corp., Harrisonburg, Va.—Denied request for special temporary authority to operate from LS to 9 p. m., EST, December 24, 1935, with power of 250 watts, in order to broadcast special Christmas programs.

KFIO—Spokane Broadcasting Corp., Spokane, Wash.—Denied request for special authority to operate from local sunset to 5:30 P. M. EST, on Tuesdays and Thursdays during months of January and February, 1936, in order to broadcast local high school basketball games.

WLBL—State of Wisconsin Department of Agriculture and Markets, Stevens Point, Wis.—Denied authority to operate from 7:45 to 9:45 p. m., CST, on January 11, 13 and 20; February 10, 24 and 29, 1936, with reduced power of 1 KW in order to broadcast the University of Wisconsin basketball games.

WHA—University of Wisconsin, Madison, Wis.—Denied authority to operate from 7 to 9:30 p. m., CST, with reduced power on January 11, 13, 20, February 8, 10, 24 and 29, 1936, in order to broadcast University of Wisconsin basketball games.

WPHR—WLBG, Inc., Petersburg, Va.—Denied authority to operate from LS to 10 p. m., EST, on January 11, 18 and 25, February 1, 8, 15, 22, 28 and 29, and March 27 and 28, 1936, with reduced power of 250 watts in order to broadcast Olympic Elimination Boxing Bouts from University of Virginia.

WKAR—Michigan State College, F. Lansing, Mich.—Denied authority to operate on 850 kc. from 7:20 to 9 p. m., CST, January 17, 18, and 29, in order to broadcast basketball games.

WCHV—Community Broadcasting Corp., Charlottesville, Va.—Denied authority to operate simultaneously with station WEED from 8 to 9:30 p. m., EST, on Jan. 18 and 25; February 1, 8, 15, 22, 28, 29 and March 27 and 28, 1936, in order to broadcast collegiate and Olympic tryout boxing matches.

WMFF—Plattsburg Broadcasting Corp., Plattsburg, N. Y.—Denied authority to operate with power of 100 watts from LS to 7:30 p. m., EST, but for period not to exceed 30 days in order to broadcast programs of special local interest and to determine what interference would be caused by such operation.

#### ORAL ARGUMENTS GRANTED

NEW—Ex. Rep. 1-126: Utah Radio Educational Society, Salt Lake City—Granted oral argument to be held February 13, 1936, before the Broadcast Division.

NEW—Louis H. Callister, Provo, Utah—Granted oral argument to be held February 13, 1936, before the Broadcast Division.

NEW—Paul Q. Callister, Salt Lake City, Utah—Granted oral argument to be held February 13, 1936, before the Broadcast Division.

NEW—Great Western Broadcasting Association, Inc., Logan, Utah.—Granted oral argument to be held February 13, 1936, before the Broadcast Division.

NEW—Great Western Broadcasting Association, Inc., Provo, Utah.—Granted oral argument to be held February 13, 1936, before the Broadcast Division.

NEW—Munn Q. Cannon, Logan, Utah.—Granted oral argument to be held February 13, 1936, before the Broadcast Division.

NEW—Utah Broadcasting Co., Salt Lake City.—Granted oral argument to be held February 13, 1936, before the Broadcast Division.

NEW—Cache Valley Broadcasting Service Co., Logan, Utah.—Granted oral argument to be held February 13, 1936, before the Broadcast Division.

KMA—Ex. Rep. 1-136: May Seed & Nursery Co., Shenandoah, Iowa.—Granted oral argument to be held February 20, 1936, before the Broadcast Division.

KGBZ—KGBZ Broadcasting Co., York, Neb.—Granted oral argument to be held February 20, 1936, before the Broadcast Division.

NEW—Ex. Rep. No. 1-138: Big Springs Herald Broadcasting Co., Big Springs, Tex.—Granted oral argument to be held February 27, 1936, before the Broadcast Division.

NEW—Vernon Taylor Anderson, Big Springs, Tex.—Granted oral argument to be held February 27, 1936, before the Broadcast Division.

NEW—Plainview Broadcasting Co., Plainview, Tex.—Granted oral argument to be held February 27, 1936, before the Broadcast Division.

NEW—North Texas Broadcasting Co., Paris, Tex.—Granted oral argument to be held February 27, 1936, before the Broadcast Division.

KID—Ex. Rep. 1-143: Kid Broadcasting Co., Inc., Idaho Falls, Idaho.—Granted oral argument to be held March 5, 1936.

NEW—Ex. Rep. 1-147: Arthur Westlund & Jules Cohn, Santa Rosa, Cal.—Granted oral argument to be held March 5, 1936.

KDFN—Ex. Rep. No. 1-139: Donald Lewis Hathaway, Casper, Wyo.—Granted oral argument to be held February 27, 1936, before the Broadcast Division.

KGHL—Northwestern Auto Supply Co., Inc., Billings, Mont.—Granted oral argument to be held February 27, 1936, before Broadcast Division.

XSOO—Sioux Falls Broadcast Association, Inc., Sioux Falls, S. Dak.—Granted oral argument to be held February 27, 1936, before the Broadcast Division.

KXL—KXL Broadcasters, Portland, Ore.—Granted oral argument to be held February 27, 1936, before the Broadcast Division.

KEHE—Evening Herald Publishing Co., Los Angeles, Cal.—Granted oral argument to be held February 27, 1936, before Broadcast Division.

NEW—Ex. Rep. 1-141: Joplin Broadcasting Co., Pittsburg, Kans.—Granted oral argument to be held March 5, 1936, before the Broadcast Division.

NEW—Pittsburg Publishing Co., Pittsburg, Kans.—Granted oral argument to be held March 5, 1936, before the Broadcast Division.

NEW—Wichita Broadcasting Co., Wichita, Kans.—Granted oral argument to be held March 5, 1936, before the Broadcast Division.

NEW—Ex. Rep. 1-142: Black Hills Broadcast Co., Rapid City, S. Dak.—Granted oral argument to be held March 5, 1936, before the Broadcast Division.

NEW—Ex. Rep. 1-146: William S. Thellman, New Castle, Pa.—Granted oral argument to be held March 5, 1936, before the Broadcast Division.

NEW—Ex. Rep. 1-149: Reporter Broadcasting Co., Abilene, Tex. and Wm. O. Anoley, Jr., d/b as Guilford Broadcasting Co., Abilene, Tex.—Granted oral argument to be held March 12, 1936.

NEW—Ex. Rep. 1-153: Roberts-MacNab Co., Jamestown, N. Dak.—Granted oral argument to be held March 12, 1936.

NEW—Ex. Rep. 1-158: Chicago Broadcasting Association, Chicago, Ill.—Granted oral argument to be held March 12, 1936.

NEW—Ex. Rep. 1-159: Robert E. Cole, d/b as Washington Broadcasting Co., Washington, Pa.—Granted oral argument to be held March 19, 1936.

WADC—Ex. Rep. 1-160: Allen T. Simmons, Tallmadge, Ohio.—Granted oral argument to be held March 19, 1936.

#### ACTION ON EXAMINERS' REPORTS

NEW—Ex. Rep. No. 1-64: Eugene DeBogory, tr/as Paris Broadcasting Co., Paris, Tex.—Denied C. P. for new station to operate on **1500 kc.**, 100 watts, daytime. Examiner Walker reversed.

NEW—Centennial Broadcasting Corp., Dallas, Tex.—Denied C. P. for new station to operate on **1200 kc.**, 100 watts, unlimited time. Examiner Walker sustained.

NEW—Ex. Rep. No. 1-72: Eugene DeBogory, tr/as Brownsville Broadcasting Co., Brownsville, Tex.—Denied C. P. for new station to operate on **1370 kc.**, 100 watts, unlimited time. Examiner R. L. Walker sustained. Order effective February 18, 1936.

NEW—Denton Broadcasting Co., Eugene DeBogory, Owner, Denton, Tex.—Denied C. P. for new station to operate on **1420 kc.**, 100 watts, daytime. Examiner Walker sustained.

WQDM—Ex. Rep. 1-85: E. J. Regan and F. Arthur Bostwick, d/b as Regan & Bostwick, St. Albans, Vt.—Remanded case heard by Examiner Dalberg to the hearing docket.

NEW—Ex. Rep. No. 1-86: Wm. A. Schall, Omaha, Nebr.—Denied C. P. for new station to operate on **1500 kc.**, 100 watts, unlimited time. Examiner R. H. Hyde sustained. Order effective February 25, 1936.

NEW—Ex. Rep. No. 1-87: W. R. Cramer and G. A. Anderson, d/b as Omaha Broadcasting Co., Omaha, Nebr.—Denied C. P. for new station to operate on **1500 kc.**, 100 watts, unlimited time. Examiner R. H. Hyde sustained. Order effective February 25, 1936.

NEW—Ex. Rep. No. 1-129: F. N. Pierce, Taylor, Tex., and Tembel Broadcasting Co., Temple, Tex.—Remanded to the docket for further hearing.

NEW—Ex. Rep. No. 1-131: Mountain States Broadcasting Corp., Salt Lake City, Utah.—Dismissed with prejudice application for C. P. for new station to operate on **550 kc.**, 500 watts, unlimited time. Examiner P. W. Seward reversed.

WGST—Ex. Rep. No. 1-145: Georgia School of Technology, Atlanta, Ga.—Granted modification of license to increase night power from 500 watts to 1 KW; 1 KW day, **890 kc.**, unlimited time. Examiner P. W. Seward sustained. Order effective March 3, 1936.

KGKB—Ex. Rep. No. 1-64: East Texas Broadcasting Co., Tyler, Tex.—Granted modification of license to change hours of operation from specified to unlimited day, specified hours night from LS to 8 p. m.; **1500 kc.**, 100 watts. Examiner R. L. Walker sustained. Order effective February 18, 1936.

NEW—Eugene DeBogory and Mildred English, d/b as Dallas Broadcasting Co., Dallas, Tex.—Denied C. P. for new station to operate on **1500 kc.**, 100 watts, daytime and specified hours night—6 p. m. to 7 p. m., 8 p. m. to 12 midnight. Examiner Walker reversed.

WROK—Ex. Rep. No. 1-148: Rockford Broadcasters, Inc., Rockford, Ill.—Granted modification of license to change hours of operation from sharing with WHBL to unlimited; **1410 kc.**, 500 watts. Examiner P. W. Seward sustained. Order effective March 10, 1936.

NEW—Ex. Rep. No. 1-151: Pat Whitaker, tr/as Tampa Broadcasting Co., Tampa, Fla.—Dismissed with prejudice application for C. P. for new station to operate on **1370 kc.**, 100 watts, unlimited time. Examiner J. P. Bramhall sustained.

NEW—Ex. Rep. No. 1-152: D. B. Sutton, Miami, Fla.—Dismissed with prejudice application for C. P. for new station to operate on **1210 kc.**, 100 watts, unlimited time. Examiner Bramhall sustained.

WJJD—Ex. Rep. No. 1-166: WJJD, Inc., Chicago, Ill.—Reaffirmed grant of C. P. to move transmitter from Mooseheart to Des Plaines, Ill. Examiner R. L. Walker sustained.

#### ACTION ON CASE HEARD BY COMMISSIONER BROWN

KFBI—Docket 2777: The Farmers & Bankers Life Ins. Co., Abilene, Kans.—Granted renewal of license, **1050 kc.**, 5 KW, limited time. Commissioner Brown's recommendations reversed.

#### MISCELLANEOUS

WDRC—WDRC, Inc., Hartford, Conn.—Approved grant of modification of license to increase day power to 5 KW inasmuch as applicant has now complied with Rule 131.

WHIS—Daily Teleg. Printing Co., Bluefield, W. Va.—Reconsidered and granted application for C. P. as amended to move locally and install new equipment and new radiating equipment. Application for increased power withdrawn.

WKRC—WKRC, Inc., Cincinnati, Ohio.—Denied petition asking Commission to reconsider and grant application for modification of license so as to change equipment and increase day power from  $2\frac{1}{2}$  KW to 5 KW. Application designated for hearing October 29, 1935.

NEW—Ex. Rep. No. 1-125: National Television Corp., New York City.—Remanded to the docket for early hearing.

KVI—Puget Sound Broadcasting Co., Inc., Tacoma, Wash.—Granted authority to take depositions in support of application for C. P. (Docket 3283).

KGKO—Wichita Falls Broadcasting Co., Wichita Falls, Tex.—Protest to grant of application to move transmitter to Fort Worth, originally filed and withdrawn by Chamber of Commerce, Temple, Okla., was reinstated and that body was permitted to participate in hearing scheduled for January 27, 1936.

KIT—Carl E. Haymond, Yakima, Wash.—Denied petition asking Commission to reconsider its former action of October 16, 1935, in designating for hearing application for voluntary assignment of license to Valley Broadcasters, Inc., a newly formed Washington corporation.

WHDL—Olean Broadcasting Co., Olean, N. Y.—Denied petition asking Commission to reconsider and grant application for transfer of control of station to the Olean Times-Herald Corp. Application designated for hearing on December 3, 1935.

W6XKG—Ben S. McGlashan, Los Angeles, Calif.—Granted license to cover C. P. (exp. gen. exp.), **31600, 35600, 38600, 41000 kc.**, 100 watts.

#### APPLICATIONS DISMISSED

NEW—Broadcasters of Pennsylvania, Inc., Erie, Pa.—Dismissed at request of applicant application, heretofore set for hearing, for C. P., **1420 kc.**, 100 watts, 250 watts LS, unlimited.

NEW—Springfield Newspapers, Inc., Springfield, Ohio.—Dismissed at request of applicant application, heretofore set for hearing, for C. P. for **1120 kc.**, 250 watts, daytime.

WPTF—WPTF Radio Co., Raleigh, N. C.—Dismissed at request of applicant application, heretofore set for hearing, for special experimental authority, **680 kc.**, 5 KW, 6 to 7 a. m., EST.

NEW—John E. Fetzer, Kalamazoo, Mich.—Dismissed at request of applicant application, heretofore set for hearing, for C. P. for **1010 kc.**, 500 watts, 1 KW LS, unlimited.

The following applications, heretofore set for hearing, were dismissed for failure of applicants to answer the form letter, adopted by the Broadcast Division, requiring applicants to signify their desire to be heard within 10 days after receipt of said form letter:

WMFD—Richard Austin Dunlea, Wilmington, N. C.—Application for modification of license, **1370 kc.**, 100 watts, specified hours (6 a. m. to 9 p. m., EST).

WCBS—WCBS, Inc., Springfield, Ill.—Application for modification of license, **1420 kc.**, 100 watts, unlimited time.

NEW—Henry William Turkel, Los Angeles, Calif.—Application for C. P., **6040 kc.**, 1 KW, Emission A-3, unlimited time.

#### APPLICATIONS DENIED

NEW—Hubert H. Hall, Erie, Pa.—Denied as in cases of default for failure to file appearance, application for C. P., **1420 kc.**, 100 watts, unlimited time.

NEW—A. O. Jenkins, Jacksonville, Fla.—Denied as in cases of default for failure to file appearance, application for **1200 kc.**, 100 watts, unlimited time.

## APPLICATIONS RECEIVED

### First Zone

- NEW—Power City Broadcasting Corp., Niagara Falls, N. Y.—Construction permit for a new broadcast station to be operated on **630 kc.**, 250 watts, daytime.
- WJAR—The Outlet Co., Providence, R. I.—Modification of construction permit (B1-P-333) for changes in equipment and move transmitter, requesting extension of completion date from 2-4-36 to 6-4-36.
- WFMD—The Monocacy Broadcasting Co., Frederick, Md.—License **900** to cover construction permit (B1-P-427) for a new station.
- WOL—American Broadcasting Co., Washington, D. C.—Construction permit to make changes in equipment, change frequency from **1310 kc.** to **1230 kc.**, increase power from 100 watts to 1 KW, move transmitter from 1111 H St., N. W., Washington, D. C., to about ½ mile east Riggs and Iager Roads, Maryland, and studio site from 1111 H St., N. W., Washington, D. C., to site to be determined, Washington, D. C.
- WFBR—The Baltimore Radio Show, Inc., Baltimore, Md.—Modification of construction permit (B1-P-847) for changes in equipment and increase in power of auxiliary equipment, requesting further changes in auxiliary equipment, increase maximum rate carrier power from 500 watts to 1 KW of auxiliary equipment.
- NEW—The Brockway Co., Watertown, N. Y.—Construction permit to erect a new broadcast station to be operated on **1270 kc.**, 250 watts power, daytime. Consideration under Rule 6 (g).
- WOKO—WOKO, Inc., Albany, N. Y.—Authority to determine operating power by direct measurement of antenna power.
- W2XF—National Broadcasting Company, Inc., New York, N. Y.—Construction permit for increase in power from 5 to 12 KW and change in transmitter for visual broadcast station.
- W2XK—National Broadcasting Company, Inc., New York, N. Y.—Construction permit for an increase in power from 2.5 KW to 15 KW.
- NEW—National Broadcasting Company, Inc., New York, N. Y.—Construction permit for a new special experimental station for **177000 kc.**, 15 watts.
- NEW—National Broadcasting Company, Inc., Portable-Mobile.—License for general experimental station for **25700, 26000, 27100, 31600, 35600, 38600, 41000, 86000-400000, 401000 kc., and above**, 25 watts (to use equipment also licensed as General Experimental Broadcast Pickup Station W10XCG).
- NEW—National Broadcasting Company, Inc., Portable-Mobile.—License for general experimental station for **25700, 26000, 27100, 31600, 35600, 38600, 41000, 86000-400000, 401000 kc., and above**, 25 watts (to use equipment also licensed as General Experimental Broadcast Pickup Station W10XCH).
- NEW—National Broadcasting Company, Inc., Portable-Mobile.—License for general experimental station for **25700, 26000, 27100, 31600, 35600, 38600, 41000, 86000-400000, 401000 kc., and above**, 25 watts (to use equipment also licensed as General Experimental Broadcast Pickup Station W10XED).
- NEW—National Broadcasting Company, Inc., Portable-Mobile.—License for general experimental station for **25700, 26000, 27100, 31600, 35600, 38600, 41000, 86000-400000, 401000 kc., and above**, 25 watts (to use equipment also licensed as General Experimental Broadcast Pickup Station W10XV).
- W2XJH—General Electric Company, Portable-Mobile.—License to cover construction permit for general experimental station.
- W10XCG—National Broadcasting Company, Inc., Portable-Mobile.—Modification of license to delete all but broadcast pickup frequencies **31100, 34600, 37600, 40600 kc.** and increase power to 25 watts.
- W10XCH—National Broadcasting Company, Inc., Portable-Mobile.—Modification of license to delete all but broadcast pickup frequencies **31100, 34600, 37600, 40600 kc.** and increase power to 25 watts.
- W10XED—National Broadcasting Company, Inc., Portable-Mobile.—Modification of license to delete all but broadcast pickup frequencies **31100, 34600, 37600, 40600 kc.** and increase power to 25 watts.
- W10XV—National Broadcasting Company, Inc., Portable-Mobile.—Modification of license to delete all but broadcast pickup frequencies **31100, 34600, 37600, 40600 kc.** and increase power to 25 watts.

### Second Zone

- NEW—Saginaw Broadcasting Co., Saginaw, Mich.—Construction **1200** permit for a new broadcast station to be operated on **1200**

**ke.**, 100 watts, 250 watts day, specified hours operation. Amended: To omit previous amendment requesting equipment changes and decrease in power.

- NEW—Harry C. Lowe and Clara A. Lowe, DuBois, Pa.—Construction permit for a new broadcast station to be operated on **850 kc.**, 250 watts, daytime operation. Amended: Change frequency from **850 kc.** to **1210 kc.**, power from 250 watts to 100 watts, move transmitter from 126 W. Long Ave., DuBois, Pa., to DuBois, Pa., and studio site from site to be determined to 2 S. Brady St., DuBois, Pa.
- NEW—Harold F. Gross, Edmund C. Shields, Saginaw, Mich.—**1210** Construction permit for a new station to be operated on **1210 kc.**, 100 watts night, 250 watts day, unlimited time. Requests facilities of WJIM, if WJIM's application for **1010 kc.** is granted.
- WTEL—Foukrod Radio Engineering Co., Philadelphia, Pa.—Construction permit to make changes in equipment, directional antenna; change frequency from **1310 kc.** to **1230 kc.**; increase power from 100 watts to 250 watts night, 500 watts day; and change hours of operation from share-WHAT to unlimited time. Amended: To change transmitter site from H Street and Wyoming Avenue, Philadelphia, Pa., to Bustleton Avenue, north of Cottman Street, Castor Highlands, Pa.
- NEW—Radio Air Service Corp., Portable-Mobile.—Construction permit for general experimental station on **31100, 34600, 37600, 40600 kc.**, 10 watts.

### Third Zone

- KPRC—Houston Printing Co., Houston, Tex.—License to cover **920** construction permit (B3-P-765) to make equipment changes, increase power, move transmitter.
- NEW—The Metropolis Co., Jacksonville, Fla.—Construction permit for new broadcast station to be operated on **1200 kc.**, 100 watts, unlimited time. Amended: Change frequency from **1200 to 1310 kc.**
- WMFR—Hart & Nelson (J. A. Hart and Wayne M. Nelson), High **1200** Point, N. C.—License to cover construction permit (B3-P-165) as modified for a new station on **1200 kc.**, 100 watts power, daytime operation.
- KMLB—Liner's Broadcasting Station, Inc., Monroe, La.—License **1200** to cover construction permit (B3-P-695) to make equipment changes.
- KIUN—Jack W. Hawkins and Barney H. Hubbs, Pecos, Tex.—**1310** Modification of license to change frequency from **1420 kc.** to **1310 kc.**
- WPFB—Forrest Broadcasting Co., Inc., Hattiesburg, Miss.—License **1370** to cover construction permit (B3-P-732) for changes in equipment, hours of operation and move of transmitter.

### Fourth Zone

- WIL—Missouri Broadcasting Corp., St. Louis, Mo.—License to **1200** cover construction permit (B4-P-869) for changes in equipment.
- KGFV—Central Nebraska Broadcasting Corp., Kearney, Nebr.—**1310** Construction permit to install new equipment and increase power from 100 watts to 100 watts, 250 watts day. Amended: Change equipment (antenna), and move transmitter and studio from 919 W. 27th St. to 13th and Railroad, Kearney, Nebr.
- NEW—Charles E. Wilkinson, Mason City, Iowa.—Construction **1370** permit for a new broadcast station to be operated on **1370 kc.**, 100 watts, unlimited time. Amended: Change name from C. E. Wilkinson to Charles E. Wilkinson, and change transmitter site from center of business district, Mason City, Iowa, to site to be determined, Mason City, Iowa.

### Fifth Zone

- KHQ—Louis Wasmer, Inc., Spokane, Wash.—Construction permit **590** to increase power from 1 KW, 2 KW day, to 5 KW, and move transmitter from Sprague Ave. and Post St., Spokane, Wash., to site to be determined. Amended to make equipment changes.
- NEW—Christina M. Jacobson, d/b as The Valley Electric Co., San **1200** Luis Obispo, Calif.—Construction permit for a new broadcast station to be operated on **1090 kc.**, 250 watts, daytime. Amended: Change frequency from **1090 kc.** to **1200 kc.**
- NEW—Ben S. McGlashan, San Diego, Calif.—Construction permit **1210** for a new station to be operated on **1210 kc.**, 100 watts, daytime.
- NEW—Howard G. DeLong and Maurice E. Kennedy, Los Angeles, Calif.—Construction permit for a new general experimental station on **31600, 35600, 38600, 41000 kc.**, 100 watts.



# The National Association of Broadcasters

NATIONAL PRESS BUILDING \* \* \* \* \* WASHINGTON, D. C.  
JAMES W. BALDWIN, Managing Director

## NAB REPORTS

Vol. 4 - - No. 5  
JANUARY 23, 1936

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### ASCAP RESTRICTIONS ON WARNER MUSIC

Several stations have raised the question whether a restricted number on the ASCAP list which happens to be published by one of the Warner Brothers publishers is restricted to the licensee of MPHC.

The MPHC in a telegram dated January 20th advises as follows:

"All stations licensed by us may perform all numbers published by us appearing on ASCAP restricted list except numbers from Shubert plays My Maryland, Student Prince, and Land of Smiles and Kern plays Cat and the Fiddle, Music in the Air, and Roberta which we are withdrawing from our repertory pending determination legal questions."

### SECURITIES ACT REGISTRATIONS

The following companies have filed registration statements with the Securities & Exchange Commission under the Securities Act:

Thompson Products, Inc., Cleveland, Ohio. (2-1863, Form A-2)  
Imperial China Company, Inc., Steubenville, Ohio (2-1864, Form A-1)

Corporate Leaders Securities Company, Wilmington, Del. (2-1865, Form A-1)

The New York Woman, Inc., New York City (2-1866, Form A-1)

Arthur J. Moss et al., New York City (2-1867, Form F-1)

London Deep Mines Co., Leadville, Colorado (2-1868, Form A-1)

Belle of Anderson County Distilling Co., Lexington, Ky. (2-1869, Form A-1)

### RADIO COMMITTEE TO MEET

The regular annual meeting of the American Section, International Committee on Radio, will be held at the University Club, this city, on January 28. Senator Wallace H. White, Jr., of Maine, is president of the organization.

### TALMADGE APPLICATION TO FCC

Regular application has been made to the Federal Communications Commission by Morris A. Bealle, of Plain Talk, a magazine published in this city, on behalf of Governor Talmadge.

The application asks for permission to send by telephone wire from Macon, Ga., to Station XEAW, the Dr. John R. Brinkley station, at Reynosa, State of Tamaulipas, Mexico, for transmission, proceedings of the political convention to be held on January 29. The station operates on 960 kilocycles with 100,000 watts power.

### FCC APPROPRIATION PASSES HOUSE

The House of Representatives has passed the appropriation bill carrying money for use of the Federal Communications Commission for the next fiscal year beginning July 1.

The total appropriation is \$1,474,000 of which \$24,000 is for printing and binding and the remainder for other expenses including salaries. Provision is made in the bill that not more than \$1,030,000 shall be spent in the District of Columbia.

### POWER INCREASE RECOMMENDED FOR TWO STATIONS

Broadcasting Station WFBM, Indianapolis, Ind., applied to the Federal Communications Commission to increase its daytime power from 1,000 to 5,000 watts and Station WHBU, Anderson, Ind., asked for a daytime power increase from 100 to 250 watts.

Examiner Ralph L. Walker, in Report No. I-183, recommended that both of the applications be granted. The Examiner states that "it appears that a need for increased daytime service exists in the area involved; that the granting of the application will not cause objectionable interference to stations other than the applicants; that objectionable interference between the applicant stations now exists; and that while the objectionable interference area of Station WHBU will be increased, the net result will be to increase the satisfactory service area of each station, including therein a substantially greater population."

### RECOMMENDS ADDITIONAL TIME FOR KADA

Application was filed with the Federal Communications Commission by broadcasting station KADA, Ada, Okla., asking for unlimited time on the air. The station, which operates on a frequency of 1200 kilocycles, has 100 watts power and now uses daytime hours only.

Examiner P. W. Seward, in Report No. I-182, recommends that the additional time be granted. The Examiner states that a need does exist for additional nighttime service in the area proposed to be served and that "the interests of other licensed stations will not be adversely affected by reason of interference with the possible exception of Station WBBZ and this can only be definitely determined by experiments proposed by taking of field tests."

### POWER INCREASE RECOMMENDED FOR WJBC

Broadcasting Station WJBC, Bloomington, Ill., applied to the Federal Communications Commission to increase its daytime power from 100 to 250 watts. The station operates on a frequency of 1200 kilocycles, sharing time with WJBL.

Examiner John P. Bramhall, in Report No. I-181, recommended that the application be granted. He found that there is need for additional daytime service in the area to be served and that "the interests of no other station will be adversely affected by reason of interference." The Examiner also states that the applicant will erect and maintain an antenna in compliance with the engineering standards of the Commission."

### FCC DENIES ORAL ARGUMENT

At a general session the Federal Communications Commission overruled the motion of Voice of Brooklyn, Inc. (WLTH), and United States Broadcasting Corporation (WARD) in the matter of their applications for renewal of licenses (Dockets Nos. 1967 and 2039) which the Broadcast Division denied effective January 22, 1936, requesting (1) that an order be entered permitting them to appear by counsel before the Commission en banc

to present oral argument in support of their several petitions which they state will be filed shortly for rehearing of these cases under Section 405 of the Communications Act of 1934, and (2) that, pending final decision of the Commission on such several petitions, the effective date of the order of the Broadcast Division in the premises be postponed from time to time sufficiently to permit full consideration by the Commission of the matters involved prior to the operation of such order.

Commissioner Stewart, presented the following statement in connection therewith:

"I adhere to the views expressed in my opinion of January 8, 1936, which was issued in connection with another applicant in these so-called 'Brooklyn cases.'"

### GOOD ENGINEERING PRACTICE

The Federal Communications Commission has issued the following interpretations of "good engineering practice" as used in the Commission's rule 132 to broadcast licensees. Rule 132 is quoted herewith for ready reference:

"(a) The transmitter proper and associated transmitting equipment of each broadcast station shall be designed, constructed and operated in accordance with good engineering practice in all phases not otherwise specifically included in these regulations.

"(b) The transmitter shall be wired and shielded in accordance with good engineering practice and shall be provided with safety features in accordance with the specifications of Article 37 of the current National Electrical Code as approved by the American Standards Association.

"(c) The station equipment shall be so operated, tuned, and adjusted that emissions are not radiated outside the authorized band which cause or are capable of causing interference to the communications of other stations. The spurious emissions, including radio frequency harmonics and audio frequency harmonics, shall be maintained at as low a level as required by good engineering practice. The program distortion, audio frequency range, carrier hum, noise level, and other essential phases of the operation which control the external effects shall at all times conform to the requirements of good engineering practice.

"(d) Whenever, in this rule, the term 'good engineering practice' is used, the specifications deemed necessary to meet the requirements of good engineering practice will be published from time to time.

"(e) This rule shall be effective upon its adoption provided, however, that existing broadcast stations shall be allowed one year in which to meet the requirements herein."

The pertinent sections of Article 37 of the National Electrical Code read as follows:

j. The transmitter shall be enclosed in a metal frame or grill or separated from the operating space by a barrier or other equivalent means, all metallic parts of which are effectually connected to ground.

k. All external metallic handles and controls accessible to the operating personnel shall be effectually grounded. No circuit in excess of 150 volts should have any parts exposed to direct contact. A complete dead front type of switchboard is preferred.

l. All access doors shall be provided with interlocks which will disconnect all voltages in excess of 750 volts when any access door is opened.

Referring to paragraph (a) of the above rule, at present good engineering practice shall be interpreted as follows:

In general the transmitter must be constructed either on racks and panels or in totally enclosed frames protected as required by the sections of Article 37 of the National Electrical Code as quoted above. The final stages of high power transmitters may be assembled in open frames providing the equipment is enclosed by a protective fence. Means must be provided for making all tuning adjustments, requiring voltages in excess of 750 volts to be applied to the circuit, from the front panels with all access doors closed. Proper bleeder resistors should be installed across all condenser banks to remove any charge which may remain after the high voltage circuit is opened. All meters which have more than 1000 volts potential to ground on the movement shall be protected by a cage or cover in addition to regular case even if bakelite.

All plate supply and other high voltage equipment, including transformers, filters, rectifiers, and motor generators, must be protected so as to prevent injury to operating personnel. This protection should include commutator guards on all high voltage rotating machinery.

The transmitter panels or units shall be wired in accordance with standard switchboard practice, either with insulated leads properly cabled and supported or with rigid bus bar properly insulated and protected. Wiring between units of the transmitter with the exception of circuits carrying R. F. energy shall be installed in conduits or approved fibre or metal raceways to protect them from mechanical injury. Circuits carrying low-level R. F. between units shall be of either concentric tube, two-wire balanced lines or properly shielded to prevent the pickup of modulated R. F. energy from the output circuits.

Each stage (including the oscillator) preceding the modulated stage shall be properly shielded and filtered to prevent feedback from any circuit following the modulated stage. An exception to this requirement will be made in the case of high-level modulated transmitters of approved manufacture which have been properly engineered to prevent reaction.

The crystal chamber, together with the conductor to the oscillator circuit, must be totally shielded. The crystal chamber must be so constructed, insulated and temperature-controlled that the maximum temperature variation at the crystal shall not be greater than 0.1 degrees Centigrade. An exception would be made in the case of transmitters employing so-called "AT" or zero coefficient crystals wherein the maximum allowable temperature variation at the crystal is 1.0 degree Centigrade. A thermometer must be installed in such a manner that the temperature at the crystal can be accurately measured and the temperature logged each half hour in accordance with Rule 142. It is preferable that the tank circuit of the oscillator tube be installed in the temperature-controlled chamber. In case an excessive shift in frequency is found during warmup periods the crystal oscillator must be operated continuously. The Commission will take special precautions to ascertain that composite crystal chambers and oscillator units meet the requirements of "good engineering practice" before the station is considered as having satisfactorily complied with Rule 132.

The radio frequency energy operating the monitor must be obtained from some stage in the transmitter prior to the modulated stage and the monitor circuits must be such that the monitor can be operated continuously without heterodyning the carrier. In addition, the monitor and the radio frequency line from the transmitter must be thoroughly shielded to prevent regeneration in the transmitter.

The transmitter power supply shall be so constructed that the maximum plate voltage regulation between no modulation and 100% modulation shall not exceed 5%. Adequate provision shall also be made for varying the transmitter power output between sufficient limits to compensate for excessive variations in line voltage, or other factors which may affect the power output.

A complete set of spare tubes for the transmitter and frequency monitor should be on hand at all times, the spares to include thyratron tubes, when used.

No requests for new broadcasting facilities will be granted unless the equipment proposed to be installed conforms with the definitions of "good engineering practice" as outlined herein.

It is the obligation of the licensee of each existing station to take the necessary steps to assure that the transmitting equipment complies with Rule 132 and these definitions of "good engineering practice." Any changes in the transmitter for which a construction permit is necessary by other rules, application therefor must be made in the regular manner.

There is sufficient time before November 12, 1936, for all licensees to file the necessary applications and install the required equipment.

Each station will be visited in the near future by an inspector of the Field Section of the Commission's Engineering Department and a detailed inspection will be made. Any points not clear or on which a ruling is desired should be discussed with him. However, this does not relieve the licensee's responsibility to proceed to comply with the requirements of this rule.

The inspector will again visit the station on or prior to November 12, 1936, to determine if the equipment complies in all details.

The purpose of this rule is to improve broadcast reception and to protect the lives of the station operators. Many frequency deviations are caused by poor equipment. The mutual interference caused by such deviations will thus be reduced as the deviations are reduced. The continuity of service and fidelity of transmission will be improved. This rule is for the good of the licensees as well as the listeners and the cooperation of all licensees is requested in assisting the Commission in the administration thereof.

The Commission will, from time to time, further define "good engineering practice" as the state of the art progresses and as the needs for the improvement in technical broadcasting demand.

COURT DECISION IN UPROAR COMPANY  
APPEAL

The United States Circuit Court of Appeals for the First Circuit rendered a decision in the case of the Uproar Company against the National Broadcasting Company.

This case was an appeal from the District Court of the United States for the District of Massachusetts. Judges Morton and Morris wrote the majority decision, while a dissenting decision was rendered by Judge McLellan. The full decision is as follows:

UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE FIRST CIRCUIT.

October Term, 1935.

No. 3050.

UPROAR COMPANY,  
Plaintiff, Appellant,

v.

NATIONAL BROADCASTING COMPANY ET AL.,  
Defendants, Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE  
DISTRICT OF MASSACHUSETTS

BEFORE MORTON, MORRIS AND McLELLAN, JJ.

Opinion of the Court.

January 7, 1936.

MORTON, J. This is an action at law to recover damages for an alleged conspiracy between the defendants, (1) to interfere maliciously with contracts made by the plaintiff with certain broadcasting concerns to advertise its pamphlets and books, (2) to prevent the printing and distribution of such pamphlets and books, and (3) to prevent the advertising of them over the radio. The alleged purpose of the conspiracy was to prevent the plaintiff from carrying out arrangements made between it, Ed Wynn and Keenan Products, Inc., a corporation owning certain rights transferred to it by Wynn, for the advertising and selling of certain literary productions of Wynn. There is a second count alleging a conspiracy under the Federal anti trust laws to interfere with interstate communications.

The defendants pleaded equitable defenses. That of the Texas Co. alleged in substance that the plaintiff had no such property rights in the productions of Wynn incorporated in the pamphlets and books as enabled it to maintain the action, and that its attempted advertising and sale of them was in violation of the defendants' rights. The prayer was for an injunction against any attempt on the part of the plaintiff to publish, advertise, or sell the literary productions in question. The answer of the National Broadcasting Co. further alleged that the pamphlets and books published by the plaintiff made use of the name "Graham McNamee" in which the Broadcasting Company had exclusive rights. It prayed that such use might be enjoined. In the court below the equitable defenses were sustained and the plaintiff has appealed.

The first question is whether any ground of equitable defense is pleaded, *i. e.*, whether the defenses stated ought not to have been made in the action at law. Inasmuch as the plaintiff's conduct is alleged in the answers to have been illegal and tortious and an interference with the defendants' property rights, and as it is of such character as, by the settled practice in equity, will if illegal be enjoined, and as injunctions were prayed for, *i. e.*, an affirmative relief not obtainable in the action at law, we think that the equitable defenses were properly pleaded and were properly heard in advance of the trial of the action at law. There is no question but what they related to the subject matter of the plaintiff's action; indeed they go to the root of it. It is the practice in cases in which equitable defenses are properly pleaded in an action at law for the trial court first to determine the equitable issues and "Once having assumed jurisdiction, it (the equity court) will determine all rights, legal or equitable, which are neces-

sary to settle the equitable issues." Wilson, J., *People of Porto Rico v. Livingston*, 47 Fed. (2d) 712 at 721 (C. C. A. 1). See too 28 U. S. C. A. Sec. 398; Equity Rule 23; and *Liberty Oil Co. v. Condon National Bank*, 260 U. S. 235.

We come therefore to the merits of the controversy between the parties. The basic facts are not in dispute. The Texas Co. is a large dealer in gasoline and related products. It made contracts with Ed Wynn a well-known actor and comedian to give a series of radio broadcasts in advertisement of its goods. The broadcasts were to be given weekly, and under the first contract Wynn was to be paid \$5,000 for each one if he furnished the program for it, \$3,500 if he did not. By other contracts the Texas Co. arranged with the National Broadcasting Co. for the use of its system for these broadcasts and for the services of Graham McNamee, a well-known speaker over the radio who was under contract with the Broadcasting Company whereby it was solely entitled to his services in broadcasting and to all public uses of his name. The arrangements between the various parties involved many details which were covered by the agreements, but which it is unnecessary to go into. The original contract between Wynn and the Texas Co. was for thirteen performances; but by additional contracts and options which were exercised, over fifty additional performances were arranged for on substantially the same terms, except that the later contracts did not contain the provision for reduction in compensation if Wynn did not furnish the programs. For the entire series Wynn received if he furnished the programs over \$350,000. The script which Wynn prepared required a second speaker. McNamee took this role. The total expense to the Texas Co. for each performance appears to have been about \$13,000.

The performances were highly successful; Wynn's jokes and witticisms made a great hit with the public. He or his associates apparently conceived the idea that it would be profitable to realize on this good will by publishing his programs in pamphlet form immediately after they had been delivered over the radio. The plaintiff corporation under arrangements with Wynn, and with Keenan Products, Inc., and one Leavitt who were interested in the copyrights or other phases of the matter, undertook to do this by a weekly pamphlet entitled "Uproar" which was sold for 10 cents per copy. The Uproar Co. attempted to advertise this pamphlet over the radio shortly after the conclusion of the performance for the Texas Co., which was contained in the pamphlet, had been given.

The Texas Co. objected to this on the ground that it owned the subject matter of Wynn's broadcast for it and on the further ground that the publication of the pamphlets would injure the advertising value of the broadcasts. The National Broadcasting Co. objected on the ground that the pamphlets used Graham McNamee's name, under the abbreviation "Graham," in violation of its rights. There is no doubt that the word "Graham" was used in the pamphlets, nor that it was there intended to refer to Graham McNamee and was so understood by the public. As has been said, McNamee took part in the broadcasts.

The first question on the merits is whether the Texas Co. acquired exclusive rights in the personal script prepared by Wynn for use in the broadcasts or whether that right remained in him. The District Judge was of opinion that these rights belonged to the Texas Co. As was said in a somewhat similar case, "It is a question of fact to be derived from all the circumstances of the case what is the nature of the contract entered into between the parties." Halsbury, L. C., in *Lawrence & Bullen v. Afalo*, L. R. 1904 App. Case 17, at 20.

The contracts, which are all in writing, make no explicit provision on this point. Under them the Texas Co. "hereby agrees to and hereby does employ the party of the second part (Wynn) as the principal featured star of a radio broadcast to be given for consecutive weeks once a week for one-half hour beginning (date named) at a salary of (\$5,000) per week for each and every week," etc. Wynn's obligation was "to render service as an artist," and to supply the necessary personal scripts for broadcasting over the radio, etc. . . . "He agrees to render such service to the best of his ability,"—and in the later contracts,—"in the manner as heretofore rendered." The first contract further provided, "6. It shall be the right of election of the party of the second part (Wynn) however to determine whether or not he will perform in full the services of supplying the program and arranging the same, subject to the supervision and approval of the party of the first part, which is a part of the duties the party of second part (Wynn) agrees to perform during the first thirteen weeks for same." . . . "If he shall elect not to perform such services of supplying the program as herein recited, because of the fact that he shall be actively engaged in playing upon the speaking stage, then he shall receive the sum of \$3,500 per week for each and every week that he shall broadcast in the optional period of said fifty-two

weeks herein mentioned, but in that event he shall be known as the star and high-spot of the said broadcast," etc.

The District Judge, applying the contracts to the circumstances surrounding them, held that they in effect made Wynn an employee of the Texaco Co. for advertising purposes and that the literary programs or script which he prepared for that purpose became its property. He regarded the situation as analogous to one in which an author had been employed to prepare manuscripts for publication; or to one in which an inventor had been employed under salary to make a specified invention. See *Lawrence v. Aflalo*, *supra*; *Dielman v. White*, 102 Fed. 892; *Standard Parts Co. v. Peck*, 264 U. S. 52. It does not seem to us, however, that Wynn's services were of that character. Wynn was not employed to prepare material, but to give a show. The proposed show involved two elements, Wynn's personality, skill and reputation as an actor and comedian, and the material which he used. It was to be entirely a spoken affair. The essential thing about it was that it should attract people to listen in, so that they would hear the Texas Company's advertising which was given in connection with it. The script was prepared for that purpose. There is nothing in the contracts to indicate that the Texas Co. regarded the scripts as of value to it after the performance was over or desired to obtain the literary property in them. That property originally belonged to Wynn, and he did not lose it unless the contract carried an implied assignment of it to the Texas Co.\* We do not think that any such assignment is implied from the language of the contracts or the relations of the parties. The literary property in the scripts prepared by Wynn remained in him. We do not overlook the fact that Wynn was paid \$1,500 more if he furnished the scripts. The Texas Co. apparently assumed that script obtained elsewhere would cost about that amount. The inferences from this fact seem to us too speculative to be controlling. It is impossible to say who would have furnished the script if Wynn did not, nor on what terms and conditions with respect to the title to it.

As the literary property in the scripts belonged to Wynn he had the general right to publish them. But this right was not unrestricted. As the scripts were prepared under contracts with the Texas Company for that company's advertising and Wynn had been paid for that use of them, plainly he was not at liberty to make any other use of them which would in any way weaken or interfere with that for which they had, so to speak, been sold. The principle is well established, "that in every contract there is an implied covenant that neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract, which means that in every contract there exists an implied covenant of good faith and fair dealing." Hubbs, J., *Kirke LaShelle Co. v. Paul Armstrong*, 263 N. Y. 79. See too *Manners v. Moroco*, 252 U. S. 317.

The final question is whether the publication and sale of the plaintiff's pamphlets "Uproar" did in fact have that effect. The District Judge found, "The plaintiff can have no greater right than Wynn or McNamee. Both defendants complain that the plaintiff, in publishing 'Uproars', has appropriated and will appropriate the good will which the defendants have, at large expense, succeeded in creating and to which the plaintiff has contributed nothing. In other words, that the plaintiff, for its own profit, is seeking to take an unfair advantage of the popularity of widely advertised programs, the proprietary interests in which belong exclusively to the defendants under their respective contracts with Wynn and McNamee.

"This misappropriation and use by the plaintiff tends to impair the value of the exclusive rights which the defendants have acquired by cheapening the whole advertising program. There was evidence tending to show that those who were in the radio audience when the program was on were led to believe that the plaintiff's publication was put out by the defendants, or one of them.

"The defendants say, with justice as I see the matter, that such a use would 'detract from the unique quality and artistically complete effect of the defendant's advertising. It would tend to cause confusion in the minds of the public with respect to the relationship between the plaintiff and the defendant, and to create some degree of impression that the defendant was responsible for what the plaintiff might do.' The cogency of the argument lies in the fact that the defendants have no control by way of censorship, or otherwise, of the matter that may appear in 'Uproars'. I have no hesitation in finding and ruling that the plaintiff is mak-

\* In England by statute the presumption is the other way in certain cases, *i. e.*, that the property passes unless expressly reserved. See *Lawrence & Bullen v. Aflalo*, *supra*; *Sweet v. Benning*, 16 C. B. 459.

ing a commercial use, wholly unauthorized, of the script and of the name 'Graham'."

It will be observed that the District Judge's findings dealt not only with what he regarded as an unpermitted misappropriation of the scripts but also with the effect of the plaintiff's use of them on the Texas Company's advertising. While the evidence on this point is not very full, and perhaps not very satisfactory, we think it supports the District Judge's findings. From an inspection of the "Uproar" pamphlets, which were shown to us, we think it might well be found that they were cheap and flashy, and if attributed to the Texas Co.,—as apparently they were to some extent at least,—were calculated to injure the effect of its advertising.

It is clear that the plaintiff had no right to use Graham McNamee's name in its publication, either in full or under the abbreviation "Graham."

It follows that the plaintiff cannot maintain the present action and that the first clause in the decree enjoining it from doing so was right. The second clause in the decree enjoining the plaintiff from publishing, etc., should be modified by adding at the end thereof the following: "in any way which injures or interferes with the benefits which the Texas Co. might derive from its advertising under its contracts with Wynn." In all other respects the decree is affirmed, with costs to the appellees.

*The decree of the District Court, as modified by this opinion, is affirmed with costs to the appellees.*

McLELLAN, J. (dissenting): I am in accord with the majority view that notwithstanding his contract with the Texas Company, the literary property in the scripts belonged to Wynn, that he had the right to publish them, and that this right was not unrestricted.

While recognizing the principle that a contractor impliedly promises that he will not use retained property in such a way as to defeat the purposes of the contract, I doubt whether in any event we should go as far as the majority opinion suggests in the proposed injunction. Be this as it may, we all agree in substance that the plaintiff, by virtue of mesne assignments from Wynn, has a restricted right to publish the scripts, and I cannot see why, on this record, the plaintiff should be enjoined from prosecuting its action for an alleged unlawful interference with that right. I should suppose that if the defendants made out a complete defense they would be entitled to a judgment,—not an injunction. But they are entitled to neither. The majority concedes such ownership in the plaintiff, that I think it cannot be ruled as a matter of law at this stage of the proceedings that the plaintiff has no cause of action for interference with its ownership and restricted right to publish the Wynn productions. And this entirely apart from the jurisdictional question as to which I am not in accord with the majority of the court.

The non-ownership of the plaintiff alleged in the equitable answer is for reasons already stated out of the case. The *restricted ownership* set up in what the defendants call an equitable defense is a matter which would have been in issue in the law action if no such thing as an equitable defense ever had been provided. May a defendant, by raising a legal issue, by calling it equitable, and by asking for an injunction of the type described in the majority opinion, deprive the plaintiff of a trial at law? In spite of judicial utterances to the effect that the test of the right to a trial in equity on a plea to an action at law is whether the averments of the plea are such as to constitute a proper basis for a bill in equity, I think this question should be answered in the negative. For this additional reason there should be no injunction against the prosecution of the action at law.

I doubt also whether the appearance of the name Graham as a participant in the dialogue constituting the script should be regarded, under the circumstances here presented, as preventing the plaintiff from publishing the Wynn compositions. At any rate, the plaintiff had the right to publish and sell the script by deleting the name in which the National Broadcasting Company had certain rights by contract with Graham McNamee.

In conclusion, I think the court was without jurisdiction in equity to hear the case over the plaintiff's protest, and that no injunction in any form should issue.

## FEDERAL TRADE COMMISSION ACTION

### Complaints

The Federal Trade Commission has alleged unfair competition in complaints issued against the following companies. The respondents will be given an opportunity for hearing to show cause why cease and desist orders should not be issued against them.

**No. 2684.** Misrepresentation in advertising **K-W Motor Graphite** is alleged in a complaint issued against the **K-W Graphite Corporation, Kansas City, Mo.**, engaged in the compounding of a lubricating oil containing a mixture of colloidal graphite, which it sells and distributes in interstate commerce.

The respondent company, the complaint charges, advertises that use of its product increases motor life and efficiency 40 per cent; reduces friction as much as 25 to 40 per cent; reduces consumption of gasoline 8 to 12 per cent, and that only one oil change in 3000 miles is necessary when K-W Motor Graphite is used.

**No. 2685.** Unfair competition in the sale of "Korgena," a tablet represented as a remedy for obesity and overweight, is alleged in a complaint issued against **Korgena Medicine Co.**, 103-7 West Church St., **Elmira, N. Y.**, and **Jerome Gladke**, doing business as **Korgena Medicine Co.**

The respondents allegedly advertise in newspapers, by radio and in other ways, that Korgena is a cure for body fat or excess weight, that it has the approval of the medical profession in general, and that it reduces weight from 7 to 10 pounds in two weeks, whereas, according to the complaint, such statements are untrue, and tend to deceive and mislead the purchasing public, to the injury of competitors who do not adopt such practices.

**No. 2686.** Use of sales methods involving a game of chance are alleged in a complaint issued against **M. H. Sobel, Inc.**, **Chicago** candy manufacturer. The respondent is charged with selling candy by a method which offers purchasers a chance of procuring larger pieces of candy or other articles of merchandise at prizes.

Such practices have long been deemed contrary to public policy, according to the complaint, and their use by the respondent has a tendency to injure competition.

### Stipulations

The Commission has announced the following cease and desist orders:

**No. 01016.** False and misleading advertising of a correspondence course in music will be discontinued by **H. H. Slingerland, of Chicago**, trading as **Chicago School of Music**, under a stipulation.

Advertising a correspondence course of 24 lessons at a purported reduced rate of \$8.50, the respondent is said to have offered to teach prospective students how to play the instrument of their choice, offering an instrument free. He also advertised that Professor Albert H. MacConnell, head of the school of music faculty, would give his personal guidance and advice to those enrolled for the course, when this was not the fact.

**Nos. 01017-01018.** In separate stipulations, two newspapers, the **Des Moines Register and Tribune**, of **Des Moines, Ia.**, and the **Chicago Evening American**, **Chicago**, which published the "Malt-O-Meal" advertising, agree to observe the provisions of the stipulation signed by the **Campbell Cereal Company**.

**No. 01022.** In a stipulation entered into by the **Guide Publishing Co., Inc.**, 719 E. Olney Road, **Norfolk, Va.**, publisher of the **Norfolk Journal and Guide**, agrees to abide by the terms of a stipulation to discontinue certain misleading advertisements signed by **Alden H. Weed, Jr.**, operating as **Professor Abdullah** and **Swami Abdullah**, **New York City**. The **Guide Publishing Company** had accepted **Weed's** advertisements.

**Nos. 01023-01024.** Similar stipulations were signed by the **Pittsburgh Courier Publishing Co., Inc.**, Center Avenue at **Francis Street**, **Pittsburgh**, publisher of the **Pittsburgh Courier**, and the **Afro-American Company**, 628 North Eutaw Street, **Baltimore**, publisher of the **Afro-American**, which also had published advertisements for **Weed**.

**No. 01025.** **Popular Publications, Inc.**, 205 East 42nd St., **New York City**, publisher of **Adventure Magazine**, agrees to abide by the terms of a stipulation previously signed by **Flying Intelligence Bureau, Los Angeles, Calif.**, in which stipulation **Flying Intelligence Bureau** agreed to discontinue false and misleading advertising.

**No. 01028.** **The Bulletin Company**, City Hall Square, **Philadelphia**, publisher of the **Philadelphia Evening Bulletin**, published advertisements for **Vikonite Crushed Herbs** and **Nu-Vitolyn**, sold by **Vikonite Tonic Corporation**, of **Brooklyn, N. Y.** **The Bulletin Company** entered into a stipulation with the **Federal Trade Commission** to abide by the provisions of a stipulation signed by the **Vikonite Tonic Corporation**, which agreed to cease the use of false and misleading advertising.

**No. 01034.** **The Campbell Cereal Co.**, of **Northfield, Minn.**, has entered into a stipulation to cease and desist from the use of false and misleading advertising in connection with the sale of "Malt-O-Meal," a cereal.

The respondent agrees to discontinue representations such as

that among athletes in leading high schools and colleges, "Malt-O-Meal" is the favorite hot cereal. It further agrees not to advertise that the cereal possesses special qualities for giving energy or health, or that it will build and renew muscles, unless the advertising matter specifically states that the cereal aids as a health and muscle builder.

**No. 01035.** **The Lone Wolf Manufacturing Co., Inc.**, of **Dallas, Tex.**, engaged in selling **Lone Wolf Hair Tonic**, has entered into a stipulation to discontinue unfair trade practices in interstate commerce.

Specifically, the respondent agrees to cease representing in its advertising that its product is a competent remedy for scalp infections, or that it will eradicate dandruff or stop falling hair, when such is not the fact. Such assertions, according to the stipulation, have a tendency to mislead prospective purchasers, to the injury of competitors.

**No. 01036.** **Plough, Inc.**, **Memphis, Tenn.**, selling **Penetro Nose and Throat Drops** and **Penetro Topical Dressing**, agrees to cease representing that either of its products is an effective remedy for colds or will prevent colds; that **Penetro Nose and Throat Drops** are a competent treatment for hay fever, unless confined to the relief of the symptoms of hay fever; or, directly or by reasonable inference, that **Penetro Topical Dressing** will prevent influenza or pneumonia.

**No. 01037.** **I. Dabney Smith, Huntington, W. Va.**, engaged in selling personal advice by mail, purportedly based upon astrology and numerology, agrees to desist from use of advertising matter, which, according to the stipulation, the Commission has reason to believe is exaggerated and incorrect. Under the stipulation, the respondent is required to discontinue representing that his advice is helpful in the solution of one's social, domestic and business affairs, or that he is a numerologist or a psychoanalyst.

**No. 01038.** **Vikonite Tonic Corporation, Brooklyn, N. Y.**, engaged in the sale of **Vikonite Crushed Herbs**, offered as a treatment for indigestion, and **Nu-Vitolyn**, an alleged concentrated food, agrees to cease attributing to these products certain properties which, according to medical opinion furnished the Commission, they do not possess. The respondent stipulates it will not represent that **Vikonite Crushed Herbs** are helpful to the entire digestive tract, or that **Nu-Vitolyn** is a great European discovery which will wipe out aggravating cases of neurasthenia or nervous breakdown. The respondent, under terms of the stipulation, will cease and desist from use of the word "Vitolyn," independently or as part of a trade name, unless its product contains vitamins in quantities sufficient to afford therapeutic value.

**No. 01039.** **National Toilet Co., Paris, Tenn.**, selling **Nadinola Face Powder** and **Nadinola Bleaching Cream**, agrees to cease representing that its face powder is wind-proof or moisture-proof, that it will keep the skin young longer and prevent wrinkles, and that it is compounded from ingredients found only in the finest French powders. Statements that the bleaching cream will permanently remove blemishes from the face, and that the directions for its use are based on a famous doctor's advice, also will be discontinued according to the stipulation.

**No. 01040.** **Joseph N. Cirone, Brooklyn, N. Y.**, operating as **Rajah Abdullah**, engaged in the sale of "The Books of Forbidden Knowledge," secret Hindu art, charms and luck pieces, agrees to desist from advertising that use of his product will enable one to win at anything, to obtain all desired things, or to discern all secrets and invisible things. The respondent further stipulates he will not represent that his products are guaranteed or that purchase money is refunded to dissatisfied customers.

**No. 01041.** **Alden H. Weed, Jr., New York City**, operating as **Professor Abdullah** and **Swami Abdullah**, and engaged in the sale of an **Astronumerology Chart** and **Dream Dope**, agrees to cease representations that use of his chart enables one to pick lucky numbers and to get on the winning side of life, and that his "Dream Dope" enables one to interpret dreams. It is further stipulated that the respondent will not represent that he has delved into ancient mystic lore and located a system very much in favor thousands of years ago.

**No. 01042.** **Noxacid Laboratories, Inc., Newark, N. J.**, selling **Noxacid**, agrees to discontinue advertising that its product is a competent treatment or an effective remedy for any stomach trouble, unless confined to the relief of ailments due to gastric hyperacidity; that the product is a new scientific discovery, or that it is effective in the treatment of any condition where surgery ordinarily is required.

**No. 01043.** **Samuel A. Saudberg and Max L. Kaufman, Chicago**, doing business under the firm name **Derna Laboratory Co.**, and engaged in selling **Skurolin**, a medicated salve, have entered

into a stipulation to cease and desist from representing that their product is used by physicians to relieve skin troubles, or that it is the best known remedy for all skin eruptions. The respondents further agree to abandon use of the term "Laboratory" in their firm name unless and until they actually operate a laboratory in connection with the manufacture of their products.

**Nos. 01045-01046-01047-01048-01049-01050-01065-01066-01067-01071.** Ten broadcasting companies have entered into stipulations with the Federal Trade Commission to abide by Commission action in cases against advertisers whose advertising matter they had broadcast. In each instance the advertiser has signed a stipulation with the Commission to cease and desist from the character of advertising to which objection was made.

Broadcasting companies and the firms for which they broadcast advertisements are as follows: National Battery Broadcasting Co., St. Paul, operating Station KSTP, advertisements of Clark Brothers Chewing Gum Co., Pittsburgh; Orlando Broadcasting Co., Inc., Orlando, Fla., operating Station WDBO, advertisements of the Brossier Twin's Laboratories, Orlando; Oak Leaves Broadcasting Station Inc., Chicago, operating Station WGES, advertisements of L. W. Paluszek, 1670 West Division St., Chicago, trading as The Vervena Co.; WGAR Broadcasting Co., Cleveland, Station WGAR, advertisements of G. B. McGlenn and C. A. Revell, Cleveland, trading as Cleveland Regol Co.; Matheson Radio Co., Station WHDH, Boston, advertisements of Freedol Remedy Co., 338-A Warren St., Boston; Western Broadcast Co., Hollywood, Calif., Station KNX, advertisements of Wain's Laboratory, Inc., Los Angeles; The Milwaukee Journal, operating Station WTMJ, Milwaukee, advertisements of Smith Bros., Inc., Poughkeepsie, N. Y.; Greenville News-Piedmont Co., Greenville, S. C., operating Station WFBC, advertisements of M. L. Clein & Co., Atlanta; Carter Publications, Inc., Ft. Worth, Tex., operator of Station WBAP, advertisements of Hyral Distributing Co., Ft. Worth; and the Oregonian Publishing Co., Station KEX, Portland, Ore., advertisements of Esbencott Laboratories, 2014 N. E. Sandy Boulevard, Portland.

**Nos. 01053-01054-01055-01056-01069.** Five radio companies broadcasting advertisements for "Katro-Lek," sold by Katro-Lek Laboratories, Inc., Boston, have signed stipulations to abide by an agreement to cease and desist from misleading advertising entered into by Katro-Lek Laboratories, Inc.

The broadcasting companies are: Bay State Broadcasting Corporation, Station WAAB, Boston; Fifth Avenue Broadcasting Corporation, Station WFAB, New York City; Howell Broadcasting Co., Inc., Station WEBR, Buffalo; Matheson Radio Co., Inc., Station WHDH, Boston, and WDRG, Incorporated, Station WDRG, Hartford, Conn.

**No. 1587.** Frank Herschel McCullough, Frances McCullough and Harry T. Weaver, doing business as the Herschel Novelty Works, 202 East 12th Street, New York City, in the sale and distribution of their "Carbonite" scissors sharpener, have agreed to discontinue the use of a container simulating in color, design and lettering the package used by John Clark Brown, 525 Lexington Avenue, New York City, in the sale of his "Kenberry" scissors sharpener. Brown sells his product in a rectangular paper container having a red background, upon which is a picture of the device, with a pair of scissors and certain words. According to the stipulation, the respondent company distributed its product in a container identical in size, shape, color of letters, and reading matter, except that the word "Carbonite" appeared in place of the word "Kenberry."

**No. 1588.** Lee Knitting Mills Corporation, selling and distributing bathing suits, slacks, jerseys and other woolen garments, agrees to stop using as part of its corporate name the words "Knitting Mills," and "Knitting," or "Mills," in a manner tending to deceive buyers into believing that the company actually owns and operates a mill or factory wherein any or all of its products are made, when this is not the fact.

**No. 1589.** Use of the name of a famous French wine will be discontinued by the Almaden Vineyards Corporation, of Los Gatos, Calif., in connection with the sale of a California-produced wine, under a stipulation entered into.

The respondent company, according to the stipulation, labeled bottles containing certain of its wines with the brand name "Chateau Yquem," and caused the same name to appear in advertising matter, including placards and window cards.

**No. 1590.** Under a stipulation entered into, The Goodman Products Corporation, 68 Jay Street, Brooklyn, N. Y., will no longer use the words "manufacturers of" or "manufactured by" on labels or in advertising its products sold in interstate commerce.

The respondent, operating under the trade names Paradise Packing Company and Easyway Products Corporation, is engaged in the repacking of steel wool and steel wool cleaning pads obtained from primary steel wool manufacturers. The respondent labeled the cartons with the words "Manufactured by Paradise Packing Company," or "Manufactured by Easyway Products Corporation," according to the stipulation, and its invoices carried the legend, "Manufacturers of Easyway Steel Wool Pads and Soap," when, in fact, it does not manufacture these products.

**No. 1591.** In a stipulation in which misrepresentation was alleged, J. M. Rurka, 864 West North Avenue, Chicago, doing business as the Secure Lock Company, agrees to cease and desist from stamping on his product, designated as a "Secure Adjustable Door Guard," the abbreviation, "Pat. Pend.," or the words, "Patent Pending." The stipulation avers that the respondent has not filed application for a United States patent on his door guard, and any marking thereon to indicate that he has done so tends to confuse, mislead and deceive purchasers.

**No. 1592.** Agreement to cease selling watches with fictitious price markings is made in a stipulation entered into by Jacob J. and Bernard Schmukler, wholesale watch dealers, trading as J. J. Schmukler & Son, 133-37 Canal Street, New York City. The respondents purchase the watch movements from one company, the cases from others, and in selling the assembled product to the retail trade, in a substantial number of instances, affixed tags to the watches on which were marked the suggested resale retail prices. The stipulation sets out that prices marked on the tags were exaggerated and fictitious, and much in excess of the prices at which the watches were intended to sell in the ordinary course of business.

**No. 1593.** Real Silk Hosiery Mills, Inc., manufacturing silk hosiery and other wearing apparel, stipulates that it will not use the phrase "custom made" in advertising products not made to order or to the customer's measure, and will cease the use in advertisements of any other representations having a tendency to deceive buyers into believing that its ladies' hosiery is made to order or to the customer's measure, when this is not the fact. The company is said to have advertised in periodicals having a wide circulation, also in radio broadcasts.

**No. 1594.** Goodwear Knitting Mills, dealing in knitted outerwear for men and boys, agree to abandon use of the phrase "Knitting Mills" in connection with their trade name, and to cease using the words "Knitting," "Mills," and "Manufacturers" on invoices, letterheads or other printed matter, implying or tending to deceive buyers into believing that they knit or manufacture the products sold by them, or that they actually own and operate a factory in which the articles are knit or manufactured, when this is not true.

**No. 1595.** An agreement to discontinue false and misleading advertising was signed by the American Foto Products Co., 216 West Jackson Boulevard, Chicago, engaged in the manufacture of novelty rings. The respondent, in advertising for salesmen, represented that they could earn from \$20 to \$40 a day by selling rings, but, according to the stipulation, such representations were exaggerated and not probable of accomplishment.

**No. 1596.** In a similar stipulation, A. Hirsch Company, 35 East Wacker Drive, Chicago, wholesale dealer in watches, agrees to cease and desist from fictitious price marking.

**No. 1597.** J. Harold Booth, trading as United Mushroom Co., 3848 Lincoln Avenue, Chicago, and engaged in the sale of mushroom spawn and instructions for growing mushrooms, has entered into a stipulation to cease and desist from the use of false and misleading advertising having a tendency to mislead purchasers, in violation of the Trade Commission Act.

The respondent agrees to discontinue representing that his so-called "Super-Spawn" is produced by his company or that it can be grown to produce profitable crops under conditions unfavorable to mushroom growth or in beds about a grower's premises.

**No. 1598.** In a stipulation entered into, Lawrence C. (Max) Kraft and Rose Kraft, co-partners, trading under the names of Kraft Bird Co. and Kraft Pet Shops, 579 Fulton St., Brooklyn, N. Y., agree to discontinue false and misleading advertising in promoting the sale of canaries.

In the course of their business the respondents advertised that they have been breeders of canaries for sixteen years, that their shipments averaged 1,000 birds per day over a period of several years, and that they handled as many as 300,000 canaries in a single year, all of which assertions, according to the stipulation, are untrue. The respondents also advertised themselves as the largest breeders and distributors of canaries in America, when, according to the stipulation, this was not the fact.

**No. 1599.** In stipulating to cease and desist from the use of false and misleading advertising, **E. M. Viquesney, of Spencer, Ind.**, trading as World War Memorial Association, and American Doughboy Studios, agrees to cease using the word "Association" in a trade name under which to conduct his business of selling statuary and metal art objects, or to use the word "Association" in any way which may tend to lead purchasers into the belief that they are dealing with an association officially connected with the American Legion or a World War veterans' organization. The respondent is also to cease representing that he has the endorsement of the American Legion, that material used in the base of his monuments is composed of "Indiana Carrarra Marble," when, in fact, there is no such product, and that he has studios in New York, Chicago, and Carrarra, Italy. The respondent is said to have advertised a statue, "Spirit of the American Doughboy," as made of cast metal bronze, and weighing 700 pounds, when in fact it was made of other materials thinly coated with bronze, and did not weight that much.

**No. 2303.** An order has been issued against **Jacob Stein, 276 Ten Eyck Street, Brooklyn, N. Y.**, trading as **Climax Rubber Co.**, directing him to cease and desist from unfair methods of competition in selling sanitary and water-proof specialties, including infants' apparel.

The respondent is ordered to discontinue advertising that his products have antiseptic and anti-acid properties and powers which actually kill bacteria and neutralize perspiration and other body wastes, completely deodorizing all odors, when such is not the fact.

**No. 2367.** **Charles E. Morris, 330 Seventh Avenue, New York City**, engaged in the sale of fur garments, is directed to discontinue misrepresenting himself as a wholesale manufacturing furrier, and that he has a factory show room, according to an order to cease and desist issued against him.

The respondent, trading under his name and as the Charles E. Morris Show Room, is required to cease advertising that the prices for his products are "strictly wholesale" or "practically wholesale," or that purchases can be made from him at one-third to one-half less than on garments of the same grade and value sold at retail establishments. The order also directs the respondent to cease making the representation that he sells to stores from coast to coast, when such is not the fact.

**No. 2543.** In an order to cease and desist issued against **C. E. Sissell and L. L. Sissell, 4322 East Third St., Los Angeles**, trading as **Sissell Brothers**, the respondents are directed to discontinue certain unfair trade practices in selling metal burial vaults. They are ordered to cease representing that their vaults resist rust or corrosion, that they are made of rust-resisting material, that they are water or vermin-proof at the time of interment, or that they will endure as such for a period of 50 years, or for any fixed period of time.

**No. 2643.** An order has been issued to cease and desist against **C. R. Acfield, Inc., of 36 West 34th St., New York City**, dealer in treatments for foot ailments, directing discontinuance of certain unfair methods of competition.

In selling its product, the respondent is ordered to stop representing that its so-called "Perfection Toe Spring" is a cure for bunions, or will remove the actual cause of bunions or enlarged joints, or that it "Bentoe Splint" is a correction for or will straighten hammer-toe.

#### FTC COMPLAINT DISMISSED

**No. 2254.** The Federal Trade Commission has dismissed a complaint which charged the Maiden-Form Brassiere Co., Inc., of New York City, with unfair methods of competition in the sale of its product through use of the terms "fashion" and "full-fashion."

#### FEDERAL COMMUNICATIONS COMMISSION ACTION

##### HEARING CALENDAR

Monday, January 27

##### HEARING BEFORE AN EXAMINER (Broadcast)

- NEW—Christina M. Jacobson, d/b as The Valley Electric Co., San Luis Obispo, Calif.—C. P., 1090 kc., 250 watts, daytime.  
NEW—E. E. Long Piano Co., San Luis Obispo, Calif.—C. P., 1300 kc., 100 watts, unlimited time.

#### TO BE HELD AT WICHITA FALLS, TEXAS, AND FORT WORTH, TEXAS

KGKO—Wichita Falls Broadcasting Co., Wichita Falls, Tex.—C. P. to move to Fort Worth, Tex.; 570 kc., 250 watts, 1 KW LS, unlimited time.

Wednesday, January 29

- WMBG—Havens & Martin, Inc., Richmond, Va.—C. P., 1350 kc., 500 watts, unlimited time.  
NEW—Wilbur M. Havens, Chas. H. Woodward, etc., d/b as Petersburg Broadcasting Co., Petersburg, Va.—C. P., 880 kc., 500 watts, daytime (request facilities of WPHR).  
WPHR—WLBG, Inc., Petersburg, Va.—Renewal of license, 880 kc., 500 watts, daytime.  
WPHR—WLBG, Inc., Petersburg, Va.—C. P., 880 kc., 500 watts, daytime (request to move to Richmond, Va.).  
NEW—Century Broadcasting Co., Inc., Richmond, Va.—C. P., 1370 kc., 100 watts, daytime.  
WCMI—Ashland Broadcasting Co., Ashland, Ky.—C. P., 1350 kc., 1 KW, unlimited time. Present assignment: 1310 kc., 100 watts, unlimited time.

Thursday, January 30

##### ORAL ARGUMENT BEFORE THE BROADCAST DIVISION

WILL—University of Illinois, Urbana, Ill.—Modification of license, 580 kc., 1 KW, daytime. Present assignment: 890 kc., 250 watts, 1 KW LS, shares with KUSD and KFNF.

##### HEARING BEFORE AN EXAMINER (Broadcast)

NEW—J. Laurance Martin, Tucumcari, N. Mex.—C. P., 1200 kc., 100 watts, unlimited time.

##### APPLICATIONS GRANTED

- KHQ—Louis Wasmer, Inc., Spokane, Wash.—Granted C. P. to makes changes in equipment.  
WDAS—WDAS Broadcasting Station, Inc., Philadelphia, Pa.—Granted C. P. to install auxiliary transmitter for emergency purposes only, at same location as main transmitter.  
KIRO—Queen City Broadcasting Co., Seattle, Wash.—Granted C. P. to move studio and transmitter locally in Seattle, and make changes in equipment.  
WNRI—S. George Webb, Newport, R. I.—Granted modification of C. P. to extend completion date from 2-4-36 to 6-4-36.  
WREC—WREC, Inc., Memphis, Tenn.—Granted modification of C. P. to extend completion date from 1-30-36 to 2-29-36.  
WAAF—Drovers Journal Pub. Co., Chicago, Ill.—Granted modification of C. P. approving proposed antenna system and transmitter site.  
WBNY—Roy L. Albertson, Buffalo, N. Y.—Granted modification of C. P. approving antenna and studio sites, and moving transmitter in Buffalo.  
WPRP—Julio M. Conesa, Ponce, Puerto Rico—Granted modification of C. P. approving transmitter site at No. 1 Trujillo St., Ponce, Puerto Rico, change location of studio to Trujillo St., Ponce, Puerto Rico, and make changes in specified hours; also to extend completion date to 180 days after grant.  
WWSW—Walker & Downing Radio Corp., Pittsburgh, Pa.—Granted C. P. to make changes in equipment; move transmitter from Frankstown Road, to Pittsburgh.  
WLW—The Crosley Radio Corp., Cincinnati, O.—Granted extension of special experimental authority to operate with 500 KW, employing directional antenna system at night, using transmitter of W8XO.  
WFBR—The Baltimore Radio Show, Inc., Baltimore, Md.—Granted modification of C. P. to make changes in equipment, and increase maximum rated carrier power, the same as regular equipment.  
KABR—Aberdeen Broadcast Co., Inc., Aberdeen, S. Dak.—Granted license to cover C. P. authorizing move of transmitter site locally and installation of new antenna to comply with Rule 131; 1420 kc., 100 watts, unlimited.  
KTRH—KTRH Broadcasting Co., Houston, Tex.—Granted license to cover C. P. authorizing changes in equipment; 1290 kc., 1 KW night, 5 KW day, unlimited.

KVOR—S. H. Patterson, Colorado Springs, Colo.—Granted license to cover C. P. authorizing move of transmitter site locally and changes in antenna, to comply with Rule 131; 1270 kc., 1 KW, unlimited time.

WFMD—The Monocacy Broadcasting Co., Frederick, Md.—Granted license to cover C. P. authorizing erection of new station; 900 kc., 500 watts, daytime.

KTRH—KTRH Broadcasting Co., Houston, Tex.—Granted authority to determine operating power by direct measurement of antenna input in compliance with Rule 137.

KOL—Seattle Broadcasting Co., Seattle, Wash.—Granted authority to determine operating power by direct measurement of antenna input.

KQV—KQV Broadcasting Co., Pittsburgh, Pa.—Granted authority to install automatic frequency control.

KCRJ—Chas. C. Robinson, Jerome, Ariz.—Granted renewal of license; 1310 kc., 100 watts, daytime-specified.

NEW—Westinghouse Elec. and Mfg. Co., Portable (Chicopee Falls, Mass.)—Granted C. P. and license (exp. spec. exp.), frequencies 31600, 35600, 38600, 41000, 55500, 60500, 86000-400000 kc., 500 watts.

W9XAA—Chicago Federation of Labor, Chicago, Ill.—Granted C. P. to move transmitter locally from Navy Pier, Chicago, to near Warwick and 39th St., York Township, DuPage County, Ill.

NEW—Connecticut State College, Storrs, Conn.—Granted license to cover C. P. (exp. gen. exp.), 86000-400000, 401000 kc. and above; 500 watts, unlimited.

W6XB—Earl A. Nielson, Portable-Mobile (Phoenix, Ariz.)—Granted license to cover C. P. (exp. gen. exp.), frequencies 31100, 34600, 37600, 40600 kc., 15 watts.

W9XID—Donald A. Burton, Portable-Mobile (Muncie, Ind.)—Granted license to cover C. P. (exp. gen. exp.), frequencies 31100, 34600, 37600, 40600 kc., 2 watts.

NEW—Tri-State Broadcasting System, Inc., Portable-Mobile, Shreveport, La.—Granted C. P. (temp. broadcast pickup), frequencies 1606, 2020, 2102, 2760 kc., 50 watts. Also granted license covering same.

W10XFZ—Don Lee Broadcasting System, Portable-Mobile (Los Angeles)—Granted license to cover C. P. (exp. gen. exp.), frequencies 31100, 34600, 40600 kc., 100 watts.

KABD—Don Lee Broadcasting System, Portable-Mobile (Los Angeles)—Granted license to cover C. P. (temp. broadcast pickup), frequencies 1646, 2090, 2190, 2830 kc., 100 watts.

#### RENEWAL OF LICENSES

The following stations were granted renewal of licenses for the regular period:

KIRO, Seattle, Wash.; KMOX, St. Louis, Mo.; KTHS, Hot Springs National Park, Ark.; KTRB, Modesto, Calif.; WAIU, Columbus, Ohio; WCAZ, Carthage, Ill.; WDZ, Tuscola, Ill.; WHAS, Louisville, Ky.; WLWL, New York City; KCMC, Texarkana, Ark.; KERN, Bakersfield, Calif.; KFIZ, Fond du Lac, Wis.; WOPI, Bristol, Tenn.; WPFB, Hattiesburg, Miss.; WRAK, Williamsport, Pa.

W3XDD—Bell Tel. Labs. Inc., Whippany, N. J.—Granted renewal of special experimental station license for period Jan. 29 to April 29, 1936, in exact conformity with existing license.

W1XKA-W3XKA-W8XKA—Westinghouse E and M Co., Portable-Mobile—Granted renewal of special experimental station license for period Jan. 30 to April 30, 1936, in exact conformity with existing license.

W9XAF—The Journal Co. (Milwaukee Journal), Milwaukee, Wis.—Granted renewal of special experimental station license for period Feb. 1 to May 1, 1936, in exact conformity with existing license.

W2XBH—Radio Pictures, Inc., Long Island City, N. Y.—Granted renewal of special experimental station license for period Feb. 1 to May 1, 1936, in exact conformity with existing license.

#### SET FOR HEARING

NEW—M. M. Opegard, Grand Forks, N. D.—Application for C. P. for new station; 1310 kc., 100 watts night, 250 watts day, unlimited.

NEW—Ted R. Woodard, Kingsport, Tenn.—Application for C. P. for new station; 1210 kc., 100 watts, daytime.

NEW—Marysville-Yuba City Publishers, Inc., Marysville, Cal.—Application for C. P. for new station; 1140 kc., 250 watts, daytime. Site to be determined.

NEW—Memphis Commercial Appeal, Inc., Mobile, Ala.—Application for C. P. for new station; 630 kc., 1 KW night, using

directional antenna, 5 KW day, unlimited. Site to be determined.

NEW—Wilton Harvey Pollard, Huntsville, Ala.—Application for C. P. for new station; 1200 kc., 100 watts, unlimited.

WMFF—Plattsburg Broadcasting Corp., Plattsburg, N. Y.—Modification of license to change hours of operation from daytime only to include 100 watts night until 7:30 p. m. daily.

WROK—Rockford Broadcasters, Inc., Rockford, Ill.—Consent to transfer of control of Rockford Broadcasters, Inc. (licensee of station WROK) from Lloyd C. Thomas, as trustee for individual stockholders, to Rockford Consolidated Newspapers, Inc. (1410 kc., 500 watts, S-WHBL).

KMPC—Beverly Hills Broadcasting Corp., Beverly Hills, Cal.—Renewal of license to operate on 710 kc., 500 watts, limited time, and granted temporary license pending hearing.

KFEQ—KFEQ, Inc., St. Joseph, Mo.—C. P. already in hearing docket, amended to read: approval of transmitter site to location to be determined; type of antenna to be determined; make changes in equipment; increase power from 2½ to 5 KW, daytime.

#### ORAL ARGUMENTS GRANTED

NEW—Ex. Rep. No. 1-150.—Clark Standiford, Visalia, Cal.—Oral argument granted to be held March 19, 1936.

KFRO—Ex. Rep. No. 1-161.—Voice of Longview, Longview, Tex.—Oral argument granted to be held March 26, 1936; and NEW—Oil Capital Broadcasting Assn., Kilgore, Tex.—Oral argument granted to be held March 26, 1936; and KWEA—International Broadcasting Corp., Shreveport, La.—Oral argument granted to be held March 26, 1936.

NEW—Ex. Rep. No. 1-165.—Florida West Coast Broadcasting Co., Inc., Tampa, Fla.—Oral argument granted to be held March 26, 1936.

NEW—Ex. Rep. No. 1-168.—W. A. Patterson, Chattanooga, Tenn.—Granted oral argument to be held February 20, 1936.

NEW—Ex. Rep. No. 1-171.—Herbert Lee Blye, Lima, O.—Granted oral argument to be held March 26, 1936.

#### MISCELLANEOUS

WDAY—WDAY, Inc., Fargo, N. Dak.—Granted petition requesting postponement of oral argument, scheduled for Jan. 23, 1936, for a period of approximately 30 days, on application of Robert K. Herbst for radio facilities at Moorhead, Minn.

Edwin A. Kraft, Fairbanks, Alaska—Granted order to take depositions in re application for radio facilities at Fairbanks, Alaska.

Leo J. Omelian, Erie, Pa.—Removed from hearing docket application for renewal of license and granted regular license for period expiring July 1, 1936. Applications for facilities of this station dismissed.

#### ACTION ON EXAMINERS' REPORTS

WBNX—Ex. Rep. 1-134: Standard Cahill Co., Inc., New York City—Denied C. P. for new equipment; move transmitter and increase power from 250 watts to 1 KW. Examiner Bramhall reversed.

WEED—William Avera Wynne, Rocky Mount, N. C.—Denied C. P. to change equipment; change frequency from 1420 to 1350 kc.; increase power from 100 watts to 250 watts; change hours of operation from unlimited, day, sharing with WEHC night, to unlimited. Examiner Bramhall sustained. Order effective March 24, 1936.

NEW—Ex. Rep. 1-154: St. Petersburg Chamber of Commerce, St. Petersburg, Fla.—Denied C. P. for new station to operate on 1310 kc.; 100 watts; unlimited time. Examiner Bramhall sustained. Order effective March 24, 1936.

KARK—Ex. Rep. 1-157: Ark. Radio & Equipment Co., Little Rock, Ark.—Granted C. P. to make changes in equipment; change location of transmitter, and increase power from 250 watts night, 500 watts day, to 500 watts night, 1 KW day; 890 kc., unlimited time. Examiner P. W. Seward sustained. Order effective March 24, 1936.

#### APPLICATIONS RECEIVED

##### First Zone

WBEN—WBEN, Inc., Buffalo, N. Y.—Modification of construction permit (B1-P-567) to make equipment changes, increase day power from 1 to 5 KW, move transmitter, further re-



questing approval of transmitter site at R. F. D. No. 2, Shawnee Road, near Martinsville, N. Y.

**NEW**—United States Broadcasting Co., Washington, D. C.—**Construction permit for a new radio station to be operated on 1310 kc., 100 watts, unlimited time, contingent upon granting of WOL's application for move of station, change of frequency and power.**

**WHDL**—Olean Broadcasting Co., Inc., Olean, N. Y.—**Construction permit to install new equipment, change frequency from 1420 kc. to 1260 kc., power from 100 to 250 watts; move transmitter from Exchange National Bank Bldg., corner Union and Laurens Sts., Olean, N. Y., to town of Allegany, N. Y. Amended to make equipment changes, change frequency from 1260 kc. to 1400 kc.**

### Second Zone

**NEW**—Harold F. Gross, Lansing, Mich.—**Construction permit for a new general experimental station to be operated on 31600, 35600, 38600, 41000 kc., 100 watts.**

### Third Zone

**WREC**—WREC, Inc., Memphis, Tenn.—**Extension of special experimental authorization to operate with power of 1 KW night, 2½ KW day, for period from 3-1-36 to 9-1-36.**

**WIS**—Station WIS, Inc., Columbia, S. C.—**Modification of construction permit (B3-P-3258) authorizing move of transmitter, change of frequency, installation of new equipment, and increase in power, requesting extension of completion date from 2-10-36 to 5-10-36.**

**NEW**—Jonas Weiland, Kinston, N. C.—**Construction permit for a new station to be operated on 1210 kc., 100 watts night, 250 watts day, unlimited time.**

**KVOL**—Geo. H. Thomas, Robert M. Dean, Louis M. Sepaugh, T. B. Lanford, a partnership d/b as Evangeline Broadcasting Co., Lafayette, La.—**Voluntary assignment of license from Geo. H. Thomas, Robert M. Dean, Louis M. Sepaugh, T. B. Lanford, a partnership, d/h as Evangeline Broadcasting Co., to Evangeline Broadcasting Co., Inc.**

**NEW**—Lookout Broadcasting Corp., Chattanooga, Tenn.—**Construction permit for a new station to be operated on 1420 kc., 100 watts, daytime.**

**NEW**—Dorrance D. Roderick, El Paso, Tex.—**Construction permit for a new station to be operated on 1500 kc., 100 watts, unlimited time.**

### Fourth Zone

**WMT**—Iowa Broadcasting Co., Des Moines, Iowa—**License to cover special experimental authorization to operate permanently on 1 KW night, 2½ KW day. (Filed under new name.)**

**NEW**—Wise Broadcasting Co., St. Paul, Minn.—**Construction permit for a new station to be operated on 630 kc., 250 watts, unlimited time. Facilities of KGDE. Amended: To change name from Emmons L. Aheles & Robert J. Dean co-partnership, d/h as Wise Broadcasting Co., to Wise Broadcasting Co.**

**NEW**—R. C. Goshorn & Lester E. Cox, d/b as Capitol Broadcasting Co., Jefferson City, Mo.—**Construction permit for a new station to be operated on 920 kc., 500 watts daytime. Consideration under rule 6 (g).**

**WHBL**—Press Publishing Co., Sheboygan, Wis.—**Construction permit to install new transmitter, erect a new vertical antenna and move transmitter from 636 Center Avenue, Sheboygan, Wisconsin, to site to be determined, near Sheboygan, Wisconsin.**

**NEW**—W. E. Day, Creston, Iowa—**Construction permit for a new station to be operated on 1500 kc., 100 watts, unlimited.**

### Fifth Zone

**KGVO**—Moshy's Incorporated, Missoula, Mont.—**License to cover construction permit (B5-P-232) as modified for new equipment, change in frequency, increase in power and move of transmitter.**

**KDYL**—Intermountain Broadcasting Corp., Salt Lake City, Utah—**Construction permit to increase power from 1 KW to 5 KW, and install new equipment. Also move transmitter from Township No. 1 South, Range 1 West, 33rd South, Cor. 9th West, Salt Lake City, Utah, to site to be determined, near Salt Lake City, Utah. Amended: To omit request for increase in night power from 1 KW to 5 KW.**

**KFBK**—James McClatchy Co., Sacramento, Calif.—**Authority to determine operating power by direct measurement of antenna power.**

**KFBK**—James McClatchy Co., Sacramento, Calif.—**License to cover construction permit (5-P-B-3144) as modified to move transmitter, make changes in equipment, change frequency and increase power.**

**W7XBD**—Oregonian Publishing Co., Portland, Ore.—**Modification of construction permit for extension of commencement date to 4-15-36 and completion date to 8-15-36. (Wrong equipment installed.)**



# The National Association of Broadcasters

NATIONAL PRESS BUILDING \* \* \* \* \* WASHINGTON, D. C.

JAMES W. BALDWIN, Managing Director

## NAB REPORTS

Vol. 4 . . . No. 6  
JANUARY 30, 1936

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### NEW RULE ON MECHANICAL REPRODUCTIONS

The Federal Communications Commission has amended Rule 176, effective January 28, regarding announcements of mechanical reproductions to read as follows:

"176. Each broadcast program consisting of a mechanical reproduction, or a series of mechanical reproductions, shall be announced in the manner and to the extent set out below:

1. A mechanical reproduction, or a series thereof, of longer duration than fifteen minutes, shall be identified by appropriate announcement at the beginning of the program, at each fifteen-minute interval, and at the conclusion of the program; provided, however, that the identifying announcement at each fifteen-minute interval is waived in case of a mechanical reproduction consisting of a single, continuous, uninterrupted speech, play, symphony concert or operatic production of longer duration than fifteen minutes;
2. A mechanical reproduction, or a series thereof, of a longer duration than five minutes and not in excess of fifteen minutes, shall be identified by an appropriate announcement at the beginning and end of the program;
3. A single mechanical reproduction of a duration not in excess of five minutes, shall be identified by appropriate announcement immediately preceding the use thereof;
4. In case a mechanical reproduction is used for background music, sound effects, station identification, program identification (theme music of short duration), or identification of the sponsorship of the program proper, no announcement of the mechanical reproduction is required.
5. The exact form of the identifying announcement is not prescribed but the language shall be clear and in terms commonly used and understood by the listening public. The use of the applicable identifying words such as 'a record', 'a recording', 'a recorded program', 'a mechanical reproduction', 'a transcription', 'an electrical transcription', will be considered sufficient to meet the requirements hereof. The identifying words shall accurately describe the type of mechanical reproduction used, *i.e.*, where a transcription is used it shall be announced as a 'transcription' or an 'electrical transcription' and where a phonograph record is used it shall be announced as a 'record' or a 'recording'."

### MUSIC USERS PROTECTIVE ASSOCIATION, INC.

The Managing Director is making inquiry concerning the Music Users Protective Association, Inc., Chimes Building, Syracuse, New York. It is suggested that members delay any action on the offer made by this Association pending further information.

### RECOMMENDS NEW HOLLYWOOD STATION

W. H. Kindig applied to the Federal Communications Commission for a construction permit for the erection of a new station at Holly-

### NOTES TO SALES STAFF

Radio broadcasting has just completed a banner year with a volume of over \$87,000,000. (See *The Year in Broadcast Advertising*, page 1176.) Nothing succeeds like success.

Radio's gain was the greatest of any medium. (See *Comparison with Other Media*, page 1176, and see the report for 1935 to be issued within a few days.)

The slight increase in local advertising during December, as contrasted to the usual seasonal downswing, together with the strong showing of local sponsorship during recent months, should be particularly encouraging. (See *Total Broadcast Advertising*, page 1176.)

The continued rise in local transcription volume and in national live talent business should provide sales arguments and opportunities to many stations. (See *Non-network Volume by Type of Rendition*, page 1177.)

The general gains in all fields of sponsorship during the month should be especially encouraging. Attention is called to the rise in national non-network and regional network confectionery advertising, beverage advertising in the local and national non-network fields, and national non-network and regional network tobacco advertising. These suggest wider opportunities to stations and regional units.

wood, Calif., to use 1300 kilocycles, 1,000 watts, and to share time with KFAC. Also, KFAC, Los Angeles, Calif., applied for license renewal. This station now uses 1300 kilocycles, 1,000 watts power, and unlimited time on the air.

Examiner George H. Hill, in Report No. I-183, recommended:

"That the application of W. H. Kindig for a construction permit be granted on condition that the applicant install an antenna which complies with the recommendations of the Engineering Department of the Commission.

"That the application of the Los Angeles Broadcasting Company, Inc., for renewal of license be granted in part and that this applicant be authorized to operate Station KFAC one-half time, sharing hours of operation equally with W. H. Kindig, applicant for a new station to operate on the 1300-kilocycle frequency, with power of 1 kilowatt."

GEORGE ELLIS

George Ellis, who calls himself a continuity writer and claims to be the author of "The Trial of Vivian Ware," it is understood, is looking for a job with some radio station or agency.

Members are advised to communicate with NAB Headquarters before offering Mr. Ellis employment.

### HIGH POWER DENIAL RECOMMENDED

Station WCAO, Baltimore, Md.; WICC, Bridgeport, Conn.; and WIP, Philadelphia, Pa., the first two operating on 600 kilocycles and the latter on 610 kilocycles, all applied to the Federal Communications Commission to increase their daytime power from 500 to 1,000 watts.

Examiner Melvin H. Dalberg, in Report No. I-187, recommends that all of the applications be denied. The Examiner states that:

"The granting of these applications would undoubtedly limit the service area of one or more Canadian stations. Therefore, it is con-

sidered that, under the arrangement between the United States of America and the Dominion of Canada effected by an exchange of notes entered into on May 5, 1932, and designated as Executive Series No. 34, the granting of all the instant applications would constitute a hostile act to the station or stations affected. It is also obvious that the granting of the application of WIP and the denial of the other two would adversely affect the latter."

## SECURITIES ACT REGISTRATIONS

The following companies have filed registration statements with the Securities & Exchange Commission under the Securities Act:

General Lumber Company, Seattle, Wash. (2-1870, Form A-1)  
Pacific Oil & Meal Company, Los Angeles, Calif. (2-1871, Form A-1)  
Beverages Incorporated, Boston, Mass. (2-1872, Form A-1)  
Oil Payment Purchase Corp., Jersey City, N. J. (2-1873, Form A-1)  
American Fidelity Corp., Ltd., San Diego, Calif. (2-1874, Form G-1)  
National Grange Fire Insurance Co., Keene, N. H. (2-1875, Form A-1)  
Medical Building of Houston, Dallas, Tex. (2-1876, Form E-1)

## RECOMMENDS FURTHER HEARING FOR KWKC

The Mid-Central Broadcasting Company applied to the Federal Communications Commission for a construction permit for the erection of a new station at Kansas City, Mo., to use 1370 kilocycles, 100 watts power, unlimited time, requesting the facilities of Station KWKC, also at Kansas City, Mo. KWKC asked for license renewal.

Examiner R. H. Hyde, in Report No. I-185, recommended that the application of the Mid-Central Broadcasting Company be denied and "that the application of Station KWKC for renewal license be set down for a further hearing to determine whether the licensee has attempted or is attempting to transfer his license or the rights thereunder to another party or parties without the consent of the Commission." The Examiner says further in this connection that:

"The evidence relating to the application of the Wilson Duncan Broadcasting Company (KWKC) for renewal of station license raises a serious question as to whether or not this station has been operated in accordance with the terms of recent licenses, and also a question as to whether the station would be operated by the applicant if a renewal license were issued to him; but since there was no notice to the applicant on this question, no finding is made."

## RADIO COMMITTEE ELECTS

Senator Wallace H. White, Jr., of Maine, was elected president of the American Section, International Committee on Radio, at a meeting held at the University Club, this city, on Tuesday night.

Other officers elected for the coming year include: Louis G. Caldwell, vice president; Howard S. LeRoy, treasurer; and Paul M. Segal, secretary. Members of the executive council: William R. Vallance, chairman; A. L. Ashby, Thad H. Brown, T. A. M. Craven, J. H. Dellinger and F. P. Guthrie.

Representative Sam Rayburn of Texas, J. H. Dellinger, T. A. M. Craven and E. M. Webster made short addresses on various phases of radio at the meeting.

## FEDERAL TRADE COMMISSION ACTION

### Complaints

The Federal Trade Commission has alleged unfair competition in complaints issued against the following companies. The respondents will be given an opportunity for hearing to show cause why cease and desist orders should not be issued against them.

**No. 2687.** Because it represents that its cosmetic products are accepted by the American Medical Association, unfair competition is charged against **C. W. Beggs Sons & Co.**, 1741 North Western Avenue, **Chicago**, in a complaint.

The respondent, engaged in the manufacture of cosmetics which it sells in interstate commerce under the trade name "Marcelle," advertises that these products are submitted to and accepted by the American Medical Association, and that they must pass the rigorous requirements of the association before being sold, whereas such assertions are untrue, according to the complaint.

**No. 2688.** **George Close Co.**, 243 Broadway, **Cambridge Mass.**, engaged in the manufacture and sale of candy, is named respondent in a complaint. It is alleged that the respondent company so

packs and assembles its product as to involve the use of a lottery scheme when the candy is sold and distributed to consumers.

The complaint describes the lottery as a method under which the purchasers, by buying small pieces of candy for one cent, may win a larger piece. Use by the respondent of this scheme, the complaint avers, is contrary to public policy and has a tendency to restrict competition in that it tends to injure competitors who do not use such methods, by diverting trade from them.

**No. 2689.** A complaint has been issued against **Jung & Schade Laboratories**, 1418 Somer St., **Milwaukee**, charging unfair representations in the sale of its product, "Vi-Vo."

In its advertising matter, the respondent allegedly represents "Vi-Vo" as a "sober-up" remedy which "counteracts alcohol," "clears the mind," "settles the stomach," "prevents bad after effects," and "completely eliminates alcoholic effects in a short time," whereas, according to the complaint, these and similar assertions are false and misleading, and the product does not possess the therapeutic properties claimed for it.

### Stipulations

The Commission has issued the following cease and desist orders:

**Nos. 01029-01051-01052-01058-01068-01070-01072-01087.** Stipulations have been entered into by two publishing companies and four broadcasting companies, to abide by agreements arrived at by the Commission with certain advertisers. The advertisers have agreed to cease and desist from the use of false and misleading advertising in the sale of their products.

The publishing companies and the firms for which they published advertisements are: **Pathfinder Publishing Co., Inc.**, 2414 Douglas St., **Washington, D. C.**, publisher of *The Pathfinder*; advertisements for Dr. W. B. Mayo's Tablets, sold by Dr. W. B. Mayo Laboratories, Los Angeles; **Bruce Publishing Co.**, 2642 University Ave., **St. Paul, Minn.**, publisher of *The Northwestern Druggist*; advertisements for "Liquid O2X", sold by J. George and Walter U. Hauser and James J. Poole, doing business under the firm name of Hauser Laboratory, Minneapolis, Minn.

The broadcasting companies and the firms for which they broadcast advertisements are: Western Broadcast Co., operator of radio station KNX, Hollywood, Calif., advertisements for medicinal products sold by Dr. Louis L. Sherman, operating as "Clinic of the Air," Oakland, Calif.; Western Broadcast Co., operator of radio station KNX, Hollywood, Calif., advertisements for "Smad" sold by Dr. A. W. Daggett, S. M. Sweeney and E. C. Groves, operating as the Smad Co., Pasadena, Calif.; Clearwater Chamber of Commerce and St. Petersburg Chamber of Commerce, Clearwater, Fla., operators of radio station WFLA, advertisements for "A. F.-3," sold by Litmo Laboratories, Inc., trading as The Brosier Twins Laboratories, 302 Fidelity Bldg., Orlando, Fla.; Radio Air Service Corporation, Cleveland, Ohio, operator of radio station WHK, advertisements for "Regol," sold by G. B. McGlenn and C. A. Revell, trading as Cleveland Regol Co.; Radio Station KGW, operated by the Oregonian Publishing Co., Portland, Ore., advertisements for "Santi-septic Lotion," sold by E. J. and Minnie E. Scheffer, doing business as Esbenscott Laboratories, 2014 N. E. Sandy Blvd., Portland, Ore.

In another stipulation, John Kaslikowski, trading as Alpenol Herb Co., Springfield, Mass., engaged in selling Alpenol Herb Tea, entered into a stipulation to cease and desist from false and misleading advertising in the sale of his product. The respondent agrees to discontinue representing that the tea is an effective remedy or a competent treatment for liver, kidney or stomach trouble, when such assertions are not the fact.

**No. 01044.** **Boyer Chemical Laboratory Co.**, 2700 Wabash Ave., **Chicago**, selling cosmetic products, agrees to discontinue representing that its "Muscle Oil Tissue Cream" will nourish the skin, remove wrinkles or build up the contours and tissues of the face; that "Boyer Face Powder" is perspiration-proof and will not clog the pores, and that "Boyer Powder Base Astringent" gives assurance against enlarged pores and wrinkles, when such assertions are not true, according to the stipulation. The respondent also will cease representing that it employs a Madame Louise Delorme to give women personal advice on skin care and make-up, until such person is employed to render the service indicated. It is further agreed that the respondent will not use the words "muscle" and "tissue" as part of the name for its so-called "Muscle Oil Tissue Cream."

**Nos. 01059-01060-01061-01062.** Three publishers printing advertisements of **Plough, Inc.**, of **Memphis, Tenn.**, dealer in medicinal products, have signed stipulations to abide by the terms of an agreement entered into by **Plough, Inc.**, to cease and desist

from misleading advertising. The publishers printed the advertisements to which objection was made.

The publishers are as follows: **American Osteopathic Association**, 430 North Michigan Ave., **Chicago**, publisher of the *Journal of the American Osteopathic Association* and of the *Osteopathic Magazine*; **Crowell Publishing Co.**, 250 Park Ave., **New York City**, publisher of *Country Home*; and Parent's Publishing Association, Inc., 9 East 40th St., **New York City**, publisher of *Parent's Magazine*.

Plough, Inc., advertised certain treatments for colds, hay fever and related ailments.

**No. 01064. J. Petrie, 6023 Harper Ave., Chicago, trading as Purity Products Co.**, and engaged in selling "Minex" and "Hygeen," agrees to discontinue advertising that these products will correct any feminine hygiene condition, or that they are recommended by physicians and surgeons unless such representation is limited to the ingredients of which the products are composed. The stipulation requires the respondent to desist from representing directly or by reasonable implication that "Minex" is an abortifacient, or that "Hygeen" tablets are a contraceptive.

**Nos. 01073-01074-01075-01076-01077-01078-01079-01080-01081.** Seven publishers printing advertisements of **Dr. W. B. Mayo Laboratories, Los Angeles**, have signed stipulations to abide by an agreement entered into with the Commission by Dr. W. B. Mayo Laboratories to cease and desist from misleading representations of its treatment for stomach trouble, known as Dr. W. B. Mayo's Tablets. The publishers have printed the advertisements to which objection was made.

The publishers are as follows: **Eugene Lorton**, publisher of the **Tulsa World, Tulsa, Okla.**; **Buffalo Courier-Express, Inc., Buffalo, N. Y.**; **Memphis Commercial-Appeal, Inc., Memphis, Tenn.**; **A. O. Anderson**, publisher of the **Dallas Dispatch, Dallas, Tex.**; **Enterprise Co., publisher of the Beaumont Enterprise and the Beaumont Journal, Beaumont, Tex.**; **Post Intelligencer Co., publisher of the Seattle Post-Intelligencer, Seattle, Wash.**; and **C. B. Blethen**, publisher of the **Seattle Times**.

**Dr. W. B. Mayo Laboratories, of Los Angeles**, agrees to cease advertising that one bottle, or any quantity, of Mayo's Tablets, will enable a person to gain 10 pounds; that half a \$5 treatment, or any quantity of these tablets, causes all pain to leave and enables one to eat the things desired without discomfort; that Mayo's Tablets are scientific and a competent treatment or effective remedy for acid stomach, indigestion, sleepless nights, and related ailments.

The respondent agrees to stop using the words "Laboratory" or "Laboratories" in its trade name or advertising until such time as it actually owns, maintains or operates a laboratory or laboratories.

**Nos. 01082-01083. William E. Miller Furniture Co., Inc., Eighth Street and Pennsylvania Ave., S. E., Washington, D. C.**, has entered into a stipulation to discontinue misleading advertising, and **American Newspapers, Inc.**, publisher of **The Washington Herald**, which carried advertisements for the Miller store, has signed a stipulation to abide by the Miller company's agreement.

This furniture company stipulates that it will cease representing that its furniture is sold at a saving of any amount, unless this assertion is qualified to show that the represented saving is based on a comparison of the fair retail value of the used furniture and the amount at which it is offered for sale.

**No. 01084. United States Rubber Products, Inc., 1790 Broadway, New York City**, agrees that in the sale of its "U. S. Royal Tires" it will cease and desist from representing in advertising that the majority of automobile manufacturers equip all of their cars with tires sold by the respondent, or that the tires are guaranteed for a definite period of time, unless the representation is qualified to indicate that the guarantee applies only to tires used on passenger cars, and unless the terms of the guarantee afford the purchaser redress in event the tire fails to last the length of time advertised.

**No. 01085. The Bromwell Wire Goods Co., Third and Walnut Sts., Cincinnati, Ohio**, operating as the Cincinnati Patent Engineering Co., is engaged in selling Bromwell's "Raio-O-Trap" aerial-eliminator, also designated as "Aero-Trap." In the stipulation the respondent agrees to discontinue representing that the device produces amazing new power, volume and clarity, eliminates the danger of lightning, brings in distant stations as clearly as local, eliminates the outside aerial, but produces the same results as a 75-foot aerial, and that it will last a lifetime, and work on any and all types of radios. These representations, according to the agreement, are incorrect and exaggerated and mislead prospective

purchasers, to the injury of competitors who truthfully advertise their products.

**No. 01086. J. Palazzolo, 436 E. Fourteenth St., New York City**, engaged in selling "Mexican Laxative Tea" and "Otello Water," has signed a stipulation to desist from misrepresenting those products. As to "Mexican Laxative Tea," the respondent agrees to discontinue advertising the product as an effective remedy for constipation, and for numerous other ailments. He also will eliminate the word "Mexican" as part of the name of the product until it or the ingredients composing it are imported from Mexico, according to the stipulation.

The respondent also agrees to cease representing that "Otello Water," offered as a remedy for restoring gray hair to its natural color, is not a dye or a tincture, that it restores gray hair to its natural color and that it ends dandruff and baldness. Under the stipulation, the use of the word "water" in the name of the product will be discontinued.

**No. 2311.** An order to cease and desist has been issued against **William Bros. Tailoring Corporation**, with its principal business office in **New York City**, and its manufacturing plant at 384 Congress St., **Troy, N. Y.**, directing discontinuance of certain unfair practices in the sale of men's clothes in interstate commerce.

Representations of the respondent company that clothes sold by it are made to order according to individual measurements of the purchasers, that is, custom tailored, are to be discontinued under the order, and are not to be resumed until it has become the established practice of the respondent that all clothes represented as custom tailored have been so made after receipt of orders from purchasers.

**No. 2318.** In an order to cease and desist, **James McCreery & Co.**, owner and operator of a department store at 5th Avenue and 34th St., **New York City**, is directed to discontinue unfair methods of competition in the sale of its Toyo hats.

The respondent is required to cease representing or advertising that Toyo hats are "Panama" hats, when such is not the fact, and to stop use of the word "Panama" in the sale or manufacture of any other hats when they are not genuine Panamas, woven by hand in a saturated condition and made from the leaf of the paja toquilla or the jipajapa plant.

**No. 2349.** Under an order to cease and desist, **David, Lewis and Benjamin Levine**, trading as **Colombo Extract Co.**, 380 Throop Ave., **Brooklyn, N. Y.**, are directed to discontinue advertising and otherwise representing that they import or export the flavoring extracts which they manufacture and sell in interstate commerce.

The order requires the respondents to cease representing by any method that their extracts or the ingredients composing them are manufactured in foreign countries, or that the respondents are the sole representatives in America for their commodity, when such assertions are untrue.

**No. 2570.** Under an order to cease and desist issued against **W. J. Thompson, Inc.**, publisher of **The Gentlewoman magazine**, 154 West 14th St., **New York City**, is required to discontinue false representation of circulation building contests in connection with the sale of any publications.

The respondent, under the order, is required to cease representing that a person solving a puzzle presented in an advertisement, and sending the solution to the respondent, will receive a prize without doing any other thing, or that the mere mailing of a correct solution is sufficient to win any prize, when such assertions are untrue.

**No. 2377. LeGay, Inc., 58 East Washington St., Chicago**, has been ordered to cease and desist from advertising or representing in any manner that "LeGay Hair Remover," which it sells in interstate commerce, is an effective and harmless depilatory, that it will permanently remove hair from the human body, or that it will banish facial shadows or remove hair without roughening the skin, when such assertions are not the fact.

**No. 2591.** Use of the word "manufacturers" in advertisements is to be discontinued by the **Arco Shirt Corporation**, 486 Broadway, **New York City**, under an order to cease and desist.

The Commission found that the respondent company, in its advertising matter, business stationery and other trade literature, represents that it manufactures the shirts it sells in interstate commerce, when in fact it does not control or own any factory in which its products are made.

**No. 2605.** An order has been issued requiring **Acme Cotton Products Co., Inc.**, 245 Fifth Ave., **New York City**, to cease and desist from the use of certain words in the sale in interstate commerce of surgical supplies and absorbent cotton products.

The respondent, in describing the grade of cotton used in the manufacture of the products it sells, is required to discontinue use of the words "Very Highest Grade Procurable," when such desig-

nation is not a fact. Use of the words "Sterilized," "Aseptic," or "Purified," to describe the absorbent cotton and surgical supplies, also is prohibited under the order unless these products are actually bacteria-free when sold by the respondent.

## BROADCAST ADVERTISING IN DECEMBER

### Developments of the Month

Broadcast advertising during December rose 5.8% as compared to the preceding month. Gross time sales of the medium amounted to \$8,686,359, a gain of 20.8% over the corresponding month of 1934. Regional network and national non-network volume continued to show the greatest gains.

Local broadcast advertising failed to show the usual seasonal decline and remained slightly above the November level. Broadcast advertising of this type was 33.4% greater than during December of last year.

Non-network advertising as a whole rose 1.8% in December as against the previous month and showed an increase of 33.4% over the same month of last year. Local station volume experienced the usual seasonal decline, while the clear-channel and high-powered regional group accounted for most of the month's non-network gains. Heaviest gains over last year were in the regional and local station classes. The situation with regard to non-network advertising in various sections of the country was practically unchanged from that of the preceding month.

In the national non-network field, live talent programs showed the greatest increase over the previous December, while transcriptions and records led in local broadcast advertising.

Compared to November, national network automotive and financial advertising, national non-network drug, confectionery and retail volume, and local beverage, and financial broadcasting showed the most pronounced gains. Regional network advertising experienced marked increases in the clothing, cosmetic, confectionery, and beverage fields.

In the national network field, accessory, beverage, and radio set advertising experienced the greatest increases as compared to December 1934. Gains were general in the non-network field, with automotive, beverage, confectionery, radio set, and tobacco advertising leading. Local broadcast advertising was spotty, important increases taking place in automotive, clothing, beverage, and house-furnishing advertising. Advertising by retail establishments rose 41.2% as against the preceding December.

### The Year in Broadcast Advertising

Total sales of time during 1935 by the broadcasting industry amounted to \$87,523,848, an increase of 20.0% over the previous year's volume. National network advertising showed a gain of 13.0% over 1934, while regional network volume rose 54.7%. National non-network business increased 26.0% as compared to the preceding year. Local broadcast advertising experienced a rise of 20.6%. The year of 1935 was the most prosperous, from the viewpoint of gross revenue, thus far experienced by the industry.

### Total Broadcast Advertising

Total broadcast advertising over stations and networks during the month under review is set forth in Table I.

**TABLE I**  
**TOTAL BROADCAST ADVERTISING**

Class of Business	1935 Gross Time Sales		
	November	December	Cumulative Jan.-Dec.
National networks	\$4,533,774	\$4,944,445	\$50,067,686
Regional networks	128,715	127,174	1,110,739
National non-network	1,652,680	1,707,140	17,063,688
Local	1,896,180	1,907,600	19,281,735
<b>Total</b>	<b>\$8,211,349</b>	<b>\$8,686,359</b>	<b>\$87,523,848</b>

Broadcast advertising rose 5.8% during the month. National network advertising exceeded the previous month's level by 9.0%. Regional network and local broadcast advertising remained practically unchanged from the preceding month, while national non-network volume rose 3.3%.

Compared to December 1934, national network volume rose 11.0%, regional network advertising 99.8%, national non-network business 39.6% and local broadcast advertising 33.4%. Total revenues of the medium showed a gain of 20.8% over the corresponding period of 1934.

### Comparison with Other Media

National magazine volume declined 20.3% during the month, partly due to normal seasonal influences. National farm papers experienced a decrease of 5.8%. Newspaper advertising remained at approximately the same level as in November, rather than showing the usual seasonal decline.

Gains over December 1934 amounted to 6.3% in the case of national magazines. National farm paper advertising rose 30.0% and newspaper advertising 12.3%. Automotive advertising in newspapers rose 3.5% and department store volume 9.9%.

Advertising volume placed in major media during December is found in Table II.

**TABLE II**  
**ADVERTISING BY MAJOR MEDIA**

Advertising Medium	1935 Gross Time and Space Sales		
	November	December	Cumulative Jan.-Dec.
Radio broadcasting	\$8,211,349	\$8,686,359	\$87,523,848
National magazines <sup>1</sup>	12,118,920	9,681,025	123,093,289
National farm papers <sup>1</sup>	481,501	452,976	5,565,059
Newspapers <sup>2</sup>	48,765,000	49,170,000	517,513,000
<b>Total</b>	<b>\$69,576,770</b>	<b>\$67,990,360</b>	<b>\$733,695,196</b>

<sup>1</sup> Publishers Information Bureau.

<sup>2</sup> Estimated.

### Non-network Advertising

General non-network advertising increased 1.8% as against November and registered a gain of 35.3% over the December 1934 level. The greatest increase over the preceding month was experienced by clear channel and high powered regional stations, whose non-network volume rose 7.6%. Regional station advertising of this type increased 1.6% while local station volume declined 13.5%.

Compared to December of the previous year, clear channel non-network advertising rose 29.7%, regional station advertising 43.5% and local station business 38.8%. Broadcast advertising by power of station is found in Table III.

**TABLE III**  
**NON-NETWORK ADVERTISING BY POWER OF STATION**

Power of Station	1935 Gross Time Sales		
	November	December	Cumulative Jan.-Dec.
Over 1,000 watts	\$1,561,600	\$1,683,850	\$16,564,505
250-1,000 watts	1,423,160	1,446,490	14,523,795
100 watts	564,100	484,400	5,257,213
<b>Total</b>	<b>\$3,548,860</b>	<b>\$3,614,740</b>	<b>\$36,345,513</b>

Except for an increase of 8.8% in non-network advertising in the North Central area, there was little change over the preceding month. Non-network advertising in the New England and Middle Atlantic States remained at approximately the same level as in December of 1934. Broadcast advertising of this type showed an increase of 70.0% in the South Atlantic and South Central States. The gain in the North Central area was 56.6%, and in the Mountain and Pacific district, 27.3%. Non-network advertising by geographical areas is set forth in Table IV.

**TABLE IV**  
**NON-NETWORK BROADCAST ADVERTISING BY GEOGRAPHICAL DISTRICTS**

Geographical District	1935 Gross Time Sales		
	November	December	Cumulative Jan.-Dec.
New England-Middle Atlantic Area	\$766,520	\$765,000	\$8,945,782
South Atlantic-South Central Area	730,610	715,530	6,060,358
North Central Area	1,305,830	1,420,650	13,941,087
Pacific and Mountain Area	745,900	713,560	7,398,286
<b>Total</b>	<b>\$3,548,860</b>	<b>\$3,614,740</b>	<b>\$36,345,513</b>

### Non-network Volume by Type of Rendition

In the national non-network field, transcription volume and live talent business rose 5.5% and 5.7% respectively. Announcement business declined 8.5% as compared to November. In the local broadcast advertising field, transcription business increased 15.0% as compared to November, while records rose 16.2%. Live talent volume dropped 4.5%, and announcements decreased 1.2%. The transcription and record increases were contrary to the usual seasonal trend.

Compared to December of the previous year, national non-network live talent business increased 43.8%. Transcription volume rose 34.2%, while gross revenues from announcements gained 32.4%. The most marked gains in the local broadcast advertising field over the corresponding month of the preceding year occurred in the transcription and record fields. In the former, a gain of 82.3% was experienced. Record volume rose 114.0%.

National non-network and local broadcast advertising volume by type of rendition employed is found in Table V.

**TABLE V**  
**NON-NETWORK BROADCAST ADVERTISING BY TYPE OF RENDITION**

Type of Rendition	National Non-network		Local		Total		Cumulative Jan.-Dec.
	November	December	November	December	November	December	
Electrical transcriptions	\$534,900	\$574,550	\$178,680	\$206,080	\$713,580	\$780,630	\$7,614,508
Live talent programs	828,940	877,520	1,040,160	995,380	1,869,100	1,872,900	17,679,530
Records	9,990	10,130	63,610	75,640	73,600	85,770	849,071
Announcements	278,850	244,940	613,730	630,500	892,580	875,440	10,202,404
<b>Total</b>	<b>\$1,652,680</b>	<b>\$1,707,140</b>	<b>\$1,896,180</b>	<b>\$1,907,600</b>	<b>\$3,548,860</b>	<b>\$3,614,740</b>	<b>\$36,345,513</b>

### Sponsor Trends in December

Few gains of importance were experienced in the national network field as compared to the preceding month, though slight increases in advertising volume occurred in the majority of sponsor groups. The most significant increases were a rise of 21.3% in automotive advertising and a gain of 26.3% in financial volume. There were no decreases.

Regional network advertising showed general increases with clothing, cosmetic, confectionery, beverage and tobacco advertising showing the greatest gains. Clothing volume tripled; cosmetic advertising, a comparative newcomer in the regional field, rose tenfold; confectionery advertising, mostly candy manufacturers, doubled, while tobacco volume continued its increases of recent months and gained 32.0%. Accessory volume declined 33.7% and soap and kitchen supply advertising dropped 15.7%.

Principal gains during the month in the national non-network field were as follows: drugs, 35.1%; confectionery, 43.1%; and radio sets, 156.0%. Decreases of importance were as follows: automotive, 32.1%; housefurnishings, 23.4%; and financial, 25.7%.

Main gains in local broadcast advertising as against November were as follows: beverages, 23.0%; soaps and kitchen supplies, 28.6%, and financial volume 18.9%. Trends as a whole were spotty with accessory volume declining 20.0%, drug advertising dropping 40.3% and foodstuffs 12.5%.

### Comparison with December 1934

Gains in the national network field were fairly general compared to the corresponding month of 1934. Accessory advertising showed

an increase of 35.1%, housefurnishing volume doubled, and radio set advertising rose 31.2%. Beverage advertising rose 90.0%. Drug volume dropped 25.0%, while confectionery declined 26.4%.

Regional network volume also experienced material increases in a number of fields. Accessory advertising rose from \$530 in December 1934 to \$13,127 during the month under review. The gain in cosmetic field during the same period was from \$1,060 to \$11,139. Confectionery volume rose from \$2,200 to \$21,546 during that period. Tobacco advertising, a newcomer for December, amounted to \$10,546 as compared to nothing during the corresponding period of the preceding year.

Gains were even more general in the national non-network field. Principal increases were as follows, when comparison is made with December 1934: automotive, 210.0%; cosmetics, 66.3%; foodstuffs, 46.8%; beverages, 256.0%; confectionery, 175.0%; radio sets, tenfold; and tobacco, threefold. Accessory advertising continued the decline of recent months, dropping 25.7% as against December of last year. Housefurnishing volume declined 17.4%.

Local broadcast advertising showed spotty tendencies. Important gains were as follows: automotive, 50.0%; accessory, 45.7%; clothing, 65.7%; beverages, 162.2%; housefurnishings, 70.8%, and financial 40.0%. Significant declines were as follows: drugs, 33.0%; confectionery, 13.0%.

Broadcast advertising during December by major product and service groups is found in Table VI.

**TABLE VI**  
**RADIO BROADCAST ADVERTISING BY TYPE OF SPONSORING BUSINESS**  
(December, 1935)

Type of Sponsoring Business	Gross Time Sales				
	National Networks	Regional Networks	National Non-networks	Local	Total
1a. Amusements	—	—	\$2,200	\$28,700	\$30,900
1-2. Automobiles and accessories:					
(1) Automobiles	\$380,666	—	156,400	75,080	612,146
(2) Accessories, gas and oils	421,442	\$13,127	106,080	73,750	614,399
3. Clothing and apparel	38,246	2,173	41,940	325,500	407,859
4-5. Drugs and toilet goods:					
(4) Drugs and pharmaceuticals	528,394	3,190	450,480	55,110	1,037,174
(5) Toilet goods	971,145	11,139	86,300	34,700	1,103,284
6-8. Food products:					
(6) Foodstuffs	959,271	33,857	368,000	209,645	1,570,773
(7) Beverages	321,077	6,015	56,760	119,550	503,402
(8) Confections	121,750	21,546	43,820	8,940	196,056
9-10. Household goods:					
(9) Household equipment and furnishings	34,305	5,594	42,580	184,220	266,699
(10) Soap and kitchen supplies	246,189	4,520	40,570	11,800	303,079
11. Insurance and financial	45,945	1,244	10,420	76,620	134,229
12. Radios	126,992	—	26,250	28,000	181,242
13. Retail establishments	5,429	—	17,800	154,325	177,554
14. Tobacco products	376,345	10,540	39,440	8,800	435,125
15. Miscellaneous	367,249	14,229	218,100	512,860	1,112,438
<b>Total</b>	<b>\$4,944,445</b>	<b>\$127,174</b>	<b>\$1,707,140</b>	<b>\$1,907,600</b>	<b>\$8,686,359</b>

## Details as to Sponsor Trends

Details as to trends in broadcast advertising volume in various sponsoring groups are as follows:

1a. **Amusements.** Total volume 35.5% above November. National gain 27.7%, local 41.7%. National volume triple last December. Local down 8.2%. Total down 7.0%.

1. **Automotive.** National network volume 21.3% above November. National non-network down 32.1% and local 11.1%. National network advertising 14.6% above December 1934. National non-network up 210.0% and local 50.0%.

2. **Accessories and gasoline.** National network volume 11.5% over November. Regional network volume down 33.7% and local 20.0%. National non-network gain 1.8%. National network advertising 35.1% above last December. Regional gain \$530 to \$13,127. Local up 45.7%. National non-network down 25.7%.

3. **Clothing.** No change in national network volume during month. Regional business triple. National non-network business up 1.06% and local 3.2%. National network advertising 7.0% above corresponding month of preceding year. National non-network business up 47.6%, and local 65.7%. Regional unchanged.

4. **Drugs and pharmaceuticals.** National network gain as compared to previous month 2.4%. National non-network gain 35.1%. Regional business unchanged. Local down 40.3%. National network decline from same month of last year 25.0%. Regional decline 38.0% and local 33.0%. National non-network unchanged.

5. **Toilet goods.** Gains over November as follows: National networks, 11.8%; regional networks, tenfold; and local 5.1%. National non-network down 15.1%. Gains compared to corresponding period of previous year as follows: National networks, 19.5%; regional networks, \$1,060 to \$11,139; national non-network, 66.3%, and local, 54.6%.

6. **Foodstuffs.** Increases over month were: National networks, 8.2%; regional networks, 28.4%; national non-network, 8.2%. Local volume down 12.5%. National network advertising 6.3% below last December, and local down 1.0%. Regional volume up 33.2%, and local 46.8%.

7. **Beverages.** National network volume 9.1% above November. Regional volume up 50.0% and local 23.0%. National non-network down 3.3%. Gains over corresponding month of 1934 as follows: National networks, 90.0%; regional networks, tripled; national non-network, 256.0%; local, 162.2%.

8. **Confectionery.** National network volume unchanged during the month. Regional advertising doubled, national non-network up 43.1% and local down 18.1%. National network advertising 26.4% below December 1934. Local down 13.0%. National non-network up 175.0%. Regional network up from \$2,200 to \$21,456.

9. **Household equipment.** Regional network and local volume unchanged during the month. National network business up 9.0%. National non-network down 23.4%. National network volume double last December. Regional volume up 11.0% and local 70.8%. National non-network down 17.4%.

10. **Soaps and kitchen supplies.** National network advertising unchanged from preceding month. Regional networks down 15.7% and national non-network business 4.0%. Local up 28.6%. Compared to corresponding month of 1934, national network volume down 3.4%, national non-network business comparatively unchanged, and local more than doubled.

11. **Financial and insurance.** National network business 26.3% above preceding month, and local 18.9%. National non-network down 25.7%. Compared to December of previous year, national network volume unchanged, national non-network up 27.6% and local 40.0%.

12. **Radios.** National network volume 5.4% ahead of November. National non-network up 10.0%. Local down 6.6%. Gains compared to last December as follows: National networks, 31.2%; national non-network, tenfold; local, 38.5%.

13. **Department and general stores.** National network volume under this classification comprises mail order business, new this month. Some volume of this type broadcast last spring. National non-network business 156.0% above November. Local down 5.6%, due to usual seasonal trend.

14. **Tobacco products.** National network advertising 5.8% above November. Regional network business up 32.0%. National non-network volume unchanged. Local up 24.2%. Compared to same month of preceding year, gains as follows: National networks, 11.3%; national non-network, threefold; local up 54.1%.

15. **Miscellaneous.** National network business up 10.5% and

local 19.0% as against November. Regional volume down 18.0% and local 4.1%. National network volume double corresponding month of 1934. Regional business up 77.5%. National non-network gain 55.0% and local 45.4%.

## Retail Broadcast Advertising

Broadcast advertising sponsored by retail establishments of various kinds increased 9.3% as compared to November, contrary to the usual seasonal trend, which is downward. Retail broadcast advertising gained 41.2% as compared to the corresponding month of 1934.

Principal gains as compared to November were as follows: Clothing, 4.2%; drugs, 12.0%; beauty parlors, 55.0%; grocery stores and delicatessens, 24.8%; restaurants, 12.7%; furniture retailers, 20.3%. Principal declines during the month were automotive, 19.6%; gasoline and accessories, 9.8%; and radio retailers, 7.0%.

Compared to December 1934, gains were as follows: automotive, 53.6%; clothing, 77.3%; beauty parlors, 82.1%; confectionery stores, 156.0%; household equipment retailers, 30.0%; furniture stores, 55.0%. The principal decline was in the gasoline and accessory field, where retail volume dropped 35.1%. Retail broadcast advertising during the month is found in Table VII.

TABLE VII

### RETAIL BROADCAST ADVERTISING OVER INDIVIDUAL STATIONS

Type of Sponsoring Business	1935 Gross November	Time Sales December
Automobiles and accessories:		
Automobile agencies and used car dealers	\$97,670	\$78,510
Gasoline stations, garages, etc.	41,660	37,450
Clothing and apparel shops	326,230	340,000
Drugs and toilet goods:		
Drug stores	25,550	28,050
Beauty parlors	7,840	12,200
Food products:		
Grocery stores, meat markets, etc.	62,070	77,530
Restaurants and eating places	20,150	22,800
Beverage retailers	5,000	5,840
Confectionery stores	3,870	7,140
Household goods:		
Household equipment dealers	47,540	46,745
Furniture stores	89,355	107,668
Hardware stores	11,670	11,330
Radio retailers	24,750	22,885
Department and general stores	169,693	172,125
Tobacco shops	—	1,370
Miscellaneous	112,547	171,430
Total	\$1,045,595	\$1,143,073

## FEDERAL COMMUNICATIONS COMMISSION ACTION

### Hearing Calendar

Monday, February 3

#### HEARING BEFORE AN EXAMINER

WRVA—Larus & Brothers Co., Inc., Richmond, Va.—C. P., 1110 kc., 50 KW, unlimited time. Present assignment: 1110 kc., 5 KW, unlimited time.

NEW—The Monocacy Broadcasting Co., Rockville, Md.—C. P., 1140 kc., 250 watts, daytime.

Wednesday, February 5

#### HEARING BEFORE AN EXAMINER

NEW—C. G. Hill, Geo. D. Walker, Susan H. Walker, Winston-Salem, N. C.—C. P., 1250 kc., 250 watts, daytime.

Thursday, February 6

#### ORAL ARGUMENT BEFORE THE BROADCAST DIVISION

Examiner's Report No. I-55:

NEW—J. C. & E. W. Lee (Riverside Broadcasting Co.), Riverside, Calif.—C. P., 820 kc., 250 watts, daytime.



**Examiner's Report No. I-114:**

NEW—Metro Broadcasting Co., Los Angeles, Calif.—C. P., **820 kc.**, 250 watts, limited with WHAS.

**Examiner's Report No. I-117:**

NEW—Wayne Broadcasting Co., Hamtramck, Mich.—C. P., **1370 kc.**, 100 watts, daytime.

**Examiner's Report No. I-111:**

WILL—University of Illinois, Urbana, Ill.—Modification of license, **580 kc.**, 1 KW, daytime. Present assignment: **890 kc.**, 250 watts, 1 KW LS, shares with KUSD and KFNF.

**APPLICATIONS GRANTED**

WOW—Woodmen of the World Life Ins. Assn., Omaha, Nebr.—Granted license to cover C. P. authorizing changes in equipment, installation of new antenna, and transmitter site; **590 kc.**, 1 KW night, 5 KW day, unlimited.

WJAR—The Outlet Co., Providence, R. I.—Granted modification of C. P. extending completion date from 2-4-36 to 6-4-36.

WBOW—Banks of Wabash, Inc., Terre Haute, Ind.—Granted license to cover C. P. authorizing changes in equipment and increase in day power to 250 watts; **1310 kc.**, 100 watts night, unlimited.

WBBM—WBBM Broadcasting Corp., Chicago, Ill.—Granted extension of experimental authority to continue to operate synchronously with station KFAB from LS to midnight for period 2-1-36 to 8-1-36.

KFAB—KFAB Broadcasting Co., Lincoln, Nebr.—Granted extension of special experimental authority to continue to operate synchronously with station WBBM from LS to midnight for period 2-1-36 to 8-1-36.

WBAL—The WBAL Broadcasting Co., Baltimore, Md.—Granted extension of special experimental authority to operate on **1060 kc.**, with power of 10 KW, simultaneously with station KTHS from 6 a. m. to sunset at Hot Springs, and alone from sunset at KTHS to 9 p. m., EST; to operate synchronously with station WJZ on **760 kc.**, with power of 2½ KW from 9 p. m., EST, to midnight, employing directional antenna, for period 2-1-36 to 8-1-36.

WESG—Cornell University, Elmira, N. Y.—Granted extension of special experimental authority to operate daytime to sunset at New Orleans on **850 kc.** with power of 1 KW.

WTIC—The Travelers Broadcasting Service Corp., Hartford, Conn.—Granted extension of special experimental authority to operate unlimited time simultaneously with station KRLD on **1040 kc.**, with power of 50 KW, for period 2-1-36 to 8-1-36.

KRLD—KRLD Radio Corp., Dallas, Tex.—Granted extension of special experimental authority to operate simultaneously with station WTIC for period 2-1-36 to 8-1-36.

KTHS—Hot Springs Chamber of Commerce, Hot Springs National Park, Ark.—Granted extension of special experimental authority to operate on frequency **1060 kc.**, with power of 10 KW, simultaneously with station WBAL from 6 a. m. to LS from 2-1-36 to 8-1-36, sharing after sunset (KTHS operates unlimited 8 p. m. to midnight. Normally licensed **1040 kc.**, 10 KW, S-KRLD).

WCAZ—Superior Broadcasting Service, Inc., Carthage, Ill.—Granted modification of license to increase hours of operation from S.H. daytime to unlimited daytime.

KSD—The Pulitzer Publishing Co., St. Louis, Mo.—Granted authority to determine operating power by direct measurement of antenna input in compliance with the terms of Rule 137.

KGFG—Oklahoma Broadcasting Co., Inc., Oklahoma City, Okla.—Granted consent to the transfer of control of Oklahoma Broadcasting Co., Inc., from R. S. James, Elizabeth E. Hibbert and Marcia A. Shaffer to Hale V. Davis.

WCAU—WCAU Broadcasting Co., Philadelphia, Pa.—Granted renewal of license, **1170 kc.**, 50 KW, unlimited time. Also granted renewal for auxiliary, **1170 kc.**, 1 KW.

WLS—Agricultural Broadcasting Co., Chicago, Ill.—Granted extension of present license for period of 90 days.

WLS—Agricultural Broadcasting Co., Chicago, Ill.—Same for auxiliary purposes.

WCFL—Chicago Federation of Labor, Chicago, Ill.—Granted extension of present license for period of 30 days.

WCFL—Chicago Federation of Labor, Chicago, Ill.—Same for auxiliary.

WWVA—West Virginia Broadcasting Corp., Wheeling, W. Va.—Granted extension of present license for period of 90 days. Also granted same for auxiliary.

KMMJ—The M. M. Johnson Co., Clay Center, Nebr.—Granted extension of present license for period of 90 days.

KLPM—John B. Cooley, Minot, N. Dak.—Granted renewal of license for the regular period; **1240 kc.**, 250 watts, S.H.

WHO—Central Broadcasting Co., Des Moines, Iowa.—Granted extension of present license for period of 90 days.

WIL—Missouri Broadcasting Corp., St. Louis, Mo.—Granted renewal of license for the regular period; **1200 kc.**, 100 watts night, 250 watts day, unlimited.

WJBW—Charles C. Carlson, New Orleans, La.—Granted extension of present license for period of 30 days.

WJR—WJR, The Goodwill Station, Detroit, Mich.—Granted extension of present license for period of 90 days.

WPTF—WPTF Radio Co., Raleigh, N. C.—Granted extension of special experimental authority to operate from local sunset to 8 p. m., PST, with 1 KW power, period 2-1-36 to 8-1-36. Also granted extension of special experimental authority for auxiliary to operate from LS to 8 p. m., PST, with power of 1 KW, for period 2-1-36 to 8-1-36.

WBRE—Louis G. Baltimore, Wilkes-Barre, Pa.—Granted renewal of license for the regular period.

WHB—WHB Broadcasting Co., Kansas City, Mo.—Granted renewal of license for the regular period.

WABY—Adirondack Broadcasting Co., Inc., Albany, N. Y.—Granted renewal of license for the regular period.

WATL—J. W. Woodruff and S. A. Cisler, Jr., d/b as Atlanta Broadcasting Co., Atlanta, Ga.—Granted extension of present license for period of 60 days.

KIRO—Queen City Broadcasting Co., Seattle, Wash.—Granted extension of special experimental authority to operate on **710 kc.**, with 500 watts, unlimited time.

**RENEWAL OF LICENSES**

The following stations were granted renewal of licenses on a temporary basis subject to whatever action Commission may take on pending applications:

KNX, Los Angeles; KOB, Albuquerque, N. Mex.; KWJJ, Portland, Ore.; KWKH, Shreveport, La.; KXA, Seattle, Wash.; WBAP, Fort Worth, Tex.; WCCO, Minneapolis, Minn.; WESG, Elmira, N. Y.; WFAA, Dallas, Tex.; WHDH, Boston, Mass.; WJAG, Norfolk, Nebr.; WNYC, New York City; WOI, Ames, Iowa; WOV, New York City.

WPG—City of Atlantic City, Atlantic City, N. J.—Granted renewal of license on a temporary basis subject to whatever action may be taken by the Commission upon their pending application for renewal.

WWL—Loyola University, New Orleans, La.—Granted renewal of license on a temporary basis, subject to whatever action may be taken by the Commission upon their pending application for renewal.

KFBI—The Farmers & Bankers Life Ins. Co., Abilene, Kans.—Granted renewal of license on a temporary basis only to conform to the Commission's action of January 10, 1936, with reference to this station's application for renewal of license.

WMSD—Muscle Shoals Broadcasting Corp., Sheffield, Ala.—Granted renewal of license for the period ending July 1, 1936.

WIBG—Seaboard Radio Broadcasting Corp., Glenside, Pa.—Present license extended on a temporary basis only from February 1 to March 1, pending receipt and action on renewal application.

WJR—WJR, The Goodwill Station, Inc., Detroit, Mich. (auxiliary).—Present license extended on a temporary basis only, from February 1 to March 1, pending receipt and action on renewal application.

KFAB—KFAB Broadcasting Co., Lincoln, Nebr.—Present license extended on a temporary basis only, to March 1, 1936, pending further action on renewal application.

WCBD—WCBD, Inc., Waukegan, Ill.—Present license extended on a temporary basis only, to March 1, 1936, pending further action on renewal application.

KGMB—Honolulu Broadcasting Co., Ltd., Honolulu, T. H.—Present license further extended upon a temporary basis only, to March 1, 1936, pending further action on renewal application.

WJEJ—Hagerstown Broadcasting Co., Hagerstown, Md.—Present license further extended upon a temporary basis only, to March 1, 1936, pending further action on renewal application.

WINS—Hearst Radio, Inc., New York City.—Present license further extended upon a temporary basis only, to March 1, 1936, pending further action on renewal application.

The following stations were granted renewal of licenses for the regular period:

KGU, Honolulu, T. H.; WBBM and auxiliary, Chicago, Ill.; WEEU, Reading, Pa.; WOAI and auxiliary, San Antonio, Tex.; WSAZ, Huntington, W. Va.

KILU—Arkansas Radio & Equipment Co., Portable.—Present license extended for a period of 1 month from February 1, 1936, to March 1, 1936, on a temporary basis, subject to such action as may be taken upon application for renewal of license pending before it.

WLEZ—The Norfolk Daily News, Portable.—Present license extended for a period of 1 month from February 1, 1936, to March 1, 1936, on a temporary basis, subject to such action as may be taken upon application for renewal of license pending before it.

### ACTION ON EXAMINERS' REPORTS

NEW—Ex. Rep. 1-135: George E. Heiges, Sharon, Pa.—Denied C. P. for new broadcast station to operate on 1370 kc., 100 watts night, 250 watts day, unlimited time; Examiner R. L. Walker sustained. Order effective March 31, 1936.

WJAR—Ex. Rep. 1-155: The Outlet Company, Providence, R. I.—Granted modification of C. P. to make changes in equipment; move transmitter; install directional antenna; and change hours of operation from 250 watts night, 500 watts LS, to 1 KW; 890 kc., unlimited time; Examiner P. W. Seward sustained. Order effective March 31, 1936.

### MISCELLANEOUS

WWRL—Long Island Broadcasting Corp., Woodside, N. Y.—Denied petition asking Commission to reconsider action of December 10, 1935, in setting application for hearing and grant said application. Applicant seeks to change specified hours to include certain hours after midnight four days per week. Rule 88 provides "a specified hour station shall not broadcast any commercial or sponsored programs from midnight to 6 a. m."

KGFG—Oklahoma Broadcasting Co., Inc., Oklahoma City, Okla.—Granted regular renewal license and dismissed application from the hearing docket.

WSJS—Winston-Salem Journal Co., Winston-Salem, N. C.—Granted petition to intervene and be a party to hearing of application of C. G. Hill, Geo. D. Walker and Susan H. Walker for a C. P. for radio broadcasting station at Winston-Salem.

WWL—Loyola University, New Orleans, La.—Extended for 30 days from February 1, 1936, temporary authorization on same conditions, subject to such action as may be had by the Commission upon application for extension now pending, which has been heard, including question of alleged interference with WLWL, New York City, and the petition of WLWL in opposition thereto.

KWKH—International Broadcasting Corp., Shreveport, La.—Extended for 30 days from February 1, 1936, temporary authorization on same conditions, subject to such action as may be had by the Commission upon application for extension now pending, which has been heard, including question of alleged interference with WLWL, New York City, and the petition of WLWL in opposition thereto.

### SET FOR HEARING

NEW—Southwest Broadcasting Co., Prescott, Ariz.—Application for C. P. for new station, 1500 kc., 100 watts night, 250 watts day, unlimited (requests facilities of KPJM which was deleted effective 11-26-35).

WHAT—Independence Broadcastng Co., Inc., Philadelphia, Pa.—Application for C. P. to move transmitter site from Philadelphia to location to be determined in Pennsylvania; install new equipment; change frequency from 1310 kc. to 1220 kc.; increase power from 100 watts to 1 KW and hours of operation from S-WTEL to unlimited.

WHBF—Rock Island Broadcasting Co., Rock Island, Ill.—Application for C. P. to move transmitter locally to a site to be determined; make changes in equipment; install directional antenna; change frequency from 1210 kc. to 1450 kc.; change power from 100 watts night, 250 watts day, to 1 KW night, 1 KW day.

KMLB—Liner's Broadcasting Station, Inc., Monroe, La.—Application for C. P. to move transmitter locally; make changes in equipment; change frequency from 1200 kc. to 1210 kc.

NEW—Ellwood W. Lippincott, Bend, Ore.—Application for C. P. for new station, 1500 kc., 100 watts, daytime, site to be determined.

NEW—John Perkins Rabb, Lenoir, N. C.—Application for C. P. for new station, 1370 kc., 100 watts, daytime.

WAAW—Omaha Grain Exchange, Omaha, Nebr.—Consent to voluntary assignment of license to the Nebraska Broadcasting Co. Also application for renewal of license, 660 kc., 500 watts daytime, and temporary license granted pending hearing.

WHB—WHB Broadcasting Co., Kansas City, Mo.—Application for C. P. to install new equipment, directional antenna; change frequency from 860 kc. to 1120 kc., time of operation from daytime to unlimited, using 500 watts night, 1 KW day.

NEW—Voice of Marshall, Marshall, Tex.—Application for C. P. for new station, 1500 kc., 100 watts, daytime, specified hours.

NEW—Earle Yates, Las Cruces, N. Mex.—Application for C. P. for new station; 930 kc., 1 KW day, daytime only.

### APPLICATIONS DENIED

KOOS—Pacific Radio Corp., Coosbay, Ore.—Denied request for authority to operate on frequency 1390 kc., with power of 250 watts daytime, at the present location, employing present antenna system.

WGST—Georgia School of Technology, Atlanta, Ga.—Denied authority to operate with a power of 1 KW, unlimited time, for a period not to exceed 30 days, employing the present antenna system.

### APPLICATIONS RECEIVED

#### First Zone

WSYR-WSYU—Central New York Broadcasting Corp., Syracuse, 570 N. Y.—License to cover construction permit (B1-P-813) to install new equipment.

NEW—The Niagara Falls Gazette Publishing Co., Niagara Falls, 630 N. Y.—Construction permit to erect a new broadcast station to be operated on 630 kc., 250 watts power, daytime.

NEW—E. Anthony & Sons, Inc., Pawtucket, R. I.—Construction 1200 permit for a new station to be operated on 1200 kc., 100 watts, 250 watts day, unlimited time. Requests facilities of Station WNRI.

KGMB—Honolulu Broadcasting Co., Ltd., Honolulu, T. H.—1320 License to cover construction permit (B5-P-303) as modified to move transmitter and studio, install new equipment, and increase power.

NEW—Auburn Publishing Co., Auburn, N. Y.—Construction permit for a new station to be operated on 1420 kc., 100 watts, unlimited time.

NEW—The Northern Corporation, Chelsea, Mass.—Construction permit for a new general experimental station to be operated on 31600, 35600, 38600, 41000 kc., 100 watts.

#### Second Zone

WIP—Pennsylvania Broadcasting Co., Philadelphia, Pa.—Extension 610 of special experimental authorization to operate with 1 KW power from 3-1-36 to 9-1-36.

WGBI—Scranton Broadcasters, Inc., Scranton, Pa.—Extension of 880 special experimental authorization to operate with 250 watts additional power from 3-1-36 to 9-1-36.

WEST—Associated Broadcasters, Inc., Easton, Pa.—Modification of 1200 construction permit (B2-P-472) for move of transmitter and studio; make changes in antenna, requesting change in hours of operation from share-WKBO to unlimited day and share-WKBO night; and extend commencement and completion dates 30 days and 6 months, respectively.

NEW—Hershel Talbot Walton, East Liverpool, Ohio.—Construction 1420 permit for a new station to be operated on 1420 kc., 100 watts, unlimited time.

WGAR—The WGAR Broadcasting Co., Cleveland, Ohio.—Authority to determine operating power by direct measurement of antenna power.

NEW—Allen T. Simmons, Village of Tallmadge, Ohio.—Construction permit for a new general experimental station for 30100, 34600, 40100 kc., 100 watts. Amended to show 31600, 35600, 38600, 41000 kc.

#### Third Zone

NEW—The Tribune Co., Tampa, Fla.—Construction permit for a 550 new station to be operated on 550 kc., 1 KW night, 5 KW day, unlimited time.

NEW—The Constitution Publishing Co., Atlanta, Ga.—Construction permit for a new station to be operated on **590 kc.**, 1 KW, unlimited time.

WJAX—City of Jacksonville, Jacksonville, Fla.—Modification of license to increase power from 1 KW night, 5 KW day, to 5 KW day and night.

KPRC—Houston Printing Co., Houston, Tex.—Authority to determine operating power by direct measurement of antenna power.

NEW—Theodore E. Johnson, Houston, Tex.—Construction permit for a new station to be operated on **1210 kc.**, 100 watts, unlimited time.

WMFJ—W. Wright Esch, Daytona Beach, Fla.—Construction permit to install a new transmitter and vertical antenna.

WMBR—Florida Broadcasting Co., Jacksonville, Fla.—License to cover construction permit (B3-P-18) for changes in equipment, increase in power, and move of transmitter.

NEW—Isadore Goldwasser, Tuscaloosa, Ala.—Construction permit for a new broadcast station to be operated on **1370 kc.**, 100 watts, unlimited time.

KNET—John C. Welch, Wm. M. Keller, and Bonner Frizzell, d/b as Palestine Broadcasting Association, Palestine, Tex.—License to cover construction permit (B3-P-216) as modified for a new station to be operated on **1420 kc.**, 100 watts power, daytime operation.

KRLH—Clarence Scharbauer, Midland, Tex.—License to cover construction permit (B3-P-675) as modified for new station on **1420 kc.**, 100 watts power, daytime operation.

#### Fourth Zone

WCBD—WCBD, Inc., Waukegan, Ill.—Authority to transfer control of corporation from Wilbur Glenn Voliva, Ernest E. Harwood, M. J. Minter to L. E. Moulds, W. F. Moss, Gene T. Dyer, E. M. Ringwald, 100 shares of common stock

NEW—Frank M. Dunham, Fort Dodge, Iowa.—Construction permit for a new station to be operated on **1500 kc.**, power not given, unlimited time. Amended to change frequency from **1500 kc.** to **1210 kc.**, giving power as 100 watts; change studio site from 908 First Ave. S. to 22 S. 10th St., Fort Dodge, Iowa.

NEW—Stanley Reid and Charles Withnell Boegel, Jr., Cedar Rapids, Iowa.—Construction permit for a new station to be operated on **1310 kc.**, 100 watts power, unlimited time.

KRNT—Iowa Broadcasting Co., Des Moines, Iowa.—Construction permit to install new equipment and increase power from 500 watts, 1 KW day, to 1 KW, 5 KW day, using directional antenna. (Consideration under Rule 6 (g)).

KSCJ—Perkins Brothers Co. (The Sioux City Journal), Sioux City, Iowa.—Construction permit to make equipment changes. Amended: Antenna and equipment changes; move transmitter from First and Bluff Sts., Sioux City, Iowa, to Sioux City, Iowa; increase power from 1 KW night, 2½ KW day, to 1 KW night, 5 KW day; and change time from simultaneous day WTAQ, specified hours night, to unlimited. Amended: Omit request for increase in power and changes in equipment.

NEW—Telegraph Herald, Dubuque, Iowa.—Construction permit to erect new station to be operated on **1340 kc.**, 500 watts power, daytime.

#### Fifth Zone

KIRO—Queen City Broadcasting Co., Seattle, Wash.—Extension of special experimental authorization to operate on **710 kc.**, 500 watts, unlimited time, from 2-1-36 to 8-1-36.

KIEV—Cannon System, Ltd., Glendale, Calif.—License to cover construction permit (5-P-B-3268) as modified for new equipment and increase in power.

KOMO—Fisher's Blend Station, Inc., Seattle, Wash.—Modification of construction permit (B5-P-536) for new equipment, increase in day power, move transmitter, requesting extension of completion date from 2-25-36 to 4-25-36.

NEW—Lyman Peters Corp., Pasadena, Calif.—Construction permit for a new station to be operated on **1160 kc.**, 250 watts, daytime.

KWSC—The State College of Washington, Pullman, Wash.—Construction permit to make changes in equipment and increase power from 1 KW, 2 KW day, to 1 KW, 5 KW day.

KTW—First Presbyterian Church, Seattle, Wash.—Authority to install automatic frequency control.

KUJ—KUJ, Inc., Walla Walla, Wash.—Construction permit to change frequency from **1370 kc.** to **1250 kc.**, install new equipment, and move transmitter from Second and Rose Sts. to site to be determined, Walla Walla, Wash. Amended to change power from 1 KW to 250 watts.

KOOS—H. H. Hanseth, Inc., Marshfield, Ore.—Modification of license to change name from H. H. Hanseth, Inc., to Pacific Radio Corporation.

KOOS—H. H. Hanseth, Inc., Marshfield, Ore.—Construction permit to make changes in equipment; move transmitter from Hall Bldg., Marshfield, Ore., to ¼ mile from north city limits of Marshfield, Ore. (Filed in new name of Pacific Radio Corporation.)



# The National Association of Broadcasters

NATIONAL PRESS BUILDING \* \* \* \* \* WASHINGTON, D. C.  
 JAMES W. BALDWIN, Managing Director

## NAB REPORTS

Vol. 4 - No. 7  
 FEBRUARY 6, 1936

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### DIRECTIONAL ANTENNA PERMITS

The Broadcast Division of the Federal Communications Commission has adopted the following policy in connection with applications for construction permits for broadcast facilities:

No application for a construction permit specifying a directional antenna will be accepted by the Commission unless a definite site and full details of the directional antenna are given with the application. Any application not complete in these details will be returned to the applicant as "incomplete" under Rules 104.1 and 103.9.

### SECURITIES ACT REGISTRATIONS

The following companies have filed registration statements with the Securities & Exchange Commission under the Securities Act:

- A. E. Staley Manufacturing Co., Decatur, Ill. (2-1878, Form A-2)
- Trenton Valley Distillers Corp., Detroit, Mich. (2-1879, Form A-1)
- Fansteel Metallurgical Corp., North Chicago, Ill. (2-1882, Form A-2)
- International Vitamin Corp., New York City, (2-1883, Form A-1)
- Charles H. Frye, Seattle, Wash. (2-1884, Form E-1)
- Hupp Motor Car Corp., Detroit, Mich. (2-1885, Form A-2)
- California Oil & Land Corp., Los Angeles, Calif. (2-1886, Form A-1)
- Chicago and Southern Air Lines, Inc., Roberston, Mo. (2-1888, Form A-1)

### RECOMMENDS NEW INDIANA STATION

The North Side Broadcasting Corporation has filed an application with the Federal Communications Commission asking for a construction permit for the erection of a new station at New Albany, Ind., to use 1370 kilocycles, 100 watts and 250 watts LS, and unlimited time.

Examiner George H. Hill, in Report No. I-188, has recommended that so much of the application be granted as to allow such a station to operate daytime hours only and "that the request for night-time hours of operation be denied."

The Examiner found that "the granting of the application for operation during daytime hours would not interfere with the fair and efficient radio service of any other station; however, the operation of the proposed station during night-time hours would result in objectionable interference with other existing stations."

### FEDERAL TRADE COMMISSION ACTION

#### Complaints

The Federal Trade Commission has alleged unfair competition in complaints issued against the following companies. The respondents will be given an opportunity for hearing to show cause why cease and desist orders should not be issued against them.

**No. 2690.** Unfair competition through misrepresentation of its cosmetics and toilet preparations as being of English origin is alleged in a complaint issued against **Worthall, Ltd.**, 160 Fifth Avenue, New York City.

The respondent is alleged to have labeled its products as "Drury Lane," "English Lavendar," and "Distributed by Worthall, Ltd., London, Montreal, New York," whereas, the complaint charges, the respondent is neither a limited corporation nor an English company.

with offices in London and Montreal, but is a New York corporation. It is also alleged that the respondent's products are manufactured and compounded in the United States, principally of materials produced in this country, and not in England.

The alleged misrepresentation, the complaint says, has a tendency to mislead dealers and purchasers into the belief that the respondent's toilet preparations are genuine English products, when such is not the case, and tends to divert trade from competitors who truthfully represent their products.

**Nos. 2691-2693.** Alleging unfair methods of competition, complaints have been issued against **Angelo Cataldo**, trading individually and as **Liberty Chocolate Co.** and as **Arcadia Chocolate Co.**, 114 Commercial St., Boston, and against **Massachusetts Chocolate Co., Inc.**, 197 Norfolk Ave., Boston. The complaints charge that the respondents pack and assemble their candy in assortments so as to involve the use of a lottery scheme when sold and distributed to consumers.

Under the respondents' lottery methods, the purchaser, for one cent, always procures a piece of candy, but it is alleged the element of lot or chance enters into the transaction in that the purchaser, if he makes a lucky choice in the selection of a certain piece of candy, receives as a prize, without additional cost, a larger piece.

Many dealers in and consumers of the respondents' candies are induced by the lottery sales plans to purchase these candies, according to the complaint, and trade is diverted to the respondents from competitors who do not use lottery systems held contrary to an established public policy.

#### Stipulations

The Commission has issued the following cease and desist orders:

**No. 01108.** **French Clinical Laboratory and Supply Depot, San Antonio, Tex.**, dealing in medicinal products, has entered into a stipulation to cease and desist from the use of false and misleading advertising in the sale of its "FFP No. 22," offered as a remedy for athlete's foot. Under the agreement the respondent will discontinue representing that its medicated foot powder will prevent or cure or that it is a sure and safe remedy for athlete's foot, when such assertions are not true.

**No. 2573.** **International Sheffield Works, Inc.**, 22 West 27th St., New York City, engaged in the sale of silverware, or silver-plated ware, has been ordered to cease and desist from the use of a trade name which includes the word "Sheffield," until it actually manufactures and sells silver products produced by the copper-rolled plate process, generally known as "Sheffield."

The respondent corporation is directed, under the order, to cease representing in any manner, or suggesting directly or indirectly, that its product is "Sheffield," unless it is manufactured by the copper-rolled plate process which originated in Sheffield, England, and shows the place of origin.

**No. 2582.** Under an order issued, the **Pratt Food Co.**, 124 Walnut St., Philadelphia, engaged in manufacturing and selling dairy feed, is required to discontinue certain claims regarding "Superiodized B. P. Dairy Feed."

Claims that this particular product decreases the amount of feed necessary, builds up resistance to disease and is highly effective in the treatment of Bang's disease, will cease, under the order, and the respondent is prohibited further from representing that cows, when fed "Superiodized Dairy Feed," produce a richer, purer milk which is beneficial to tubercular patients and to infants.

**No. 2616.** An order to discontinue representing in advertising matter that "Cal-Aspirin" contains certain therapeutic properties lacking in ordinary aspirin has been issued against **Cal-Aspirin Corporation**, 160 E. Illinois St., Chicago.

The respondent is prohibited, under the order, from representing that "Cal-Aspirin" is less toxic and better tolerated than ordinary aspirin, or is a more prompt and efficient analgesic and anti-pyretic, and that it acts quicker and its effects last longer, also that it is safer and can be used in larger doses.

## FEDERAL COMMUNICATIONS COMMISSION ACTION

The Broadcast Division of the Commission held no meeting on its regular meeting day this week but postponed it until later in the week.

### HEARING CALENDAR

#### Monday, February 10

- NEW—Edwin A. Kraft, Fairbanks, Alaska.—C. P., 950 kc., 250 watts, unlimited time.  
NEW—John A. Stump, Fairbanks, Alaska.—C. P., 1210 kc., 100 watts, 250 watts LS, unlimited time.  
NEW—Northern Commercial Co., Fairbanks, Alaska.—C. P., 550 kc., 250 watts, unlimited time.  
KVI—Puget Sound Broadcasting Co., Inc., Tacoma, Wash.—C. P., 570 kc., 1 KW, 5 KW LS, unlimited time. Present assignment: 570 kc., 1 KW, unlimited time.

#### Tuesday, February 11

- KOB—New Mexico College of Agriculture and Mechanic Arts, Albuquerque, N. Mex.—Renewal of license, 1180 kc., 10 KW, simultaneous day, share night with KEX.

#### Thursday, February 13

### ORAL ARGUMENT BEFORE THE BROADCAST DIVISION

#### Examiner's Report No. I-123:

- NEW—Hammond-Calumet Broadcasting Corp., Hammond, Ind.—C. P., 1480 kc., 5 KW, daytime.

#### Examiner's Report No. I-126:

- NEW—Utah Radio Educational Society, Salt Lake City, Utah.—C. P., 1450 kc., 1 KW, unlimited time.  
NEW—Louis H. Callister, Provo, Utah.—C. P., 1200 kc., 100 watts, unlimited time.  
NEW—Paul Q. Callister, Salt Lake City, Utah.—C. P., 1370 kc., 100 watts, unlimited time.  
NEW—Great Western Broadcasting Assn., Inc., Logan, Utah.—C. P., 1500 kc., 100 watts, unlimited time.  
NEW—Great Western Broadcasting Assn., Inc., Provo, Utah.—C. P., 1210 kc., 100 watts, unlimited time.  
NEW—Munn Q. Cannon, Logan, Utah.—C. P., 1210 kc., 100 watts, unlimited time.  
NEW—Jack Powers, Frank C. Carman, David G. Smith, and Grant Wrathall, d/b as Utah Broadcasting Co., Salt Lake City, Utah.—C. P., 1500 kc., 100 watts, unlimited time.  
NEW—Cache Valley Broadcasting Service Co., Logan, Utah.—C. P., 1370 kc., 100 watts, unlimited time.

#### Friday, February 14

### HEARING BEFORE AN EXAMINER (Broadcast)

- NEW—Carl S. Taylor, Dubois, Pa.—C. P., 780 kc., 250 watts, daytime.

### APPLICATIONS RECEIVED

#### First Zone

- WCAO—Monumental Radio Co., Baltimore, Md.—Modification of 600 construction permit (B1-P-824) for changes in equipment, requesting move of transmitter 60 feet from present site at same address, and make changes in antenna.  
NEW—North Jersey Broadcasting Co., Inc., Paterson, N. J.—Construction permit to erect a new station to be operated on 620 kc., 250 watts power, daytime.  
WAWZ—Pillar of Fire, Zarephath, N. J.—Modification of license to 1350 increase power from 500 watts, 1 KW day, to 1 KW night and day.  
W3XEY—The Baltimore Radio Show, Inc., Baltimore, Md.—Modification of construction permit giving exact transmitter site as Hotel Belvedere, southeast corner Chase and Charles Sts., Baltimore, Md.  
WIEK—Atlantic Broadcasting Corp., New York, N. Y.—Construction permit to replace transmitter and increase power to 100 watts.  
W1XAV—Shepard Broadcasting Service, Inc., Quincy, Mass.—License for 61500 kc., 100 watts.

#### Second Zone

- WIBM—WIBM, Inc., Jackson, Mich.—Construction permit to make 1370 changes in equipment and install a new vertical antenna system.  
W8XWJ—The Evening News Assn., Portable-Mobile.—License to cover construction permit for a new general experimental station.

#### Third Zone

- WDBO—Orlando Broadcasting Co., Inc., Orlando, Fla.—Extension 580 of special experimental authorization to operate with 750 watts additional day power for period from 3-1-36 to 9-1-36.  
WIOD-WMBF—Isle of Dreams Broadcasting Corp., Miami, Fla.—970 Construction permit to make changes in equipment; move transmitter from Collins Island, Miami Beach, Fla., to 600 Biscayne Blvd., Miami, Fla. Amended (see petition) requesting application be granted on temporary basis, pending final action on application for 970 kc. (B3-P-378).  
WJBO—Baton Rouge Broadcasting Co., Inc., Baton Rouge, La.—1120 Construction permit to install new equipment, increase power from 100 watts to 500 watts, change frequency from 1420 kc. to 1120 kc., change hours of operation from unlimited to specified hours. Facilities of WGCM (unlimited time, except from 8 to 9 p. m. on Monday and Friday nights).  
WRDW—Augusta Broadcasting Co., Augusta, Ga.—Construction 1240 permit to make changes in equipment; move transmitter from 309 Eighth St., Augusta, Ga., to Satcher Estate on the edge of the city, North Augusta, South Carolina; change frequency from 1500 kc. to 1240 kc.; and increase power from 100 watts to 250 watts night, 1 KW day, using directional antenna at night if necessary. Amended to make equipment changes (mod. equip. to 500 watts maximum power); change height of antenna and omit request for directional antenna; change power from 250 watts, 1 KW day, to 250 watts night, 500 watts day.  
KFYO—T. E. Kirksey, tr. as Kirksey Bros., Lubbock, Tex.—Vol- 1310 untary assignment of license from T. E. Kirksey, tr. as Kirksey Brothers, to Plains Radio Broadcasting Co.  
KGFG—Oklahoma Broadcasting Co., Inc., Oklahoma City, Okla.— 1370 Authority to transfer control of corporation from Hale V. Davis to Harold V. Hough, 133½ shares of common stock.  
NEW—C. W. Snider, Wichita Falls, Tex.—Construction permit for 1500 a new station to be operated on 1500 kc., 100 watts, unlimited daytime. Amended to request 100 watts, unlimited time.  
NEW—Radio Station WSOC, Inc., Portable.—Construction permit for a new general experimental station to be operated on 31100, 34600, 37600, 40600 kc., 7 watts.  
NEW—The Constitution Publishing Co., Atlanta, Ga.—Construction permit for a new general experimental station to be operated on 31600, 35600, 38600, 41000 kc., 100 watts.

#### Fourth Zone

- KMBC—Midland Broadcasting Co., Kansas City, Mo.—License to 950 use old 2½-KW transmitter for emergency purposes only.  
WFAM—The South Bend Tribune, South Bend, Ind.—Modification 1200 of license to change time from share with WWAE to unlimited day to local sunset, share with WWAE night.  
NEW—Black Hawk Broadcasting Co., Emmons L. Abeles, Secy., 1370 Waterloo, Iowa.—Construction permit for a new station to be operated on 1370 kc., 100 watts, unlimited time.  
KWKC—Wilson Duncan, tr. as Wilson Duncan Broadcasting Co., 1370 Kansas City, Mo.—Voluntary assignment of license from Wilson Duncan, tr. as Wilson Duncan Broadcasting Co., to Tom Cleveland.

#### Fifth Zone

- KIRO—Queen City Broadcasting Co., Seattle, Wash.—Modification 710 of special experimental authorization to operate on 710 kc., unlimited time, 1 KW power instead of 500 watts.  
KHJ—Don Lee Broadcasting System, Los Angeles, Calif.—Modifi- 900 cation of license to change power from 1 KW to 5 KW day and night (5 KW granted on C. P.).  
KGEK—Elmer G. Beehler, Sterling, Colo.—Modification of license 1200 to change specified hours to include 1:30 p. m. to 2:00 p. m. Saturdays.  
KRE—First Congregational Church of Berkeley, Berkeley, Calif.— 1370 Voluntary assignment of license from First Congregational Church of Berkeley to Central California Broadcasters, Inc.

KFBK—James McClatchy Co., Sacramento, Calif.—Authority to 1490 determine operating power by direct measurement of antenna power.

NEW—Don Lee Broadcasting System, Portable.—Construction permit for general experimental station for 31600, 35600, 38500, 41000 kc., 100 watts.

#### No Zone

NEW—Foreign Lands Corp., Honolulu, Hawaii.—Construction permit for a new station to be operated on 600 kc., 1 KW, unlimited time. Amended to give transmitter site to be determined, Honolulu, Hawaii.

### STATE OF WASHINGTON VS. ASCAP

In response to numerous demands from NAB members for copies of the proceedings in the case of State of Washington vs. ASCAP, there are printed below copies of the original Complaint filed in the Superior Court of the State of Washington; Temporary Restraining Order and Order to Show Cause, motion for Restraining Order and affidavits in support thereof; memorandum decision by Judge Cushman of the United States District Court remanding the case; Receiver's Report to the Superior Court of the State of Washington and Supplemental Order of this Court.

### IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR THURSTON COUNTY

No. 16114—SUMMONS

STATE OF WASHINGTON, EX REL, G. W. HAMILTON, Attorney-General, *Plaintiff*,

v.

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS, an unincorporated association; GENE BUCK, its President; LOUIS BERNSTEIN, its Vice-President; JEROME KERN, its Vice-President; JOSEPH YOUNG, its Secretary; ROBERT CRAWFORD, its Assistant Secretary; SAUL H. BORNSTEIN, its Treasurer; SIGMUND RUMBERG, its Assistant Treasurer; NATHAN BURKAN, its counsel; E. C. MILLS, General Manager; JOHN L. STANLEY; KXRO, Inc., a corporation; KVOS, Inc., a corporation; KGY, Inc., a corporation; SEATTLE BROADCASTING CO., a corporation; RADIO SALES CORPORATION, a corporation; KVL, Inc., a corporation; SPOKANE BROADCASTING CORPORATION, a corporation; SYMONS BROADCASTING CO., a corporation; LOUIS WASMER, Inc., a corporation; KMO, Inc., a corporation; KUJ, Inc., a corporation; WESTCOAST BROADCASTING CO., a corporation; CARL E. HAYMOND d/b/a Radio Station KIT, a corporation, *Defendants*.

THE STATE OF WASHINGTON, To the said American Society of Composers, Authors and Publishers, an unincorporated association; Gene Buck, its President; Louis Bernstein, its Vice-President; Jerome Kern, its Vice-President; Joseph Young, its Secretary; Robert Crawford, its Assistant Secretary; Saul H. Bornstein, its Treasurer; Sigmund Rumberg, its assistant treasurer; Nathan Burkan, its Counsel; E. C. Mills, General Manager; John I. Stanley; KXRO, Inc., a corporation; KVOS, Inc., a corporation; KGY, Inc., a corporation; SEATTLE BROADCASTING CO., a corporation; RADIO SALES CORPORATION, a corporation; KVL, Inc., a corporation; SPOKANE BROADCASTING CORPORATION, a corporation; Symons Broadcasting Co., a corporation; Louis Wasmer, Inc., a corporation; KMO, Inc., a corporation; KUJ, Inc., a corporation; Westcoast Broadcasting Co., a corporation; Carl E. Haymond D/B/A Radio Station KIT, a corporation, *Defendants*:

You are hereby summoned to appear, within twenty days after the service of this summons upon you, exclusive of the day of service, and defend the above entitled action in the court aforesaid, and answer the complaint of the Plaintiff, and serve a copy of your answer upon the undersigned attorneys for Plaintiff, at their office below stated; and in case of your failure so to do, judgment will be rendered against you according to the demand of the complaint, which will be filed with the clerk of said court (a copy of which is herewith served upon you).

G. W. HAMILTON,  
*Attorney-General.*  
E. P. DONNELLY,  
*Assistant Attorney-General.*

Postoffice Address: Temple of Justice, Olympia, Thurston County, Washington.

### IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THURSTON COUNTY

No. 16114—COMPLAINT

STATE OF WASHINGTON, EX REL, G. W. HAMILTON, Attorney-General, *Plaintiff*,

v.

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS, an unincorporated association; GENE BUCK, its President; LOUIS BERNSTEIN, its Vice-President; JEROME KERN, its Vice-President; JOSEPH YOUNG, its Secretary; ROBERT CRAWFORD, its Assistant Secretary; SAUL H. BORNSTEIN, its Treasurer; SIGMUND ROMBERG, its Assistant Treasurer; NATHAN BURKAN, its counsel; E. C. MILLS, General Manager; JOHN L. STANLEY; KXRO, Inc., a corporation; KVOS, Inc., a corporation; KGY, Inc., a corporation; SEATTLE BROADCASTING CO., a corporation; RADIO SALES CORPORATION, a corporation; KVL, Inc., a corporation; SPOKANE BROADCASTING CORPORATION, a corporation; SYMONS BROADCASTING CO., a corporation; LOUIS WASMER, Inc., a corporation; KMO, Inc., a corporation; KUJ, Inc., a corporation; WESTCOAST BROADCASTING CO., a corporation; CARL E. HAYMOND d/b/a Radio Station KIT, a corporation, *Defendants*.

Comes now G. W. HAMILTON and respectfully represents that he is the duly elected, qualified and acting Attorney General of the State of Washington, and that he prosecutes this suit in behalf of the State of Washington and respectfully informs the Court as follows:

I.

That the State of Washington is one of the sovereign States of the United States of America.

II.

That defendant, AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS, hereinafter referred to as the "Society," is an unincorporated membership association of music composers, authors and publishers which has an office at 1501 Broadway, Borough of Manhattan, New York City, State of New York, but is actually engaged in and transacting business in the form and manner of a corporation in the State of Washington, with its principal Washington office at 652 Skinner Building, Seattle, Washington; that under the Laws of New York, Code of Civil Procedure, Section 1919, the President of an unincorporated association, such as the Society, is expressly authorized to maintain and defend actions at law and suits in equity on behalf of such association; that the Defendant, John L. Stanley, has been and is authorized by the Society, to represent the Society in the State of Washington in the transaction of its business and in the maintenance and defense of actions at law and in equity and is authorized under by the Laws of the State of New York, to defend this action on behalf of such association.

III.

That the Defendant Society transacts business under a form of organization substantially the same as that of a corporation, and acts through officials duly elected and qualified as though they were the officers of a corporation. That the membership of the Society comprises approximately 100 publishers and approximately 780 composers, all of whom are made Defendants in this suit, and the names of the membership of the Society is hereto attached, marked Plaintiff's Exhibit "A", and by this reference is made a part hereof.

IV.

That the Defendant, John L. Stanley, is the duly qualified and acting District Manager of the Society, domiciled in the State of Washington, in the City of Seattle therein, and that as said District Manager, the said John L. Stanley is the Agent of the Society authorized to and actually transacts the business of the Society in the State of Washington, with his principal office as hereinbefore alleged.

V.

That Defendant, KXRO, Inc., a corporation organized under the Laws of the State of Washington, operates a radio station with the call letters KXRO at Seattle; that the Defendant, KVOS, Inc., a

corporation organized under the Laws of the State of Washington, operates a radio station with the call letters KVOS at Bellingham; that the Defendant, KGY, Inc., a corporation organized under the Laws of the State of Washington, operates a radio station with the call letters KGY at Olympia; that Defendant, SEATTLE BROADCASTING COMPANY, a corporation organized under the Laws of the State of Washington, operates a radio station with the call letters KOL at Seattle; that Defendant, RADIO SALES CORPORATION, a corporation organized under the Laws of the State of Washington, operates a radio station with the call letters KRSC at Seattle; that Defendant, KVL, Inc., a corporation organized under the Laws of the State of Washington, operates a radio station with the call letters KVL at Seattle; that Defendant, SPOKANE BROADCASTING CORPORATION, a corporation organized under the Laws of the State of Washington, operates a radio station with call letters KFIO at Spokane; that Defendant, SYMONS BROADCASTING COMPANY, a corporation organized under the Laws of the State of Washington, operates a radio station with call letters KFPY at Spokane; that Defendant, LOUIS WASMER, Inc., a corporation organized under the Laws of the State of Washington, operates two radio stations with the call letters KGA and KHQ at Spokane; that Defendant, KMO, Inc., a corporation organized under the Laws of the State of Washington, operates a radio station with the call letters KMO at Tacoma; that Defendant, KUJ, Inc., a corporation organized under the Laws of the State of Washington, operates a radio station with the call letters KUJ at Walla Walla; that Defendant, WESTCOAST BROADCASTING COMPANY, a corporation organized under the Laws of the State of Washington, operates a radio station with the call letters KPQ at Wenatchee; that Defendant, CARL E. HAYMOND d/b/a radio station KIT at Yakima, Washington, individually, and not as a corporation.

#### VI.

That in or about the year 1918, the Defendant Society and its members organized said Society into a combination which includes approximately fifty per cent of the leading publishers of copyrighted musical compositions in the United States who control and own approximately ninety-five per cent of the copyrighted *acceptable* and popular musical compositions published in the United States; that said popular and *acceptable* music is that music which appeals to the great mass of the population in the State of Washington, as distinguished from standard church, educational, or other musical compositions.

#### VII.

That said Defendant Society and its members, acting through its Agents, its Board of Governors and Trustees, and its individual members, and sundry other persons including hired agents and representatives, have for several years last past, within the confines of the State of Washington, and continuously since that time, been engaged in and is now engaged in a nefarious combination and conspiracy to restrain trade and commerce in the State of Washington, and have been functioning actually as an illegal monopoly and trust within said State in violation of the Constitution and the Laws of the State of Washington.

#### VIII.

That every member agent and representative of said Society and all of those persons acting by, through, or under them, whether knowingly or unknowingly, has created, maintained and utilized said Defendant Society and its membership as an instrumentality for business suppression, business coercion, business compulsion, and for promoting and maintaining an illegal combination and conspiracy, in collaboration with others, for the purpose of fixing the price and limiting the production of musical compositions and the public performing thereof, within the State of Washington and its confines.

#### IX.

That all the members of the said Defendant Society have transferred, combined and pooled with said Defendant Society their rights under copyrights and other proprietary rights, including performing rights, for profit or otherwise, in said Society, or in those rights which any member during the term of his agreement and contract with said Society may write, compose, acquire for publication or copyright, whether alone or in collaboration with others, for the sole and exclusive purpose of permitting said Defendants and each of them, particularly the member officers and agents of said Society, to fix and control the price of said musical compositions and the performing rights therein, within the State of Washington.

#### X.

That said Defendant Society has for many years prior hereto, and has now, a complete monopoly of the right to license for public performance for profit all of the musical compositions of all of its members, aggregating an unknown number of musical compositions, which Defendant has at all times herein refused and still refuses to furnish a list to its licensees or to any person so that competition and trade may be free and untrammelled.

#### XI.

That all competition and free and wholesome bargaining between the members of said Society and the public at large has been eliminated and stifled by this said illegal combination, conspiracy and monopoly herein described; that the public at large has been unable to negotiate for the purchase of the right to use any particular copyrighted musical composition with the individual members of said Defendant Society separately and individually, but have been and are now obliged, compelled, coerced and forced to acquire from said Defendant Society, upon terms and conditions arbitrarily and viciously fixed by it, a general license to perform publicly all of said copyrighted musical compositions whether the public likes them all or not; that said pool and combination exists, among other purposes, in order to force the licensees and the public to take musical numbers of no value on the same terms as must be paid for those compositions of great value.

#### XII.

That the members of said Society, its Agents, its hired representatives of every name and description, have illegally agreed and conspired among themselves to establish and maintain, pursuant to secret agreements among themselves, and by means of pooling their individual copyrights, monopolies and trusts, non-competitive prices and royalties, for licenses to publicly perform copyrighted musical compositions owned and controlled by said Defendants, their members, or their Agents, which combination and pool represents, as Complainant believes, ninety-five per cent of the *acceptable* music in the world.

#### XIII.

That by reason of the said combination herein outlined, it is utterly impossible for any member of the public, or any person not a member of said Society, to acquire control over the public performance rights of any copyrighted musical composition, without paying the defendants' arbitrary price.

#### XIV.

That all members of defendant Society have adopted the means and engaged in the activities aforesaid, with the intent, purpose, and effect of unreasonably and unlawfully maintaining enhanced, uniform, and oppressive prices, and have otherwise restrained trade and commerce in the State of Washington.

#### XV.

That all members of defendant Society, through the mutual and identical agreements hereinbefore described, have actively and effectively restricted their own activities, have eliminated competition among themselves, and have created, maintained and utilized defendant Association as instrumentalities to dominate and restrict, directly and indirectly, the activities of others in commerce, as heretofore described.

#### XVI.

The members of defendant Society, through the combination and illegal pooling of their respective individual copyright monopolies hereinbefore described, have created in defendant Society an instrumentality which has the power to and does dictate to and dominate the radio industry, the hotel industry, and entertainment enterprises and other business industries within the confines of the State of Washington in violation of the Constitution and Laws of said State.

#### XVII.

That Defendants propose to carry on said combinations and conspiracies in the manner heretofore described unless restrained.

#### XVIII.

That every member of defendant Society has created, maintained and utilized defendant Society as an instrumentality for promoting and maintaining the illegal combination and conspiracy herein described. They have created defendant Society as such instrumentality with a self-perpetuating board of directors, have vested in the twenty-four persons constituting such board the exclusive con-



control and operation of the activities of defendant Society and have restricted membership in defendant Society to such composers, authors and publishers as may be approved by the Board of Directors. All members of defendant Society have transferred to and pooled in defendant Society for the period ending December 31, 1935, the sole and exclusive right to perform publicly all musical compositions of which they are the copyright proprietors, or which any member, either alone or jointly or in collaboration with others, wrote, composed, published, acquired or owned, or in which any member has any right, title, interest or control whatsoever, in whole or in part, or which any member, during the term of the agreement, may write, compose, acquire, own, publish, or copyright, either alone, jointly, or in collaboration with others, or in which any member may at any time, during the term of the agreement, have any right, title, interest or control, either in whole or in part. All members of defendant Society have vested in defendant Society absolutely until and including December 31, 1935, the sole and exclusive right to license others to perform publicly for profit all their musical compositions. Defendants intend to continue such pool of public performance rights by an extension of the existing agreements or by new agreements.

#### XIX.

That Defendant Society since September 1, 1932, and for many years prior thereto, has had and now has a complete monopoly of the right to license for public performance for profit all the musical compositions of all its members, aggregating an unknown number of musical compositions; defendant Society has at all times herein mentioned refused and now refuses to furnish to its licensees lists of such musical compositions. All competition among members of defendant Society in the sale of rights to perform publicly their respective musical compositions, which, but for the illegal combination and conspiracy herein described, would have existed, has been eliminated by said illegal combination and conspiracy; that radio broadcasting stations, advertisers desiring to utilize the service of such stations to promote the sale of their merchandise, orchestras, theatres, and others desiring the right to perform publicly the copyrighted musical compositions of members of defendant Society, have been unable to negotiate for the purchase of the rights to use such copyrighted musical compositions with members of defendant Society, separately and individually, but have been and are obliged and compelled to acquire from defendant Society, upon terms and conditions arbitrarily fixed by it, a general license to perform publicly the copyrighted musical compositions of all members of defendant Society.

#### XX.

That the members of defendant Society have agreed to establish and maintain, and pursuant to such agreement have established and maintained, by means of the pooling of their individual copyright monopolies, enhanced and non-competitive prices or royalties for licenses to perform publicly copyrighted musical compositions owned and controlled by individual defendants. Competition between members of defendant Society in the sale of licenses to perform publicly their individual musical compositions has been eliminated, and because of the combined power obtained by them through the unlawful pooling of their individual copyright monopolies, the members of defendant Society have concertedly refused and still refuse, through defendant Society, to license the public performance by radio broadcasting stations or otherwise of any copyrighted musical composition owned and controlled by a member of defendant Society, except on the basis of a general license covering any and all musical compositions of all members and except upon the basis of an arbitrary royalty for such general license, fixed and determined by the aforesaid self-perpetuating board of directors of defendant Society. By reason of the facts herein alleged defendant Society has acquired control over the public performance of so great a number of copyrighted musical compositions that it is impossible for a radio broadcasting station to operate without using at some time some musical composition so controlled by members of defendant Society. Broadcasting stations must either accept a license from defendant Society upon any terms and conditions imposed by defendant Society, or subject themselves to numerous infringement suits in which they may be compelled to pay not less than the minimum damages of Two Hundred Fifty (\$250) Dollars for each infringement, provided for in the copyright laws of the United States.

#### XXI.

That each year for a number of years prior to September 1, 1932, members of defendant Society, through it, have concertedly demanded and have received from radio broadcasting stations increased amounts as royalties for licenses to perform publicly copyrighted musical compositions owned and controlled by members of defendant

Society. That on or about April 11, 1932, members of defendant Society, through defendant Society, notified all radio broadcasting stations in the State of Washington that, on and after June 1, 1932, defendant Society would issue to broadcasting stations only a general license covering all musical compositions of all members of defendant Society, which license would require the payment annually as royalty of a sum approximately equal to the annual royalty theretofore paid by them, and in addition thereto, five per cent of the gross income of the broadcasting station from whatever source derived. That this represented an increase of approximately 400 per cent in so-called "Royalty" payments over the aggregate royalty demanded for the previous year. That protests were made by the broadcasting stations to defendant Society and the then existing licenses were temporarily extended to September, 1932. Thereupon efforts were made by the broadcasting stations to obtain licenses providing for royalty payments by each station based on the number of performances by such station of copyrighted musical compositions owned and controlled by defendant members of defendant Society. The members of defendant Society, through defendant Society, refused to agree to royalty payments based upon the actual use made of their musical compositions. Other proposals submitted by the broadcasting stations were also rejected by defendants. Each broadcasting station, in order to use the copyrighted musical compositions controlled by defendant Society and to avoid a multiplicity of infringement suits, was compelled to accede to the demands of defendant Society and to accept from defendant Society a three-year blanket license agreement, commencing in or about September, 1932, covering all musical compositions of all members of defendant Society, upon then basis of a royalty payment approximately equal to the fixed annual royalty paid for the preceding year, plus three per cent of the station's net receipts during the first year of the agreement, four per cent of such receipts during the second year, and five per cent of such receipts during the third year. As defined in said agreement, "net receipts" constitute the full amount paid to the station for the use of its broadcasting facilities, after deducting commissions not exceeding fifteen per cent, if any, paid to an independent advertising agent or agency; that members of defendant Society threaten further increases in the royalty amounts to be demanded from broadcasting stations after August 31, 1935. The percentage of income demanded by members of defendant Society from radio broadcasting stations represents a percentage of the entire income received by such broadcasting stations for the sale to advertisers of their operating time on the radio; that such demand for the payment of these percentages constitutes a charge upon income received by radio broadcasting stations from their time devoted to the broadcasting of lectures, dramatizations, sporting events, and other programs, which employ none of the copyrighted musical compositions of the members of defendant Society.

#### XXII.

That Defendant Society has created a distinction and discrimination between the license agreements exacted of radio broadcasting stations owned at least 51 per cent by newspapers, and license agreements exacted from radio broadcasting stations not so owned in other sections of the nation; that the license agreement exacted by defendant Society from broadcasting stations owned 51 per cent by newspapers does not require payment to defendant Society of a percentage of the station's income derived from all advertisers, but only requires the payment of 3 per cent of the income of the station received from advertisers whose programs include musical compositions owned or controlled by members of defendant Society; that such three per cent is payable until the total amount paid by the station equals an amount agreed upon between the station and defendant Society in the agreement. Thereafter the station is required to pay 5 per cent of all additional income received by it from programs in which musical compositions owned or controlled by members of defendant Society are used. The terms of all the license agreements permit the copyright owner, through defendant Society, to withdraw at will from the operation of the license any musical composition and thereby prevent its broadcast by the broadcasting station. By this means members of defendant Society are enabled to and do frequently so withdraw any musical compositions in great demand by the general public. Special and additional compensation is required for the granting of permission to broadcast musical compositions so withdrawn. Withdrawal of the right under the licenses to broadcast particular compositions is often used by members of defendant Society particularly to compel radio broadcasting stations to broadcast other and less popular music compositions for which publicity is desired. Radio broadcasting stations are obliged to accept all terms and conditions imposed by members of defendant Society for the right to broadcast popular musical compositions which have been withdrawn from their general license because a

station's continued existence depends upon the popularity of the programs it broadcasts.

#### XXIII.

That by reason of the combination and conspiracy and the concerted action of members of defendant Society, as a result of which radio broadcasting stations are obliged to accept a blanket license as heretofore stated upon terms and conditions imposed by defendant Society, the members of defendant Society have secured the exclusive use of radio broadcasting as a means of conveying musical compositions to the ear of the public-at-large. By the means described the members of defendant Society have destroyed the incentive of broadcasting stations to use the musical compositions of composers, authors, and publishers who are not members of defendant Society and have prevented non-members of defendant Society from receiving the compensation for the rights at public performance of their musical compositions, which they would otherwise receive, and have limited and restricted the popular demand of the listening public to musical compositions controlled by defendant Society.

#### XXIV.

That the members of defendant Society, through defendant Society, have been and are enabled to enforce, and have been and are now enforcing, acceptance of their arbitrary and non-competitive demands for royalties upon all classes of entertainers using music. Such entertainers must perform those musical compositions demanded by their audiences. The limitation and restriction of popular demand to the musical compositions controlled by defendant Society has forced such entertainers to obtain from defendant Society, a license to perform music controlled by defendant Society so demanded by the public. The members of defendant Society, through defendant Society, have concertedly refused to grant such entertainers permission to perform individual musical compositions selected by the entertainers, but have insisted and still insist that general licenses be accepted which cover all the musical compositions of all the members of defendant Society, upon payment of a fixed amount therefor, irrespective of whether one or more of such musical compositions are actually performed. By this method of licensing, the members of defendant Society have further restricted the popular demand to those musical compositions owned or controlled by the members of defendant Society, and have prevented the use of musical compositions owned by non-members of defendant Society and who reside in the State of Washington.

#### XXV.

That by reason of the concerted action of the members of defendant Society in refusing to issue licenses for the public performance of musical compositions owned or controlled by them, except upon the terms and conditions above set forth, the members of defendant Society have prevented and are preventing the sale of musical scores owned by composers, authors and publishers who are not members of defendant Society in the State of Washington.

#### XXVI.

That Defendant Society has adopted and maintained a comprehensive system for the acquiring of detailed and complete information relative to the musical compositions used by broadcasting stations, by means of which information the members of defendant Society have been and are enabled to conduct their operations through defendant Society so as to prevent the development of competition between members of defendant Society and owners of copyrighted musical compositions who are not members of defendant Society, and have been and are enabled to maintain their combined power to compel radio broadcasting stations and all others requiring music in the conduct of their business to obtain licenses from defendant Society for the public performance of musical compositions owned or controlled by the members of defendant Society upon such terms and conditions as may be demanded by defendant Society.

#### XXVII.

That the members of defendant Society have agreed to restrict and withdraw at the will of the copyright owner, from radio broadcasting stations licensed by defendant Society the right to perform by broadcasting any individual musical composition and have so restricted and withdrawn musical compositions from broadcasting in order to enforce their demands for royalties from others. By this means members of defendant Association, through defendant, John L. Stanley, acting as agent and trustee for such members and others, has maintained and utilized defendant Society as an instrumentality of oppression, monopoly and trust.

#### XXVIII.

That the Defendant Association as pleaded aforesaid has avoided and breached the laws and Constitution of the State of Washington, and continues so to do by transacting its business in this State with the citizens thereof, among them the Defendant Radio Stations as hereinbefore named, and without submitting to the control and regulation of the Laws of this State.

#### XXIX.

That the Defendant Radio Stations, among other citizens of the State of Washington, have at all times hereinbefore mentioned, continued to aid, abet and contribute to the illegal and unlawful monopoly and trust of said defendant Society and its members as hereinbefore pleaded; that each and every radio station named as a Defendant in this action by voluntarily submitting to and becoming a party to the said illegal combination and trust, whether by contract or license, has made it possible and now makes it possible for Defendant Society to control and fix prices and limit free trade and competition in the sale of the performing rights of all musical compositions, to the detriment of the citizens of the State of Washington, and against the peace and dignity of said state, and with the result of effectually enabling Defendant Society and its agents, members and officers, to avoid the control which the duly constituted officers and authorities of the State of Washington should assert over them, and, therefore, are parties to the successful conclusion of the illegal combination, monopoly and trust, as is operated by said Society and its members.

#### XXX.

That as a result of the participation of said Defendants and each of them in the said illegal conspiracy, monopoly and trust, defendant Society has been effectually enabled to fix and control prices and limit production, contrary to the intent and meaning of the Constitution of the State of Washington, and that unless all of the Defendants are restrained by this Honorable Court, said Society will continue to operate in disobedience to the laws of this State, and said Defendant Radio Stations will continue to aid and abet said illegal monopoly and trust by paying to said Society various and sundry sums of money, all of which is to the detriment of the people of the State of Washington, and with the result of making it possible for the defendant Society to continue to regulate, fix and control prices and limit production and to carry on its said illegal combination, conspiracy, monopoly and trust, as hereinbefore alleged.

#### XXXI.

That the Complainant has no plain, speedy and adequate remedy at law, and unless a restraining order is granted against the defendants, and each of them, as hereinbefore requested, the people of the State of Washington will be subjected to irreparable harm, damage and injury, and the business of the defendants, and each of them, as conducted, as hereinbefore set forth, will be and is a detriment to the people of the State of Washington, and against public policy and public interest.

#### WHEREFORE PETITIONER PRAYS:

1. That the combinations, conspiracies, agreements and activities of the defendants described in this petition be declared to be and do constitute a conspiracy and monopoly in restraint of trade and commerce, and are illegal and in violation of the Constitution and Laws of the State of Washington, and that all agreements and licenses between the Society and the Defendant Radio Stations and various and other sundry individuals, firms and corporations, with whom the Society has dealt, and with whom they threaten to deal with in the future, be declared to be illegal and void.

2. That defendants and each of them, and each and all of their respective members, officers, managers, agents, employees, and all persons acting or claiming to act for or on behalf of them, or any of them, be perpetually enjoined individually and collectively,

a. From further engaging in, agreeing to perform, or performing, said conspiracy or any part thereof, or any other conspiracy of like character or effect, or any of the acts, agreements, understandings or concerts of action described in this petition;

b. From entering into any agreements or licenses for the public performance of musical compositions owned and controlled by them, or any of them, providing for the payment of royalty determined upon any basis except such as is predicated upon free and open competition between copyright owners with the royalty on individual musical compositions fixed and determined by the copyright owner thereof acting independently in his or its own discretion;

- c. From joining, becoming a part of, or in any manner becoming associated with, any association, firm or corporation for the issuing of general or blanket agreements, or licenses to perform publicly musical compositions, unless the facilities of such association, firm or corporation are open to all owners of copyrighted musical compositions upon an identical and equal basis and unless the general or blanket agreements or licenses issued, or to be issued by such association, firm or corporation shall provide for the payment by the licensee of such royalty as is fixed and determined by the copyright owner of each musical composition publicly performed by such licensee;
- d. From commencing or prosecuting any suits or actions for alleged infringement of copyright against any licensee whose agreements or license may be declared illegal and void herein.

3. That a temporary restraining order be issued and directed to said defendant Society and its members and to Defendant, John L. Stanley, and to each and every one of them, restraining and enjoining them from conducting their business as hereinbefore alleged and that said radio stations be restrained from making any further payments whatever to the Society, or any person acting on its behalf, or from permitting the Society, or any person on its behalf, to have access to the books and records of Defendant Radio Stations, or from making any further agreements whatever with the Society, and from doing any other act according to the terms of any agreement now in existence, except to preserve the status quo thereof, until further order of Court, and that on the return hereof, the Court should grant a temporary injunction, and that after a hearing on the merits, said temporary injunction should be made permanent.

4. That the petitioner have such other, further and general relief as the nature of the case may require and the Court may deem proper in the premises, together with costs.

G. W. HAMILTON,  
Attorney General of the State of  
Washington; and  
E. P. DONNELLY,  
Assistant Attorney General,  
Attorneys for Plaintiff.

State of Washington }  
County of Thurston } ss.

G. W. HAMILTON, being first duly sworn, on oath deposes and says: That he is the duly elected, qualified and acting Attorney General of the State of Washington, and makes this verification as such officer. That he has read the foregoing Complaint, knows the contents thereof, and believes the same to be true.

G. W. HAMILTON.

SUBSCRIBED and sworn to before me this 24 day of June 1935.

JENNIE M. TATTERSALL,  
Notary Public in and for the State of Wash-  
ington, residing at Olympia.

**IN THE SUPERIOR COURT OF THE STATE OF  
WASHINGTON FOR THURSTON COUNTY**

NO. 16114—TEMPORARY RESTRAINING ORDER AND  
ORDER TO SHOW CAUSE

STATE OF WASHINGTON, EX REL, G. W. HAMILTON, Attorney-  
General, Plaintiff,

v.

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS, an unincorporated association; GENE BUCK, its President; LOUIS BERNSTEIN, its Vice-President; JEROME KERN, its Vice-President; JOSEPH YOUNG, its Secretary; ROBERT CRAWFORD, its Assistant Secretary; SAUL H. BORNSTEIN, its Treasurer; SIGMUND RUMBERG, its Assistant Treasurer; NATHAN BURKAN, its counsel; E. C. MILLS, General Manager; JOHN L. STANLEY; KXRO, Inc., a corporation; KVOS, Inc., a corporation; KGY, Inc., a corporation; SEATTLE BROADCASTING CO., a corporation; RADIO SALES CORPORATION, a corporation; KVL, Inc., a corporation; SPOKANE BROADCASTING CORPORATION, a corporation; SYMONS BROADCASTING CO., a corporation; LOUIS WASMER, Inc., a corporation; KMO, Inc., a corporation; KUJ, Inc., a corporation; WESTCOAST BROADCASTING

CO., a corporation; CARL E. HAYMOND d/b/a Radio Station KIT, a corporation, Defendants.

This matter coming on for hearing on the application of the state of Washington for this temporary restraining order and it appearing to the court that the matter is of public importance and the ends of justice require the issuance of this order and it appearing from the affidavits accompanying the motion for this order that the defendant, society, has its principal office in New York and that, therefore, a reasonable time should be given to the said society and other defendants involved to fully present the merits of this controversy and it appearing that no bond is required of the state of Washington and that the importance of this case is such as to justify the taking of oral testimony on oath in open court in addition to such affidavits as counsel for any party may wish to file on the return of this order NOW THEREFORE

IN THE NAME OF THE STATE OF WASHINGTON, IT IS BY THE COURT ORDERED, ADJUDGED AND DECREED, That you, American Society of Composers, Authors and Publishers, and each and every director, officer, member, manager or agent thereof and particularly you, John L. Stanley, be and each of you hereby are restrained until further order of this court from making any new agreements whatever with any individual or corporation in the state of Washington for the use of copyrighted music controlled by you; From making any collections or receiving any money from any person or corporation in the state of Washington on any agreement now in existence whereby the society is to receive money for the use of copyrighted music controlled by it and particularly you are restrained from having any access to the books of defendant broadcasting stations named in this action from making any other or further agreement with said broadcasting stations regarding the use of copyrighted music; from receiving or accepting any moneys whatever from said radio broadcasting stations and from taking any action in any court whatever in any way effecting the use of copyrighted music of said radio broadcasting stations and from doing any other thing which may in any way hinder the true presentment of the facts as to your method of doing business on the return of this order and specifically are you and each of you restrained from taking any step whatever to embarrass defendant radio broadcasting stations in the conduct of their business either by attempting to collect money from them or by attempting to prohibit the use of copyrighted music, until further order of this court.

IN THE NAME OF THE STATE OF WASHINGTON, IT IS FURTHER ORDERED, ADJUDGED AND DECREED, That you, KXRO, Inc., a corporation; KVOS, Inc., a corporation; KGY, Inc., a corporation; SEATTLE BROADCASTING CO., a corporation; RADIO SALES CORPORATION, a corporation; KVL, Inc., a corporation; SPOKANE BROADCASTING CORPORATION, a corporation; SYMONS BROADCASTING CO., a corporation; LOUIS WASMER, Inc., a corporation; KMO, Inc., a corporation; KUJ, Inc., a corporation; WEST-COAST BROADCASTING CO., a corporation; CARL E. HAYMOND d/b/a Radio Station KIT, a corporation; and each of you be and you hereby are restrained until further order of this court from in any manner making any further payments to defendant society or any of its members, directors, officers, agents or legal representatives, until further order of this court and that you and each of you hereby are restrained from allowing any of the members, agents or representatives of said society to have any access to your books until further order of this court and you are likewise restrained from making any new agreement whatever with said society or any of its members or representatives and you are restrained until further order of this court from doing any act or series of acts other than to continue the use of the copyrighted music controlled by the society, keeping a record of what music is used without making any payments whatever on existing agreements or contracts and without making any new agreements or contracts until the legality of said agreements and contracts and the legality of the business methods of the society, is determined in this action.

IN THE NAME OF THE STATE OF WASHINGTON, IT IS FURTHER ORDERED, ADJUDGED AND DECREED, That each of the defendants named in the caption of this action and in this restraining order, be and appear in this court on the 22d day of July at 10 o'clock A.M., then and there to show cause if any, they or any of them may have, why this temporary restraining order should not be continued in force and effect until the trial of this action on the merits and that at said time and place you and each of you be prepared with such a showing as you may desire, by way of affidavit or oral testimony, and you and each of you are hereby notified that on account of the public importance of the issues presented and the fact that the interests of defend-

ants in other states are effected, the court has given in its opinion sufficient time to allow for a complete presentation of the pertinent facts on the return of this order. This order shall be effective without the requirement of a bond by virtue of chapter 122, Laws of Washington for 1935.

Done in open court this 24th day of June, 1935.

D. F. WRIGHT,  
Judge.

IN THE SUPERIOR COURT OF THE STATE OF  
WASHINGTON FOR THURSTON COUNTY

NO. 16114—MOTION AND AFFIDAVIT FOR RESTRAIN-  
ING ORDER

STATE OF WASHINGTON, EX REL, G. W. HAMILTON, Attorney-  
General, *Plaintiff*,

v.

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS, an unincorporated association; GENE BUCK, its President; LOUIS BERNSTEIN, its Vice-President; JEROME KERN, its Vice-President; JOSEPH YOUNG, its Secretary; ROBERT CRAWFORD, its Assistant Secretary; SAUL H. BORNSTEIN, its Treasurer; SIGMUND RUMBERG, its Assistant Treasurer; NATHAN BURKAN, its counsel; E. C. MILLS, General Manager; JOHN L. STANLEY; KXRO, Inc., a corporation; KVOS, Inc., a corporation; KGY, Inc., a corporation; SEATTLE BROADCASTING CO., a corporation; RADIO SALES CORPORATION, a corporation; KVL, Inc., a corporation; SPOKANE BROADCASTING CORPORATION, a corporation; SYMONS BROADCASTING CO., a corporation; LOUIS WASMER, Inc., a corporation; KMO, Inc., a corporation; KUJ, Inc., a corporation; WESTCOAST BROADCASTING CO., a corporation; CARL E. HAYMOND d/b/a Radio Station KIT, a corporation, *Defendants*.

Comes now plaintiff above entitled and on the affidavits hereto attached and the complaint on file herein, moves this honorable court for an order restraining defendants from further participation in the unlawful and illegal manner of conducting their business as alleged in plaintiff's complaint.

G. W. HAMILTON,  
Attorney-General.  
E. P. DONNELLY,  
Assistant Attorney-General.  
Attorneys for Plaintiff.

IN THE SUPERIOR COURT OF THE STATE OF  
WASHINGTON FOR THURSTON COUNTY

No. 16114—AFFIDAVIT OF SENATOR GEORGE A. LOVEJOY

STATE OF WASHINGTON, EX REL, G. W. HAMILTON, Attorney-  
General, *Plaintiff*,

v.

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS, an unincorporated association; GENE BUCK, its President; LOUIS BERNSTEIN, its Vice-President; JEROME KERN, its Vice-President; JOSEPH YOUNG, its Secretary; ROBERT CRAWFORD, its Assistant Secretary; SAUL H. BORNSTEIN, its Treasurer; SIGMUND RUMBERG, its Assistant Treasurer; NATHAN BURKAN, its counsel; E. C. MILLS, General Manager; JOHN L. STANLEY; KXRO, Inc., a corporation; KVOS, Inc., a corporation; KGY, Inc., a corporation; SEATTLE BROADCASTING CO., a corporation; RADIO SALES CORPORATION, a corporation; KVL, Inc., a corporation; SPOKANE BROADCASTING CORPORATION, a corporation; SYMONS BROADCASTING CO., a corporation; LOUIS WASMER, Inc., a corporation; KMO, Inc., a corporation; KUJ, Inc., a corporation; WESTCOAST BROADCASTING CO., a corporation; CARL E. HAYMOND d/b/a Radio Station KIT, a corporation, *Defendants*.

State of Washington }  
County of King, } ss:

GEORGE A. LOVEJOY, being first duly sworn on oath deposes and says: That he is a Senator from the 36th District, King county,

state of Washington, and a citizen of said state; that I have read the petition herein and know that the defendants as therein alleged are perpetrating a great wrong on the people of this state by said illegal combination and monopoly; that I have no interest, one way or another, in the outcome of this action except to see that the Constitution and the laws of the state of Washington are complied with and that all monopolies and trusts are forever broken and dissolved;

That from my sources of information, the acts of the defendants, as alleged in the attorney-general's position, are odious and detrimental to the people of this state and that their business constitutes a combination and a conspiracy to fix and control prices which is in restraint of trade and stifles free and untrammelled competition within this state in the sale of musical compositions and the rights to performing rights therein.

That the best interests of the people of this state would be better preserved if this business combination of defendants were forever divorced and severed by law, and that a restraining order should issue pending the outcome of this suit so that the defendant society, or any of its agents, should not reap any of its ill-gotten gains in the interim.

GEORGE A. LOVEJOY.

Subscribed and sworn to before me this 22nd day of June, 1935.

JENNIE M. TATTERSALL,  
Notary Public in and for the state of  
Washington, residing at Olympia.

State of Washington, }  
County of Thurston, } ss:

E. P. DONNELLY, being first duly sworn on oath deposes and says: That he is a duly appointed, qualified and acting assistant attorney general of the state of Washington and that he has been heretofore delegated to investigate the business activities of defendants in this action; that he has made such investigation as is possible in the State of Washington and from such investigation believes and states:

That defendant, American Society of Composers, Authors and Publishers, referred to in this action as the "society," was and now is an unincorporated association organized and existing under and by virtue of the laws of the state of New York with its principal place of business in the city of New York.

That under the laws of New York the society, to all intents and purposes, carries on business as though it were a corporation in that it has a board of directors who manage the affairs of the society through regular officers and that its president, vice-presidents secretary, assistant secretary, treasurer, assistant treasurer, counsel and general manager, are correctly named in the caption hereof.

That all of said officials reside outside of the state of Washington but that defendant, John L. Stanley, is the local agent and manager of the society which has its Washington office in the city of Seattle, Washington; that John L. Stanley, as such agent, represents the society in Washington in the transaction of its said business and is apparently fully authorized so to do.

That the membership of the society is admittedly composed of more than 800 authors, publishers and composers of musical works, representing all popular and acceptable music and that the society actually owns, by assignment, the copyrights of each and every member thereof and controls all rights relative to the public performance for profit of all musical works and compositions of said members.

That the society is ostensibly organized to protect the members thereof but that its real purpose and the end which it has actually accomplished is to effectually and actually fix the prices to be paid by persons desiring to use, for profit, any of the musical productions of any of the members; that the society has effectually controlled and fixed the prices to be paid in the state of Washington by theatres, motion picture theatres, restaurants, hotels, cabarets, inns, circuses, carnivals, dance halls, concerts, reviews, music halls and radio broadcasting stations among others.

That said society has such a monopoly in the distribution of the right to use the acceptable and popular copyrighted music that for many years, and admittedly since August 1, 1933, no person, firm or corporation other than the society, has received or collected any royalties or other compensation for the public production, for profit, in the state of Washington, of any copyrighted musical work whatever.

That the society does and has, for many years, deprived the individuals in the state of Washington, desiring to use copyrighted music for profit, of the right to bargain for the particular copy-

righted music desired, but as a result of the illegal combination and monopoly has been able to and has forced each and every person and individual desiring to use any copyrighted music to pay an arbitrary price fixed by the society for all copyrighted music controlled by the society.

That as a result there is, in the state of Washington, at this time, no right whatever on the part of any person to bargain or deal with any individual, writer or composer for his individual output and that all competition is effectually done away with.

That among the persons in the state of Washington frequently having occasion to use in public, for profit, copyrighted music, are radio broadcasting stations; that the radio broadcasting stations named as defendants in this action, among other stations in the state of Washington, have entered into agreements with defendant society whereby in effect in return for the right to use the entire output of the society publicly for profit, they pay to the said society a percentage of their earnings as well as a fixed sum payable at stated intervals.

That the radio corporations, named as defendants in this action by said practices, have made it possible for the society to control the entire field of the distribution of copyrighted musical works in the state of Washington and have made it impossible for smaller individuals or organizations, such as hotels and small organizations, to do anything else than to submit to the terms dictated by defendant society.

That as a result, at this time, the society is enjoying a complete monopoly in the distribution of the right to use copyrighted music in the state of Washington for profit, and enjoying this monopoly the society has necessarily decreased the use thereof and increased the price thereof to the detriment of the people generally.

That the society is so organized and managed by persons with years of legal experience that it is apparently without existence as an entity in this or other states and that society so conducts its business as to make it practically impossible to prove the true method of transacting its business without the members thereof and the individuals who conspire and contribute to the accomplishment of the illegal monopoly being restrained until the validity of the agreement or understanding and the method of transacting business is determined.

That the society has in the past and now continues to hold over the heads of different individuals desiring to use copyrighted music for profit, the threats of prosecutions unless a fixed and stipulated sum is paid for all copyrighted music controlled by the society and that in order to obtain a decision as to legality of the acts in business carried on by the society in the manner in which it is carried on in the state of Washington, it is necessary that the said society be restrained until further order of this honorable court from the bringing of any action whatever based upon any agreements heretofore made; it is necessary also that said society be restrained from making any other or different agreements until further order of this court and until the legality of said agreements and said method of doing business is determined in this action.

That this action is brought on behalf of the state of Washington and that affiant is duly authorized to represent the state in this action and makes this showing to the best of his knowledge and belief supporting the state's application for the issuance of a temporary restraining order.

That no bond is required of the state of Washington in order to support said restraining order by virtue of chapter 122, Laws of 1935.

E. P. DONNELLY.

Subscribed and sworn to before me this 24th day of June, 1935.

JENNIE M. TATTERSALL,  
Notary Public in and for the state of  
Washington, residing at Olympia.

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
SOUTHERN DIVISION

No. 564.—MEMORANDUM DECISION ON MOTION TO  
REMAND.

Filed Dec. 12, 1935

STATE OF WASHINGTON, EX REL, G. W. HAMILTON, Attorney-  
General, *Plaintiff*,

*vs.*

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND  
PUBLISHERS, an unincorporated association; GENE BUCK,  
its President; LOUIS BERNSTEIN, its Vice-President; JEROME  
KERN, its Vice-President; JOSEPH YOUNG, its Secretary;  
ROBERT CRAWFORD, its Assistant Secretary; SAUL H.  
BORNSTEIN, its Treasurer; SIGMUND ROMBERG, its As-  
sistant Treasurer; NATHAN BURKAN, its Counsel; E. C.  
MILLS, General Manager; JOHN L. STANLEY; KXRO, Inc., a  
corporation; KVOS, Inc., a corporation; KGY, Inc., a corpora-  
tion; SEATTLE BROADCASTING CO., a corporation; RADIO  
SALES CORPORATION, a corporation; KVL, Inc., a corpora-  
tion; SPOKANE BROADCASTING CORPORATION, a corpora-  
tion; SYMONS BROADCASTING CO., a corporation;  
LOUIS WASMER, Inc., a corporation; KMO, Inc., a corpora-  
tion; KUJ, Inc., a corporation; WESTCOAST BROADCASTING  
CO., a corporation; CARL E. HAYMOND d/b/a Radio Station  
KIT, a corporation, *Defendants*,  
GREENHALGH AMUSEMENT CORPORATION, a corporation,  
*Intervener*.

G. W. HAMILTON, *Attorney-General*, and  
E. P. DONNELLY, *Assistant Attorney-General*, Olympia, Wn.  
*Attorneys for Plaintiff*,

PALMER, ASKREN, BRETHORST and H. W. HAUGHLAND, and  
RYAN, ASKREN & RYAN, Northern Life Tower, Seattle, Wn.,  
*Attorneys for defendant American Society of Composers,  
Authors and Publishers, an unincorporated association,  
specially appearing*,

BYERS, WESTBERG & JAMES, 310 Marion Bldg., Seattle, Wn.,  
*Attorneys for defendants KGY, Inc., and Seattle Broadcast-  
ing Company*,

KENNETH C. DAVIS, 1514 Northern Life Tower, Seattle, Wn.,  
*Attorney for defendants KVOS, Inc., a corporation; Spokane  
Broadcasting Co., a corporation; KUJ, Inc., a corpora-  
tion; Westcoast Broadcasting Co., a corporation; Carl E.  
Haymond d/b/a Radio Station KIT; KMC, Inc., a corpora-  
tion; KVL, Inc., a corporation and KXRO, Inc., a  
corporation*,

POST, RUSSELL, DAVIS & PAINE, Box 2193, Spokane, Wn.,  
*Attorneys for defendant Symons Broadcasting Co., a cor-  
poration*,

SHERWOOD & HEIMAN, 1411 Fourth Ave. Bldg., Seattle, Wn.,  
*Attorneys for Greenhalgh Amusement Corporation, Inter-  
vener*.

The voluminous transcript in this cause doubtless affords material for an extended statement but one does not appear necessary.

The State of Washington, upon relation of its Attorney General, brought suit in the Superior Court of the State for Thurston County, against the defendants alleging that the American Society of Composers, Authors and Publishers is organized and exists under the laws of the State of New York as an unincorporated association of music composers, authors and publishers; that it is actually engaged in and transacting business in the form and name of a corporation in the State of Washington; that the defendant John L. Stanley is authorized to represent the defendant society in such State; that he is domiciled in and transacts therein its business.

It is alleged that the membership of the defendant society comprises approximately one hundred publishers and approximately eight hundred composers. They are made defendants but, on account of the large number of members, the named officers and agents of the society are sued as their representatives. Other defendants are alleged to operate radio stations in the State of Washington—a number in this district and others in the Eastern District of Washington —. Owners and operators of theaters are also named as parties defendant.

For the sake of brevity the defendant operators of radio stations and the owners and operators of theatres will be herein designated as "users."

The complaint alleges the existence of a conspiracy on the part of the defendants and others to restrain trade and commerce in the State of Washington, and contains a prayer, in part, that defendants

be enjoined from further conspiring and from performing the conspiracy and for general relief.

After the entry of a default against the defendant society, the filing of an amended complaint and the granting of an injunction, upon petition of the Attorney General for the appointment of a receiver to preserve the jurisdiction of the Court and the assets of the defendant society, the Court, on August 13th, 1935, appointed a temporary receiver to take possession of the business and property of the defendant society in the State of Washington.

Ten days later the defendant society petitioned the Superior Court for the removal of the cause to this court. The petition was refused.

A transcript of the proceedings in the State Court was filed in this Court, the defendant society notified the plaintiff of such filing, following which the plaintiff, by its attorney general, moved that the cause be remanded—among others—upon the ground that the action was begun by the State in its sovereign capacity to enforce by injunction its criminal laws. See Article XII, Sec. 22 of the Washington Constitution and Sec. 2382, sub-sections 6 and 7, Remington's Revised Statutes of Washington.

PLAINTIFF cites: Sec. 2382, sub-section 6, Remington's Revised Statutes of Washington; Article 12, Section 22, Constitution of the State of Washington; Article 12, Section 5, Constitution of the State of Washington; Sec. 226, sub-section 9, Remington's Revised Statutes of Washington; *Georgia Trust Co. v. State of Georgia*, 109 Ga. 736, 35 S. E. 323; 41 Corpus Juris 198; *State v. Racine*, 63 Tex. Civ. Appeals 663, 134 S. W. 400; 41 Corpus Juris 127; *State ex rel Dunbar v. American University*, 140 Wash. 625, 633; *United States v. American Society of Composers, Authors and Publishers*, Cause No. —, United States District Court for the Southern District of New York; 11th Amendment to the Constitution of the United States; *Hartford Insurance Co. v. Chicago, Milwaukee & St. Paul Railway Company*, 175 U. S. 91; *Howard v. Fleming*, 191 U. S. 126; *Pratt v. Paris Gas Light & Coke Company*, 168 U. S. 255; *Randall v. Brigham*, 74 U. S. 523; *Boyd v. Alabama*, 94 U. S. 645; *In re Jordan*, 49 Fed. 238; *Carl Laemmle Music Co. v. Stern, et al.*, 209 Fed. 129; *Germania Insurance Company v. Wisconsin*, 119 U. S. 473; *Terrace v. Thompson*, 263 U. S. 197; *Waverly Stone & Gravel Co. v. Waterloo, C. F. & N. Ry. Co., et al.*, 239 Fed. 561-564; *Pullman Palace Car Company v. Speck, et al.*, 113 U. S. 84; *Schipper, et al., v. Consumer Cordage Co., Ltd.*, 72 Fed. 803; *Kansas City Railroad v. Daughtry*, 138 U. S. 298-303; *Wisconsin v. Pelican Insurance Company*, 127 U. S. 265-268-270; *City of Montgomery, Ala., v. Postal Telegraph Cable Co., et al.*, 218 Fed. 471-475; *Huntington v. Attrill*, 146 U. S. 657-672; *State of Iowa v. Chicago, B. & Q. R. Co.*, 37 Fed. 497; *Shehane v. Smith*, 257 Fed. 823-5; *Straus v. American Publishers' Association*, 231 U. S. 222; Sec. 2384 and Sec. 2610, Remington's Revised Statutes of Washington; *Daugherty v. Sharpe, et al.*, 171 Fed. 466; *MacGinnis v. Boston Copper and Silver Mining Company*, 119 Fed. 96; *Heller v. Itwaco Mill and Lumber Co.*, 178 Fed. 111; *Southern Pac. Co. v. Stewart*, 245 U. S. 363; *Maloney, Attorney General v. American Tobacco Co.*, 72 Fed. 801; *City of Montgomery v. Postal Telegraph Co.*, 218 Fed. 471; *State of Arkansas v. St. Louis Ry. Co.*, 173 Fed. 572; *Wisconsin v. Pelican Insurance Co.*, 127 U. S. pp. 290, 291, 294; *State of Iowa v. Chicago, B. & Q. Ry. Co.*, 37 Fed. 497; *Huntington v. Attrill*, 146 U. S. 668; *State of Indiana v. Alleghany Oil Co.*, 85 Fed. 870; *Ferguson v. Ross*, 38 Fed. 161; *State of Indiana v. Tolleston Club of Chicago*, 53 Fed. 18; *State of Alabama v. Wolfe*, 18 Fed. 836; *Grinnell v. Johnson*, 28 Fed. 2; *Postal Telegraph Cable Co. v. State of Alabama*, 155 U. S. 482; *Germania Insurance Company v. Wisconsin*, 119 U. S. 473; *Arkansas v. Kansas City & Texas Coal Co.*, 183 U. S. 185; *State v. Morey*, 105 Pac. 501; *National Harrow Co. v. Hench*, 83 Fed. 36; *Hoit v. Bates*, 81 Fed. 641; *Carl Laemmle Music Co. v. Stern*, 209 Fed. 129; *Charroin v. Romort Manufacturing Co.*, 236 Fed. 1011; *Straus v. American Publishers' Association*, 231 U. S. 222 at 234; *Motor Truck Ass'n of Western Mass. v. Daley*, 8 Fed. Supp. 672; *Huntington v. Pinney*, 126 Fed. 237; *Thompson v. Chicago, St. Paul Railroad Co.*, 60 Fed. 773; *Murphy v. Johnson*, 49 Fed. (2d) 410; *Blytheville Ry. Co. v. St. Louis-San Francisco Ry. Co.*, 33 Fed. (2d) 481; *Von Herberg v. City of Seattle*, 27 Fed. (2d) 457; *Maloney v. Cressler*, 210 Fed. 105; *Miller v. Clifford*, 133 Fed. 880; *Gates Iron Works v. James E. Pepper & Co.*, 98 Fed. 449; *McMillan v. Noyes*, 146 Fed. 926; *Regis v. United Drug Co.*, 180 Fed. 201; *Gullidge v. Director General of Railroads*, 270 Fed. 276; *Chicago & Rock Island v. Whitaker*, 36 S. Ct. Rptr. p. 152; *Alabama Great Southern Ry. v. Thompson*, 26 S. Ct. Rptr. p. 163; *Egyptian Novaculite Co. v. Stevenson*, 8 Fed. (2d) 576; *Vener v. Great Northern*, 209 U. S. 24, 32; Sec. 2690, Remington's Revised Statutes of Washington; *State of Texas v. Day Land and Cattle Company*, 49 Fed. 593.

REMOVING DEFENDANT cites: *Powers v. Chesapeake & Ohio R. Co.*, 169 U. S. 91, 42 L. Ed. 673; *Brashear v. Louisville & N. R. Co.*, 32 Fed. (2d) 373; *Kincheloe v. Hopkins*, 4 Fed. Supp. 196; *Berry v. St. Louis & S. F. R. Co.*, 118 Fed. 911; *Allen v. New York P. & N. R. Co.*, 15 Fed. (2d) 532; *Gable v. Chicago, M., St. P. & P. R. Co.*, 8 Fed. Supp. 944; *Niccum v. Northern Assurance Company*, 17 Fed. (2d) 160; *Bedell v. B. & O. R. Co.*, 245 Fed. 788; *McKinlay v. Puget Sound Bridge & Dredging Co.*, 6 Fed. Supp. 114; *Meyer v. Del. R. R. Con. Co.*, 100 U. S. 457, 25 L. Ed. 598; *Boatmen's Bank v. Fritzen, et al.*, 135 Fed. 650; *Hutton v. Joseph Bancroft & Sons Co.*, 77 Fed. 481; *Baker v. Duwamish Mill Co.*, 149 Fed. 612; *Consolidated Textile Corporation v. Iserson*, 294 Fed. 289; *Evers v. Watson*, 156 U. S. 527; *Carson v. Hyatt*, 118 U. S. 279; *Simkins Federal Practice*, Revised Edition, Sec. 1168; *Barney v. Latham*, 103 U. S. 205, 26 L. Ed. 514; *Warax v. Cincinnati, etc., R. R. Co.*, 72 Fed. 637; *Gulf, etc., Co. v. Gulf Refining Co.*, 260 Fed. 262; 35 Stat. 1075, 1088, Title 17, U. S. C. A., Sec. 1; *West Publishing Co. v. Edward Thompson Co.*, 169 Fed. 833; *State of California v. Southern Pac. Ry. Co.*, 118 U. S. 109, 30 L. Ed. 103; *Ames v. Kansas*, 111 U. S. 449; 54 C. J. 234, Sec. 53; *State of Oregon v. Three Sisters Irr. Co.*, 158 Fed. 346; *The Mill Co. v. Casey*, 189 NYS 275; *Stevens v. Gladding and Proud*, 58 U. S. 447; 15 L. Ed. 155; *Feibleman v. Packard*, 109 U. S. 426, 27 L. Ed. 984; *Barnette v. Wells-Fargo National Bank*, 270 U. S. 438, 70 L. Ed. 669; *Hopkins v. Walker*, 244 U. S. 486, 61 L. Ed. 1270; *First National Bank v. Williams*, 252 U. S. 504, 64 L. Ed. 692; *Littlefield v. Perry*, 88 U. S. 205, 22 L. Ed. 577; *Excelsior Wooden Pipe Co. v. Pacific Bridge Co.*, 185 U. S. 281, 46 L. Ed. 1911; *Woods Sons Company v. Valley Iron Works*, 166 Fed. 770; *Wooster v. Crane & Co.*, 147 Fed. 515; *Hartford Fire Insurance Co. v. Kansas City, etc., R. Co.*, 251 Fed. 332; *State ex rel Dept. of Public Works v. Northern Pacific R. R. Co.*, 172 Wash. 37; *Ex Parte Nebraska*, 209 U. S. 436, 52 L. Ed. 876; 25 C. J. 741; *State of Indiana v. Glover*, 155 U. S. 513, 39 L. Ed. 243; *Maryland v. Baldwin*, 112 U. S. 490, 28 L. Ed. 822; *State v. Frost*, 89 N. W. 915, 113 Wis. 623; *Gruetter v. Cumberland, etc., Co.*, 181 Fed. 248; *State of Ohio v. Swift & Co.*, 270 Fed. 141; *Ward, et al., v. Congress Const. Co.*, 99 Fed. 598; *Boyd v. Bradish, et al.*, 10 Fed. 406; *Simkins Federal Practice*, Revised Edition, page 1036, Sec. 1177; *Kanouse v. Martin*, 15 How. 198, 14 L. Ed. 660; Note 202, U. S. Code Annotated; *Straus v. American Publishers' Association*, 231 U. S. 222.

CUSHMAN, District Judge:

On account of the conclusion reached it is not now necessary to determine whether the petition for removal was timely filed or not.

The complaint alleges, in effect, that the defendant society dominates, in the State of Washington, commerce in compositions of the character described, controlling and owning approximately ninety-five per cent of the copyrighted acceptable and popular musical compositions published in the United States.

While the compositions owned and controlled by the defendant society may be copyrighted, a suit to enjoin a conspiracy to restrain commerce and trade in such compositions is not one arising under the copyright laws of the United States. *Straus v. American Publishers' Association*, 231 U. S. 222-234. See also *Standard Oil Co. v. United States*, 283 U. S. 163.

The allegations made in the petition for removal are not of a nature to bring the case within Section 31 of the Judicial Code (Title 28 U. S. C. A., Sec. 74).

In the petition for removal are allegations of collusion and the fraudulent bringing of the suit ostensibly in the name of the Attorney General but for and on behalf of the defendant users.

If it be conceded that it has been shown that the Attorney General consented to the assertion in this litigation of claims by certain of the defendant users against the defendant society, or that he sought the granting of more favorable terms by the defendant society to such users,—if done by him with the purpose of protecting the public of the State, it would not amount to fraud upon his part, and, if he failed to disclose such purpose at once, that fact would not be a concealment of a fraudulent character.

From time immemorial the Attorney General, using the testimony of an accomplice—even an accomplice of a murderer—would impliedly promise that accomplice immunity. Whiskey Cases, 99 U. S. 594-605-606; *Saunders v. Lowry*, 58 Fed. (2d) 158.

Nothing has been shown that would impute to the Attorney General any purpose beyond that of protecting the public by such means.

So, in this case it may be conceded that the fraudulent prosecution by the Attorney General of a suit such as this—whether fraud was actual or constructive—would, in law, insofar as such suit was concerned, strip him of such official character, reducing him to the

status of an individual litigant, and change the state's case from one brought as a sovereign to one of a civil nature, which, other requirements existing, would be removable.

In such a case the court would, it may further be conceded, be concerned with a realignment of parties plaintiff and defendant, the existence of a separable controversy and diversity of citizenship, but, absent such fraud, such a case—being one by the State—is not removable. *Minnesota v. Northern Securities Co.*, 194 U. S. 48-63; *Postal Telegraph Cable Co. v. Alabama*, 155 U. S. 482-487; *Ames v. Kansas*, 111 U. S. 449; *Stone v. South Carolina*, 117 U. S. 430; *Germania Insurance Co. v. Wisconsin*, 119 U. S. 473.

It has been further contended on behalf of the removing defendant that by requesting the appointment of a receiver to take over the public performing rights in musical numbers, the copyrights of which are held by the defendant society, and its members, and the request that the receiver be authorized to extend existing contracts and make new contracts, thereby there was presented a federal question. Such action and that of the Court taken pursuant to it did not render the cause removable. Such action was incidental to the main suit.

Insofar as the decision in *State of Ohio v. Swift & Co.*, 270 Fed. 141, is similar to the present suit, it supports the motion to remand rather than the petition for removal. The validity of no state law nor state court construction thereof violative of the Constitution of the United States are in question in the present suit.

The motion to remand will be granted.

Any order or orders embodying the rulings herein made will be settled upon notice.

The Clerk is directed to notify the attorneys for the parties of the filing of this decision.

## IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR THURSTON COUNTY

No. 16114—RECEIVER'S REPORT

STATE OF WASHINGTON ex rel. G. W. HAMILTON, Attorney General, *Plaintiff*,

vs.

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS, an unincorporated association, et al., *Defendants*,

GREENHALGH AMUSEMENT CORPORATION, a corporation, *Intervenor*.

To: The Honorable D. F. Wright, Judge of the Above Entitled Court.

Comes now TRACY E. GRIFFIN, the duly qualified and acting temporary Receiver of the American Society of Composers, Authors and Publishers, an unincorporated association, and shows to this Court as follows:

### I.

That pursuant to order of this Honorable Court, dated August 13th, 1935, your Receiver, having duly qualified, took into his possession all of the assets of the American Society of Composers, Authors and Publishers as shown by previous reports on file herein; that the principal asset of the American Society of Composers, Authors and Publishers, as shown by the evidence and as found by the Court, was the title to copyrighted music which had, together with the public performing rights thereof, been exclusively vested in the American Society of Composers, Authors and Publishers by assignments from the various members of said Society, a partial list of such membership being attached hereto and marked Exhibit "A" and by this reference made a part hereof.

### II.

That although title to said copyrighted musical compositions vested in your Receiver as of August 13th, 1935, by order of this Honorable Court, your Receiver has given no notice thereof, but has confined his efforts to preserving the property of the Society of American Society of Composers, Authors and Publishers and has maintained in full force and effect all previous contracts for the use of said music between the American Society of Composers, Authors and Publishers and the users thereof in the State of Washington, as was authorized by order of this Honorable Court on August 24th, 1935.

### III.

That Defendant American Society of Composers, Authors and Publishers heretofore filed in this cause and court a petition for removal of this action to the United States District Court for the Western District of Washington, Southern Division; that said petition was by this court refused, but pursuant to law, a transcript of the proceedings in this cause was filed in the said United

States District Court; that the State of Washington thereupon filed a motion to remand said cause back unto this court; that said motion to remand came on for hearing, was argued and taken under advisement. That on the 12th day of December, 1935, the Honorable Edward E. Cushman, United States District Judge, made and entered his memorandum decision granting the State of Washington motion to remand; that notice of said memorandum decision remanding this cause to this court has been given to all counsel by the Clerk of the said United States Court.

### IV.

That your Receiver respectfully represents and shows to this Court that in his opinion it is necessary that notice be given that the title to the copyrighted works of each and every member of the American Society of Composers, Authors and Publishers, as listed in Exhibit "A", has been vested in your Receiver by order of this Court, dated August 13th, 1935.

WHEREFORE, your Receiver prays that this report be considered and that the Court take oral evidence as to the necessity of the Receiver's recommendations herein and that your Receiver be properly instructed as to his duties and rights in the premises.

E. P. DONNELLY,  
*Assistant Attorney-General,  
Attorney for the Receiver.*

STATE OF WASHINGTON }  
COUNTY OF THURSTON } ss.

TRACY E. GRIFFIN, being first duly sworn on oath, deposes and says: That he is the duly qualified and acting receiver in this case; that he is familiar with the contents of the foregoing report; that he has read the same, knows the contents thereof, and believes the same to be true.

TRACY E. GRIFFIN.

SUBSCRIBED and SWORN to before me this 13th day of December, 1935.

WALTER REDDEN,  
*Notary Public in and for the State  
of Washington, residing at Olympia.*

### EXHIBIT A. PUBLISHERS

Abrahams, Maurice, Inc.  
Ager, Yellen & Bornstein, Inc.  
Alfred Music Co., Inc.—Feature Music Syndicate, Lowe-Goulston, Inc., Manus Music Co., Inc., Piantadosi, Al., Music Publisher, Song Creators.  
Allen, Thornton W., Co.  
Artmusic, Inc.—Empire Music Co., Inc., York Music Co., The.  
Ascher, Emil, Inc.  
Austin, Gene, Inc.  
Belwin, Inc.—Berg, S. M., Cinema Music Co.  
Berlin, Irving, Inc.  
Berlin, Irving, Standard Music Corp.  
Bibo-Lang, Inc.  
Birchard, C. C., & Co.—H. F. W. Deans Catalogue (Year Book Press)  
Bloom, Harry, Inc.  
Bond, Carrie Jacobs, & Son  
Boston Music Company—Hatch Music Company  
Bosworth & Company  
Broadway Music Corporation  
Brown, Nacio Herb, Inc.  
Browne, Ted, Music Co.  
Century Music Pub. Co.  
Chappell-Harms, Inc.  
Church, John Co., The  
Composers' Music Corp.  
Conrad, Con, Music Pub., Ltd.  
Curtis, L. B., Music Pub.—Van Alstyne & Curtis  
Davis, Joe, Inc.—Triangle Music Pub. Co.  
Denton & Haskins Music Pub. Co., Inc.  
De Sylva, Brown & Henderson, Inc.  
Ditson, Oliver Co.  
Donaldson, Douglas & Gumble, Inc.  
Evans Music Company  
Famous Music Corporation—Spier & Coslow, Inc.  
Feist, Leo, Inc.  
Fischer, Carl, Inc.  
Fisher, J., & Bro.  
Flammer, Harold, Inc.—Luckhardt & Belder  
Forster Music Publisher, Inc.  
Fox, Sam, Publishing Co.—Pallma Music Publishers, Inc., Red Star Music Co., Inc.

Gamble Hinged Music Co.,  
 Goodman Music Co., Inc.—Handman & Goodman, Inc., Hand-  
 man, Kent & Goodman, Inc., Universal Music Co., Ltd.  
 Gordon, Hamilton S., Inc.  
 Gray, H. W., Company  
 Handy Bros. Music Co., Inc.  
 Harms, Inc.  
 Harms, T. B., Company  
 Harris, Charles K., Est.  
 Haviland, F. B., Pub. Co.  
 Huntzinger, R. L., Inc.  
 Jacobs, Walter, Inc.—Abt, Valentine, Bates & Bendix, Bendix,  
 Theodore, Farrand, Van L., Jaques, Percy, Musiclovers Co., Partee,  
 C. L., Music Co., Shattuck, B. E., Williams, Ernest S.  
 Jenkins, J. W., Sons' Music Co.  
 Jungnickel, Ross, Inc.  
 Kalmus, E. F., Inc.  
 Kay & Kay Music Pub. Corp.—Franklin, John, Music Co.  
 Keit-Engel, Inc.—Davis, Coots & Engel, Inc.  
 Kendis Music Corporation  
 Kornheiser-Gottler, Inc.—Kornheiser, Phil, Inc.  
 Leslie, Edgar, Inc.  
 Lewis Music Publishing Co.  
 Marks, Edw. B., Music Co.—Apollo Verlag, Berlin; Berliner, Leo.  
 E., Pub. Co.; Chilton, Forrest S.; Dresser, Paul, Pub. Co.; Evans  
 (George Honeyboy Evans); Globe Music Publishing Co.; Graham,  
 Roger; Halle, R. L.; International Music Co., Brussels; Jordan,  
 Julian, Music Co.; Lecuona Music Co.—Cuba; Lyceum Music Co.;  
 Metz, Theodore, Music Co.; Miller, Roy M.; Musin, Ovide; Penn,  
 Wm. H.; Petrie, H. W., Catalog; Primrose & West Music Co.;  
 Recker, Robert, Music Co.; Shields, Ren; Stern, Jos. W., & Co.;  
 Willis-Woodward Music Co.  
 Marlo Music Corporation  
 McKinley Music Co.  
 Melrose Bros. Music Co., Inc.  
 Miller Music, Inc.—Youmans, Vincent, Inc.  
 Mills Music, Inc.—American Composers, Inc., Clark, Frank,  
 Music Co., Daly, Joseph, Music Pub. Co., Edwards, Gus, Music

Pub. Co., Fisher, Fred, Inc., Gordon & Rich, Inc., Gotham Music  
 Service, Inc., Jerome & Schwartz Pub. Co., Kalmar, Puck & Abra-  
 hams, Consolidated, Nelson, Jack, Music Co., Stark & Cowan, Inc.,  
 Sunlight Music Co., Inc., Waterson, Berlin & Snyder Co.; Water-  
 son, Henry, Inc., Williams, Harry, Music Co.  
 Morris, Joe, Music Co.  
 New World Music Corp.  
 Olman Music Corporation—Down Home Music Co.  
 Paull-Pioneer Music Co.—Rossiter, Harold, Music Co.  
 Photo Play Music Co., Inc.—Luz Brothers Music Pub., Music  
 Buyers Corporation  
 Pond, Wm. A., & Company  
 Quincke, W. A., & Company  
 Remick Music Corporation  
 Robbins Music Corporation—Metro-Goldwin-Mayer Corp.  
 Rossiter, Will  
 Rubank, Inc.—Carlson, M. L., Finder & Urbanek, Victor Music Co.  
 Santly Bros., Inc.  
 Schirmer, G., Inc.—Heffelfinger, R. W.; Sanders-Weiss, Inc.  
 Schroeder & Gunther, Inc.  
 Shapiro, Bernstein & Co., Inc.  
 Sherman, Clay & Co.  
 Schubert Music Pub. Corp.  
 Simon, Walter B., Inc.—Dixon-Lane, Inc.  
 Skidmore Music Co., Inc.  
 Sonnemann Music Co., Inc.—Feature Music Co.  
 Southern Music Pub. Co., Inc.  
 Stept & Powers, Inc.—Fred & Powers, Ltd.  
 Victoria Publishing Co.  
 Villa Moret, Inc.  
 Von Tilzer, Harry, Music Pub. Co.  
 Weil, Milton, Music Co., Inc.  
 White-Smith Music Pub. Co.  
 Williams, Clarence, Music Pub. Co.  
 Willis Music Company  
 Witmark, M., & Sons  
 Wood, B. F., Music Co.

#### COMPOSERS AND AUTHORS

Aarons, Alfred E.  
 Abrahams, Maurice, Est. of  
 Achron, Joseph  
 Adamson, Harold  
 Ager, Milton  
 Ahlert, Fred E.  
 Akst, Harry  
 Allen, Thornton W.  
 Alter, Louis  
 Anderson, Frank H., Jr.  
 Anderson, Lily Strickland  
 Archer, Harry  
 Arlen, Harold  
 Armstrong, Harry  
 Arndt, Felix, Est. of  
 Arnheim, Gus  
 Atteridge, Harold  
 Auer, Leopold, Est. of  
 Austin, Gene  
 Axt, William  
 Ayres, Frederic, Est. of  
 Baer, Abel  
 Bainbridge, Katharine  
 Baker, Phil  
 Ball, Ernest R., Est. of  
 Ballard, Pat  
 Barnett, Alice  
 Baron, Maurice  
 Barris, Harry  
 Barron, Ted S.  
 Bartholomae, Philip H., Est. of  
 Bartholomew, Marshall  
 Baskette, Billy  
 Bassett, Karolyn Wells, Est. of  
 Baxter, Phil  
 Bayha, Charles A.  
 Beach, Mrs. H. H. A.  
 Bennett, George J.  
 Berg, David  
 Berg, Harold  
 Bergh, Arthur  
 Berlin, Irving  
 Bibo, Irving

Black, Ben  
 Black, Frank J.  
 Blake, Eubie  
 Blaufuss, Walter  
 Bloch, Ernest  
 Bloom, Marty  
 Bloom, Rube  
 Blossom, Henry, Est. of  
 Bond, Carrie Jacobs  
 Borch, Gaston, Est. of  
 Borissoff, Josef  
 Bornschein, Franz C.  
 Botsford, George  
 Boutelje, Phil  
 Bowers, Robert Hood  
 Bradford, James C.  
 Bratton, John W.  
 Breaux, Lew, Est. of  
 Brennan, James A.  
 Brennan, J. Keirn  
 Breuer, Ernest  
 Bridges, Ethel  
 Brockman, James  
 Brooks, Shelton  
 Broones, Martin  
 Brown, Al. W., Est. of  
 Brown, A. Seymour  
 Brown, Bertrand—  
 Brown, Lew  
 Brown, Nacio Herb  
 Browne, J. Lewis  
 Bruhns, George F. W.  
 Bryan, Alfred  
 Bucharoff, Simon  
 Buck, Gene  
 Burke, Johnny  
 Burke, Joseph A.  
 Burleigh, Harry T.  
 Burns, Annelu  
 Burnside, R. H.  
 Burtnett, Earl  
 Burton, Val  
 Buzzi-Peccia, A.

Byrnes, James A.  
 Caddigan, Jack J.  
 Cadman, Charles Wakefield  
 Caesar, Irving  
 Caine, Sidney C.  
 Callahan, J. Will  
 Carlo, Monte  
 Carmichael, Hoagy  
 Carpenter, John Alden  
 Carroll, Earl  
 Carroll, Harry  
 Charig, Philip  
 Chase, Newell  
 Chattaway, Thurland  
 Chenoweth, Wilbur  
 Clare, Sidney  
 Clark, Amy Ashmore  
 Clarke, Grant, Est. of  
 Claypoole, Edward B.  
 Cleary, Michael H.  
 Clifford, Gordon  
 Cobb, Will D., Est. of  
 Coburn, Richard  
 Cohan, George M.  
 Cohen, Henry R.  
 Cohn, Chester  
 Collins, Will  
 Confrey, Edw. E.  
 Conrad, Con  
 Connor, Pierre  
 Cook, Philip D.  
 Cook, Will Marion  
 Cool, Harold  
 Coombs, C. Whitney  
 Cooper, Bud  
 Cooper, Joe  
 Coots, J. Fred  
 Coslow, Sam  
 Costello, Bartley  
 Cowna, Rubey  
 Cox, Ralph  
 Creamer, Henry, Est. of  
 Crist, Bainbridge

Crosby, Bing  
 Crumit, Frank  
 Cunningham, Paul  
 Curran, Pearl G.  
 Curtis, Billy  
 Curtis, Loyal  
 Daly, William  
 Daniels, Charles N.  
 Dash, Irwin  
 David, Benjamin  
 David, Lee  
 Davis, Benny  
 Davis, John Carlyle  
 Davis, Lou  
 Dawson, Eli  
 De Costa, Harry  
 De Costa, Leon  
 De Francesco, L. E.  
 DeKoven, Reginald, Est. of  
 Deleath, Vaughn  
 Delf, Harry  
 Denniker, Paul  
 Deppen, Jessie L.  
 De Rose, Peter  
 DeSylva, Bud  
 Dett, R. Nathaniel  
 De Voll, Cal  
 Dietz, Howard  
 Dillon, Will  
 Dixon, Harold  
 Dixon, Mort  
 Donaldson, Walter  
 Donaldson, Will  
 Donnelly, Andrew  
 Donnelly, Dorothy, Est. of  
 Dougherty, Dan  
 Dreyer, Dave  
 Drumm, George  
 Dubin, Al  
 Duncan, Wm. C.  
 Dunn, James P.  
 Dyson, Hal  
 Eberhart, Nelle Richmond



Edelheit, Harry  
 Edmonds, Shepard N.  
 Edwards, Clara  
 Edwards, Gus  
 Edwards, Leo  
 Egan, John C.  
 Egan, Raymond B.  
 Ehrlich, Sam. Est. of  
 Elie, Justin, Est. of  
 Eliscu, Edward  
 Elman, Mischa  
 English, Granville  
 Erdman, Ernie  
 Fain, Sammy  
 Farley, Roland, Est. of  
 Fazioli, Billy, Est. of  
 Federlein, Gottfried H.  
 Fields, Buddy  
 Fields, Dorothy  
 Fiorito, Ted  
 Fisher, Fred  
 Fisher, Mark  
 Fisher, William Arms  
 Flatow, Leon  
 Fleeson, Neville  
 Forster, Dorothy  
 Forsyth, Cecil  
 Fowler, B. Sherman  
 Fox, Oscar J.  
 Franklyn, Blanche  
 Franko, Nahan, Est. of  
 Freed, Arthur  
 Freer, Eleanor Everest  
 Frey, Hugo  
 Fried, Martin  
 Friedland, Anatol  
 Friend, Cliff  
 Friml, Rudolf  
 Frisch, Billy  
 Gahm, Joseph  
 Gaines, Samuel Richard  
 Gardner, William H., Est. of  
 Garrett, Lloyd Fry  
 Gaskill, Clarence  
 Gaul, Harvey B.  
 Gay, Byron  
 Gensler, Lewis E.  
 Gerard, Richard Hirsch  
 Gerber, Alex  
 Gershwin, George  
 Gershwin, Ira  
 Gilbert, L. Wolfe  
 Gillespie, Haven  
 Gillespie, Marian E.  
 Ginsberg, Sol  
 Glick, Jesse G. M.  
 Glougau, Jack  
 Godowsky, Leopold  
 Goetz, Coleman, Est. of  
 Goetz, E. Ray  
 Gold, Joe  
 Golden, Ernie  
 Golden, John  
 Goldman, Edwin Franko  
 Goodhart, Al  
 Goodman, Alfred  
 Goodman, Frank  
 Goodman, Lillian Rosedale  
 Goodwin, Joe  
 Goold, Sam, Est. of  
 Gorney, Jay  
 Gottler, Archie  
 Grainger, Percy Aldridge  
 Grant, Bert  
 Grant, Charles N.  
 Green, Bud  
 Green, John W.  
 Greene, Schuyler, Est. of  
 Greer, Jesse  
 Grey, Clifford  
 Grey, Frank H.  
 Grofe, Ferde  
 Grossman, Bernie  
 Grunberg, Jacques  
 Grunn, Homer  
 Guion, David W.  
 Gumble, Albert  
 Gurewich, Jascha  
 Gusman, Meyer  
 Hadley, Henry  
 Haenschen, Walter G.  
 Hageman, Richard  
 Hagen, Milt  
 Hager, Clyde  
 Hahn, Carl, Est. of  
 Hajos, Karl  
 Hamblen, Bernard  
 Hammerstein, Oscar, 2nd  
 Handman, Lou  
 Handy, William C.  
 Hanley, James F.  
 Hanlon, Bert  
 Harbach, Otto A.  
 Harburg, E. Y.  
 Harling, W. Franke  
 Harris, Charles K., Est. of  
 Harris, Harry  
 Harris, Victor  
 Harrison, C. F.  
 Hart, Lorenz  
 Hartmann, Arthur  
 Hawley, C. B., Est. of  
 Hazzard, John E.  
 Heagney, William H.  
 Hein, Silvio, Est. of  
 Henderson, Charles E.  
 Henderson, Ray  
 Herbert, Victor, Est. of  
 Herscher, Louis  
 Hersom, Frank E.  
 Hess, Cliff  
 Heyman, Edward  
 Hill, William J.  
 Hirsch, Louis A., Est. of  
 Hirsch, Walter  
 Hobart, George V., Est. of  
 Hoffman, Al  
 Holden, Sidney  
 Hollingsworth, Thekla  
 Holzmann, Abraham  
 Homer, Sidney  
 Hooker, Brian  
 Hoschna, Karl, Est. of  
 Hosmer, Lucius  
 Howard, John Tasker  
 Howard, Joseph E.  
 Hubbell, Raymond  
 Huertler, Charles  
 Hughes, Rupert  
 Huhn, Bruno  
 Hupfeld, Herman  
 Jacobi, Frederick  
 Jaffe, Moe  
 James, Billy  
 James, Paul  
 James, Philip  
 Janis, Elsie  
 Janssen, Werner  
 Jentes, Harry  
 Jerome, M. K.  
 Jerome, William, Est. of  
 Johnson, Arnold  
 Johnson, Horace  
 Johnson, Howard E.  
 Johnson, J. C.  
 Johnson, James P.  
 Johnson, J. Rosamond  
 Johnson, James Weldon  
 Johnstone, Gordon, Est. of  
 Johnstone, Thomas A.  
 Johnstone, Will B.  
 Jolson, Al  
 Jones, Isham  
 Jones, Stephen  
 Kahal, Irving  
 Kahn, Grace Le Boy  
 Kahn, Gus  
 Kalmar, Bert  
 Kassel, Art  
 Kaufman, Mel B., Est. of  
 Keithley, E. Clinton  
 Kempinski, Leo A.  
 Kendis, James  
 Kenny, Nick A.  
 Kern, Jerome  
 Kernell, Wm. B.  
 Kernochan, Marshall  
 Kerr, Harry D.  
 Kilenyi, Edward  
 King, Robert A., Est. of  
 Klages, Raymond W.  
 Klein, Lou  
 Klemm, Gustav  
 Klenner, John  
 Klickmann, R. Henri  
 Knox, Helen  
 Koehler, Ted  
 Kortlander, Max  
 Kountz, Richard  
 Kramer, A. Walter  
 Kreisler, Fritz  
 Kriens, Christiaan  
 Lada, Anton  
 La Forge, Frank  
 Lake, Mayhew Lester  
 Lampe, J. Bodewalt, Est. of  
 Lane, Eastwood  
 Lange, Arthur  
 Lange, Henry W.  
 Lannin, Paul  
 Laska, Edward  
 Lawlor, Chas. B., Est. of  
 Layton, Turner  
 Lee, Norah  
 Lerner, Sammy  
 Leslie, Edgar  
 Levant, Oscar  
 Levenson, Boris  
 Levey, Harold  
 Lewis, Al  
 Lewis, Roger  
 Lewis, Samuel M.  
 Lief, Max  
 Lief, Nathaniel  
 Link, Harry  
 Little, George A.  
 Little, Jack  
 Livingstone, Mabel  
 Lockhart, Eugene  
 Leob, John Jacob  
 Logan, Fred'k Knight, Est. of  
 Logan, Virginia K.  
 Lombardo, Carmen  
 Lyman, Abe  
 MacBoyle, Darl  
 MacDermid, James G.  
 MacDonald, Ballard  
 MacDonough, Glen, Est. of  
 Mack, Andrew, Est. of  
 Madden, Edward—  
 Maduro, Charles  
 Maganini, Quinto  
 Magidson, Herbert  
 Magine, Frank  
 Mahoney, Jack  
 Maley, Florence Turner  
 Malie, Tommie, Est. of  
 Malneck, Matt  
 Mana-Zucca, Mme.  
 Manney, Charles F.  
 Manning, Kathleen L.  
 Marion, Jr., George  
 Marks, Gerald  
 Marshall, Henry I.  
 Martens, Frederick H.  
 McCarthy, Joseph  
 McConnell, George B.  
 McHugh, Jimmie  
 McKee, Frank W.  
 McKenna, William  
 McLaughlin, John  
 McPherson, R. C.  
 Melrose, Walter  
 Mencher, Murray  
 Mendoza, David  
 Merele, George  
 Meskill, Jack  
 Metz, Theo. A.  
 Meyer, George W.  
 Meyer, Joseph  
 Meyers, Billy  
 Miles, Walter E.  
 Miller, Ned  
 Mills, F. A.  
 Mills, Irving  
 Moll, Billy  
 Mitchell, Sidney D.  
 Monaco, James V.  
 Moore, Elizabeth Evelyn  
 Moore, Leslie F.  
 Moore, McElbert  
 Morgan, Carey  
 Morris, Edward  
 Morris, Melville  
 Morse, Arthur Cleveland  
 Morse, Dolly  
 Morse, Theodore, Est. of  
 Motzan, Otto  
 Murchison, Kenneth M.  
 Murphy, Owen  
 Murphy, Stanley, Est. of  
 Murray, Jack  
 Myers, Richard  
 Nelson, Ed. G.  
 Nevin, Arthur  
 Nevin, Ethelbert, Est. of  
 Nevin, George B.  
 Newman, Charles  
 Norworth, Jack  
 O'Dea, Anne Cladwell  
 O'Flynn, Charles  
 O'Hara, Geoffrey  
 O'Keefe, James  
 O'Keefe, Lester  
 Olcott, Chauncey, Est. of  
 Olman, Abe  
 Oppenheim, David  
 Orlob, Harold  
 Osborne, Nat  
 Osgood, H. O., Est. of  
 Otvos, Adorjan  
 Owens, Harry  
 Paley, Herman  
 Palmer, Jack  
 Parenteau, Zoel  
 Parish, Mitchell  
 Paskman, Dailey  
 Pasternack, Josef  
 Paul, E. T., Est. of  
 Pease, Harry  
 Peck, Raymond W.  
 Penn, Arthur A.  
 Perkins, Ray  
 Perry, Sam A.  
 Peters, Wm. Frederick  
 Petkere, Bernice  
 Phillips, Fred  
 Piantadosi, Al  
 Pinkard, Maceo  
 Pirani, Eugenio Di  
 Pochon, Alfred  
 Polla, W. C.  
 Pollack, Lew  
 Ponce, Phil  
 Porter, Cole  
 Powell, John  
 Price, Georgie  
 Prival, Max  
 Pryor, Arthur  
 Rachmaninoff, Sergei  
 Rainger, Ralph  
 Rapee, Erno

Rapoport, Ruth  
 Rasback, Oscar  
 Raskin, William  
 Razaf, Andy  
 Reddick, William  
 Repper, Charles  
 Rice, Lieut. Gitz  
 Rich, Max  
 Richman, Harry  
 Riesenfeld, Hugo  
 Ringle, Dave  
 Robe, Harold  
 Roberts, Charles J.  
 Roberts, Lee S.  
 Robin, Leo  
 Robinson, J. Russel  
 Robison, Willard  
 Robyn, Alfred G.  
 Rodgers, Richard  
 Rogers, James H.  
 Rolfe, Walter  
 Roma, Caro  
 Romberg, Sigmund  
 Ronell, Ann  
 Rose, Billy  
 Rose, Ed  
 Rose, Fred  
 Rose, Vincent  
 Rosemont, Walter L.  
 Rosey, George  
 Rosey, Joe  
 Rosoff, Charles  
 Rourke, M. E.  
 Rubens, Maurie  
 Ruby, Harry  
 Ruby, Herman  
 Rupp, Carl  
 Russell, Alexander  
 Russell, Bence  
 Russo, Dan  
 Ryan, Ben  
 Ryder, Sturkow, Mme.  
 Saar, Louis Victor  
 Saenger, Gustav  
 St. Clair, Floyd J.  
 Salter, Mary Turner  
 Saminsky, Lazare  
 Samuels, Frank  
 Sanders, Alma M.  
 Sanders, Joe L.  
 Santly, Henry W.  
 Santly, Joseph H.  
 Santly, Lester

Savino, Domenico  
 Schad, Walter C.  
 Schafer, Bob  
 Schmid, Adolf  
 Schmidt, Edwin R.  
 Schoebel, Elmer  
 Schonberg, Chris.  
 Schonberger, John  
 Schuster, Ira  
 Schuster, Joseph  
 Schwartz, Arthur  
 Schwartz, Jean  
 Schwarzwald, Milton  
 Scott, John Prindle  
 Selden, Edgar, Est. of  
 Severn, Edmund  
 Seymour, Tot  
 Shapiro, Ted  
 Shay, Larry  
 Shelley, Harry Rowe  
 Sherman, Al  
 Shields, Ren., Est. of  
 Shilkret, Nathaniel  
 Siegel, Monty  
 Silberta, Rhea  
 Silver, Abner  
 Silvers, Louis  
 Silvers, Sid  
 Simon, Edward G.  
 Simon, Walter C.  
 Simons, Seymour B.  
 Sissle, Noble  
 Sizemoure, Arthur L.  
 Skilton, Charles S.  
 Sloane, A. Baldwin, Est. of  
 Smith, Chris  
 Smith, Clay, Est. of  
 Smith, Edgar  
 Smith, Harry B.  
 Smith, H. Wakefield  
 Smith, Robert B.  
 Smith, Walter Wallace  
 Snyder, Ted  
 Solman, Alfred  
 Sousa, John Philip, Est. of  
 Sowerby, Leo  
 Spaeth, Sigmund  
 Spalding, Albert  
 Speaks, Oley  
 Spencer, Fleta Jan Brown  
 Spencer, Herbert  
 Spencer, Otis  
 Spencer, Robert E.

Spier, Larry  
 Spitalny, Maurice  
 Spross, Charles Gilbert  
 Squires, Harry D.  
 Stamper, Dave  
 Stanley, Jack  
 Stanton, Frank L., Est. of  
 Steiger, Jimmy, Est. of  
 Stein, Jules K.  
 Stept, Sam H.  
 Sterling, Andrew B.  
 Stern, Henry R.  
 Stern, Jack  
 Stevens, David  
 Stickles, William  
 Stoddard, George E.  
 Stone, Billy, Est. of  
 Stothart, Herbert  
 Straight, Charley  
 Stults, R. N.  
 Sturm, Murray  
 Suesse, Dana  
 Sullivan, Alexander C.  
 Sullivan, Henry  
 Swanstrom, Arthur  
 Sweatmen, Wilbur C.  
 Swift, Kay  
 Taylor, Deems  
 Terry, Robert Huntington  
 Thompson, Harlan  
 Thornton, James  
 Tierney, Harry  
 Tobias, Charles  
 Tobias, Harry  
 Tobias, Henry H.  
 Tracey, Wm. G.  
 Trent, Jo  
 Trinkaus, George J.  
 Tucker, John Aloyseus  
 Turk, Roy  
 Twohig, Daniel S.  
 Tyers, Wm. H., Est. of  
 Vallee, Rudy  
 VanAlstyne, Egbert  
 Vanderpool, Frederick W.  
 Verges, Joe  
 Vicars, Harold, Est. of  
 Vincent, Nathaniel H.  
 Von Der Goltz, Eric, Jr.  
 Von Tilzer, Albert  
 Von Tilzer, Harry  
 Waller, Thomas  
 Walsh, J. Brandon

Ward, Sam  
 Warford, Claude  
 Warren, Harry  
 Washington, Ned  
 Wayne, Mabel  
 Webb, Kenneth S.  
 Webb, Roy  
 Webster, Paul Francis  
 Weeks, Harold  
 Weidt, A. J.  
 Weill, Irving  
 Weinberg, Chas.  
 Wells, John Barnes  
 Wendling, Pete  
 Wenrich, Percy  
 Weslyn, Louis  
 West, Eugene  
 Westphal, Frank C.  
 White, Clarence Cameron  
 Whithorne, Emerson  
 Whiting, George  
 Whiting, Richard A.  
 Wiedoedt, Rudy  
 Wilkie, Bud  
 Williams, Clarence  
 Williams, Sam  
 Williams, Spencer  
 Williams, W. R.  
 Wilson, Al  
 Wilson, Irving M.  
 Wilson, Mortimer, Est. of  
 Winne, Jesse M.  
 Winternitz, Felix  
 Witmark, Jay  
 Wood, Cyrus D.  
 Wood, Leo, Est. of  
 Woodin, W. H.  
 Woodman, R. Huntington  
 Woods, Harry M.  
 Wright, Frank A.  
 Wynn, Ed  
 Yellen, Jack  
 Yon, Pietro A.  
 Youmans, Vincent  
 Young, Joseph  
 Young, Victor  
 Zamecnik, J. S.  
 John Doe and Jane Doe,  
 Hannah Roe and Richard Roe  
 and all other members of said  
 society whose true given names  
 are unknown.

IN THE SUPERIOR COURT OF THE STATE OF  
 WASHINGTON FOR THURSTON COUNTY

No. 16114—SUPPLEMENTAL ORDER RE INVOLUNTARY  
 ASSIGNMENT OF MUSICAL COMPOSITIONS

STATE OF WASHINGTON, ex rel., G. W. HAMILTON, Attorney  
 General, *Plaintiff*,

vs.

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND  
 PUBLISHERS, an unincorporated association; et al., *Defendants*,

GRENHALGH AMUSEMENT CORPORATION, a corporation,  
*Intervenor*.

The Court having considered the Report of TRACY GRIFFIN, Receiver of the American Society of Composers, Authors, and Publishers, dated December 13th, 1935, and having listened to the evidence offered in support thereof, and having found that in order to preserve the jurisdiction of the proper Court that it is necessary that notice be given of the fact that the legal and equitable title to all musical compositions copyrighted and held in the name of each and every member of the American Society of Composers, Authors and Publishers, as partially listed and named in Exhibit "A", attached hereto and to the Receiver's Report, has been heretofore legally vested in said Receiver by order of this Court, dated August 13th, 1935, and the Court being further advised in the premises, it is now

ORDERED, ADJUDGED, AND DECREED that TRACY E. GRIFFIN, the duly qualified and acting Receiver of the American Society of Composers, Authors and Publishers be and he is hereby authorized and directed to file with the Register of Copyrights at Washington, D. C., a certified copy of this order together with a copy of the Receiver's Report, in lieu of the prior order of this Court of August 23d, 1935, and that notice shall be given that the Receiver herein is exclusively entitled to the control and possession of all of the joint property of the American Society of Composers, Authors, and Publishers for the purpose of preserving it pendente lite, and that the title to each and every copyrighted musical composition, together with the public performing rights thereof, of each and every member of the American Society of Composers, Authors and Publishers, is and has been exclusively vested in TRACY E. GRIFFIN, as the Receiver of said Society, for all purposes, and said Receiver shall possess and control said property and the affairs of said Society during the continuation of this receivership, or until further order of the Court.

DONE IN OPEN COURT this 14th day of DECEMBER, 1935.  
 D. F. WRIGHT,  
*Judge.*

Presented by  
 E. P. DONNELLY,  
*Assistant Attorney General  
 of the State of Washington.*

Exhibit A attached to the supplemental order is a duplicate of Exhibit A which appears in connection with the Receivers Report, and is, therefore not reproduced here.

# The National Association of Broadcasters

NATIONAL PRESS BUILDING \* \* \* \* \* WASHINGTON, D. C.

JAMES W. BALDWIN, Managing Director

## NAB REPORTS

Vol. 4 . . . No. 8  
FEBRUARY 7, 1936

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### BROADCAST ADVERTISING IN 1935

#### Highlights of the Year

Broadcast advertising volume reached a new high level during 1935. Gross time sales of the medium totalled \$87,523,848, a gain of 20.0% over the preceding year.

The most pronounced gains were experienced in the regional network and national non-network fields. Following a slight recession in 1934, local broadcast advertising rose materially and more than offset the losses of the previous year.

Local stations continued to show the greatest gains, while non-network business rose most rapidly in the southern and far western parts of the country.

Live talent programs, produced in station studios, showed the greatest increase of the year in the non-network field, due principally to the marked gain in the use of this type of rendition by national advertisers in their non-network broadcasting. Transcription volume experienced the most pronounced rise in the local broadcast advertising field.

Gains in broadcast advertising volume were general throughout all product and service groups employing the medium. Automotive, clothing, housefurnishing and tobacco advertising gained particularly. Financial advertising alone experienced any recession, declining 0.2% from the previous year's level. A general tendency toward more diversified sponsorship manifested itself throughout the year, as is evidenced partly by the statistical summaries as to radio advertising sponsorship and even more by examination of individual station accounts.

#### Total Broadcast Advertising

The volume of broadcast advertising placed over the various subdivisions of the medium during 1934 and 1935 is presented in Table I.

TABLE I

#### TOTAL BROADCAST ADVERTISING

Class of Business	Gross Time Sales	
	1934	1935
National networks	\$42,647,081	\$50,067,686 <sup>1</sup>
Regional networks	717,117	1,110,739
National non-network	13,541,770	17,063,688
Local	15,981,201	19,281,735
Total	\$72,887,169	\$87,523,848

<sup>1</sup> This includes the Mutual Network formed during the year.

Total broadcast advertising volume in 1935 increased 20.0% over the preceding year's level. It is particularly interesting to note that the rate of increase was maintained fairly steadily throughout the entire year.

National network advertising increased 17.4%. Regional network volume experienced the greatest gain over the preceding year, rising 54.7%. National non-network advertising rose 26.0%. Following a decrease in 1934 of 3.2% from the estimated previous year's level, local broadcast advertising rose materially during the year. Broadcast advertising of this type registered a gain of 20.6% over 1934.

It is interesting to note that gross time sales of the medium exceeded estimated 1931 volume by 25.0%, and the estimated depression low of the medium, \$57,000,000 in 1933, by 53.5%.

National network volume exceeded 1933 by 59.0%. Data are available with regard to other portions of the medium only for the latter half of that year. A comparison of revenues for that period with those of the corresponding months of 1935 showed the following

gains: Regional networks 160.4%, national non-network business 66.3%, and local broadcast advertising 22.0%.

#### Composition of Broadcast Advertising

The composition of the total broadcast advertising has remained very much the same as during the preceding year. National network advertising accounted for 57.2% of the industry's gross revenues during the year under review as compared to 58.5% in 1934, 55.2% in 1933, and an estimated 51.2% in 1931. The increasing proportion of total volume represented by national network advertising was due to the more rapid recovery of this portion of the medium from the effects of the depression. The situation over the past two years, however, seems to have become fairly well stabilized.

The marked rise in regional network volume is reflected in the growing proportion of total radio advertising which it represents. Regional network advertising accounted for 1.2% of total gross time sales in 1935 as compared to 0.9% in 1934 and 0.7% in 1933. National non-network advertising represented 19.5% of the gross volume of the medium in 1935 as against 18.6% in 1934 and 17.5% in 1933.

The relative importance of local broadcast advertising remained unchanged during the past year as compared with 1934. Advertising of this type accounted for 22.1% of total volume in 1935.

#### Comparison with Other Media

Broadcast advertising continued to make the most rapid forward strides of any medium during 1935. Compared to the 20.0% increase in gross time sales, national magazine volume rose 5.9% as against 1934. National farm paper advertising increased 7.0%, while newspaper lineage increased 5.8%. Newspaper department store advertising increased 3.4% as compared to a rise of 30.9% in radio department store volume.

Advertising volume by major media during the year of 1935 is found in Table II.

TABLE II

#### ADVERTISING BY MAJOR MEDIA

Advertising Medium	Gross Time and Space Sales	
	1934	1935
Radio broadcasting	\$72,887,169	\$87,523,848
National magazines <sup>1</sup>	116,268,492	123,093,289
National farm papers <sup>1</sup>	5,200,067	5,565,059
Newspapers <sup>2</sup>	485,481,718	517,513,000
Total	\$679,837,446	\$733,695,196

<sup>1</sup> Publishers' Information Bureau.

<sup>2</sup> Estimated.

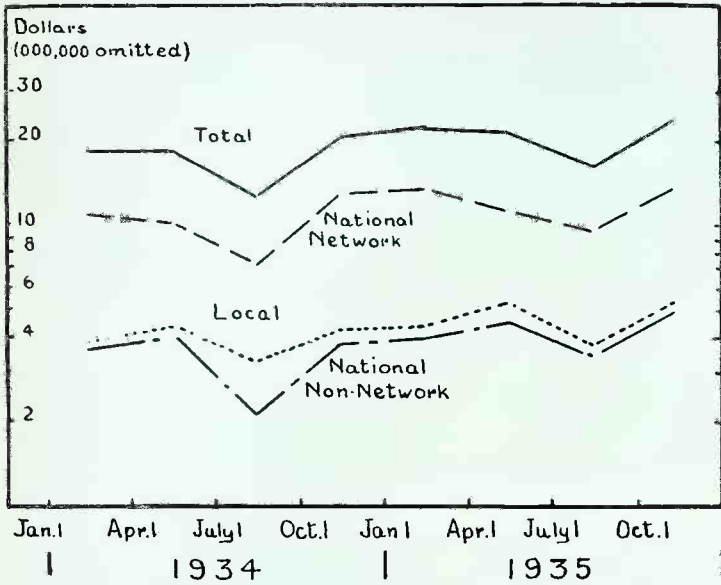
#### Non-network Broadcast Advertising

Non-network advertising rose 23.3% as compared to the preceding year. Local station volume continued to show the strength exhibited during the latter portion of 1934 and experienced a gain of 31.9% over that year. Clear channel and high-powered regional station non-network advertising increased 23.6% as compared to 1934, while regional station volume rose 19.9%.

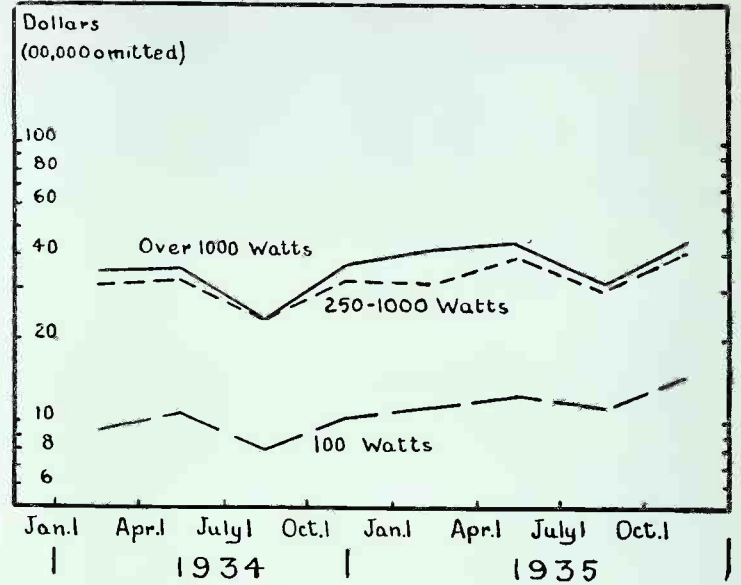
When comparison is made with the latter half of 1933, representing the depression low point of the industry, regional and local station non-network advertising is revealed to have made the most pronounced gains. Regional station non-network volume for the corresponding period of 1935 exceeded the 1933 level by 49.3%, while local station volume rose 76.5%. Clear channel and high-powered regional station non-network advertising experienced an increase of 18.6% over the level of two seasons ago.

Non-network broadcast advertising by power of station is presented in Table III.

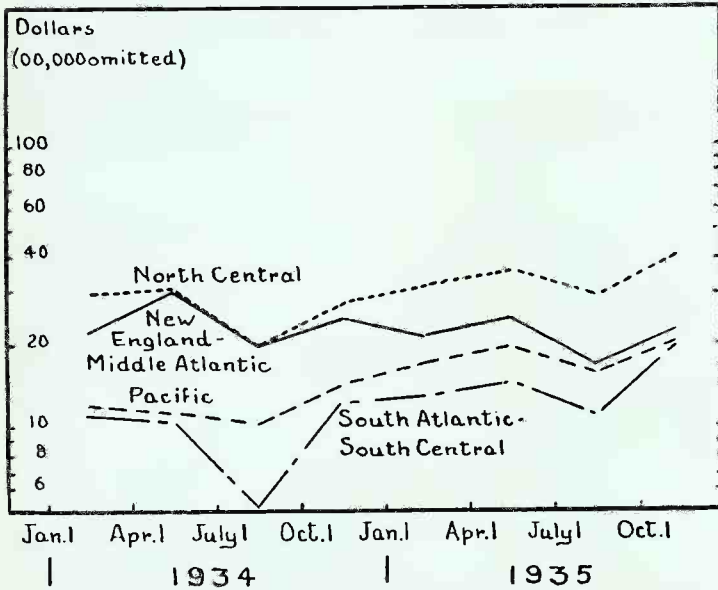
**RADIO BROADCAST ADVERTISING VOLUME BY QUARTERS**  
January, 1934 to December, 1935



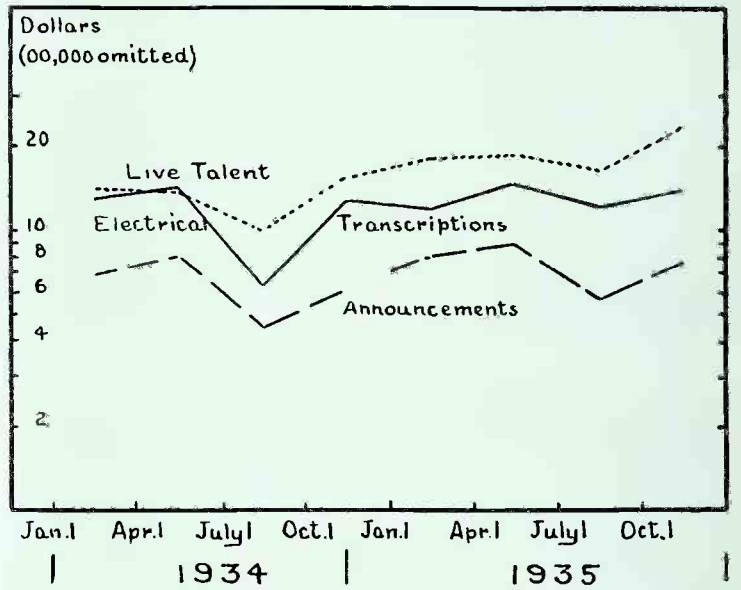
**NON-NETWORK ADVERTISING BY STATION POWER (QUARTERLY)**  
January, 1934 to December, 1935



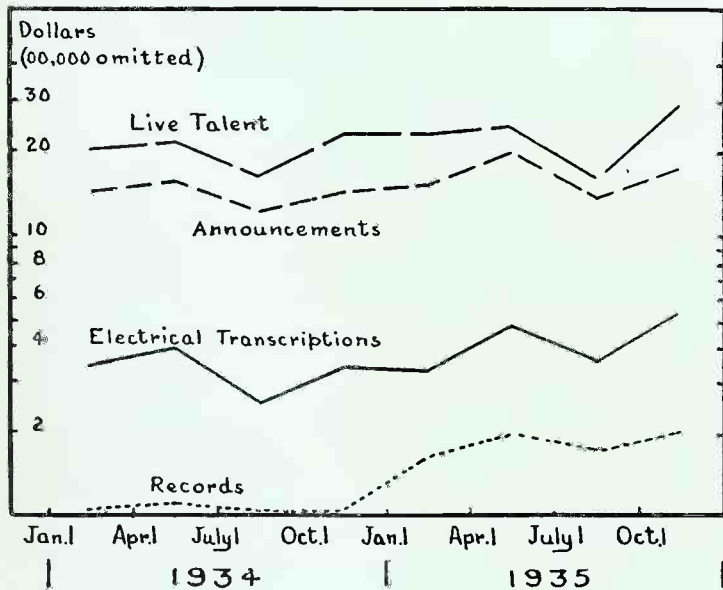
**NON-NETWORK ADVERTISING BY GEOGRAPHICAL DISTRICTS (QUARTERLY)**  
January, 1934 to December, 1935



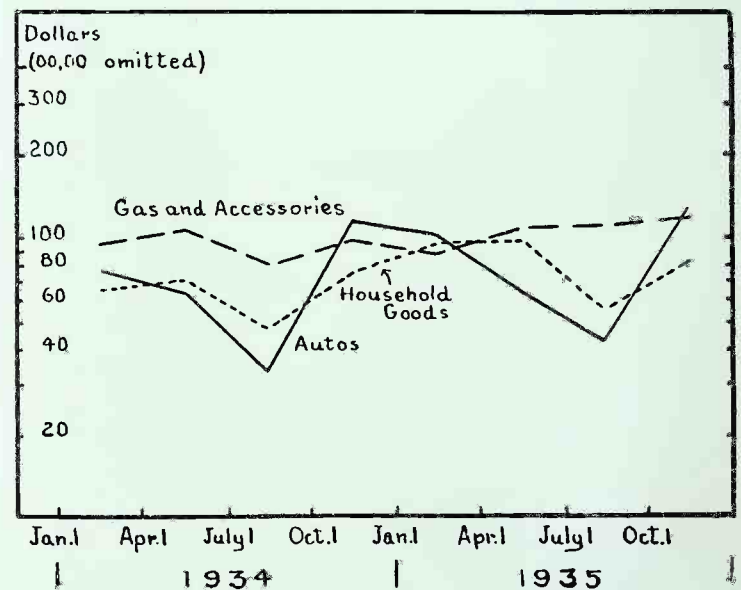
**NATIONAL NON-NETWORK ADVERTISING BY TYPE OF RENDITION (QUARTERLY)**  
January, 1934 to December, 1935



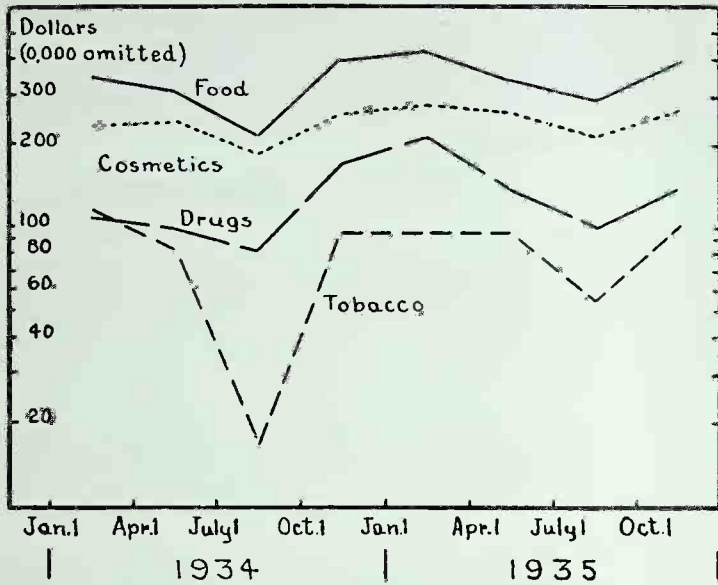
**LOCAL ADVERTISING BY TYPE OF RENDITION (QUARTERLY)**  
January, 1934 to December, 1935



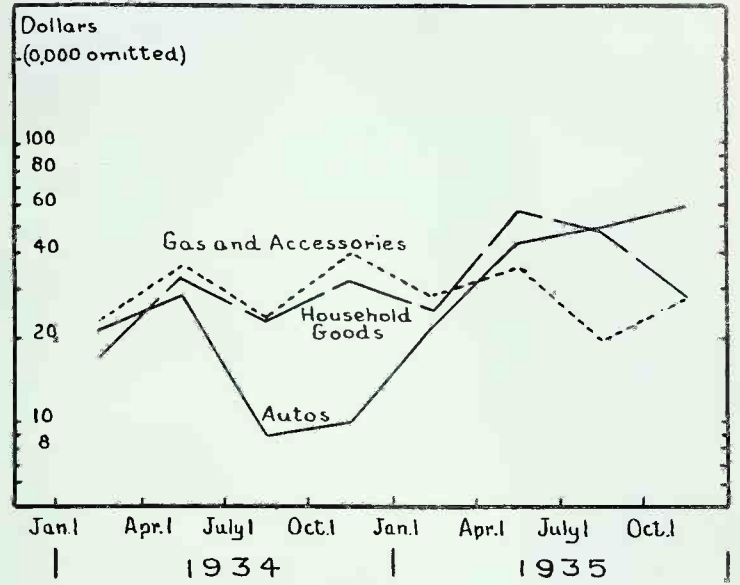
**NATIONAL NETWORK ADVERTISING BY PRODUCT CLASSES (QUARTERLY)**  
January, 1934 to December, 1935



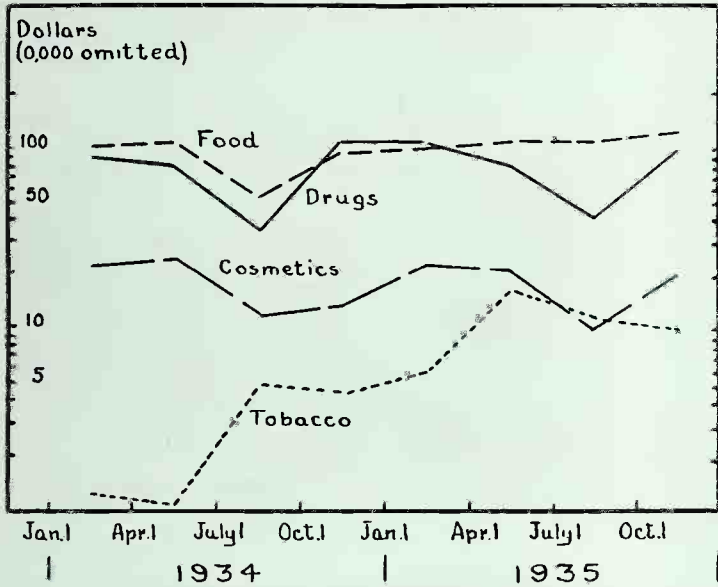
**NATIONAL NETWORK ADVERTISING BY PRODUCT CLASSES (QUARTERLY)**  
January, 1934 to December, 1935



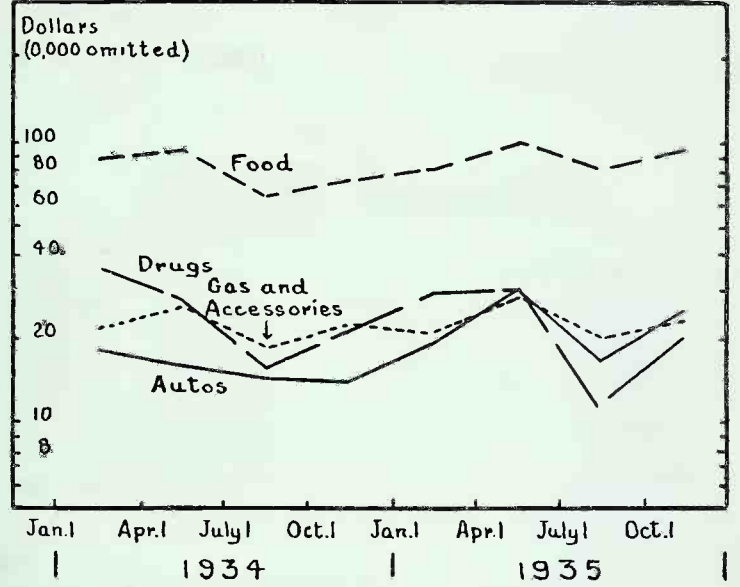
**NATIONAL NON-NETWORK ADVERTISING BY PRODUCT CLASSES (QUARTERLY)**  
January, 1934 to December, 1935



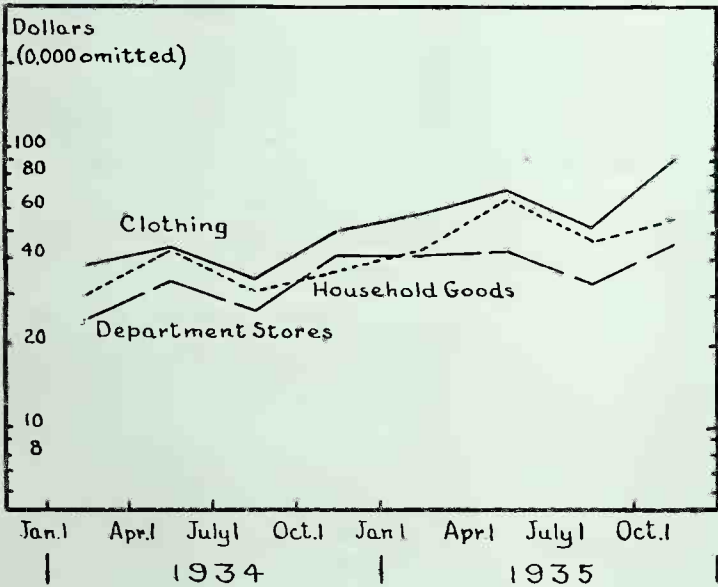
**NATIONAL NON-NETWORK ADVERTISING BY PRODUCT CLASSES (QUARTERLY)**  
January, 1934 to December, 1935



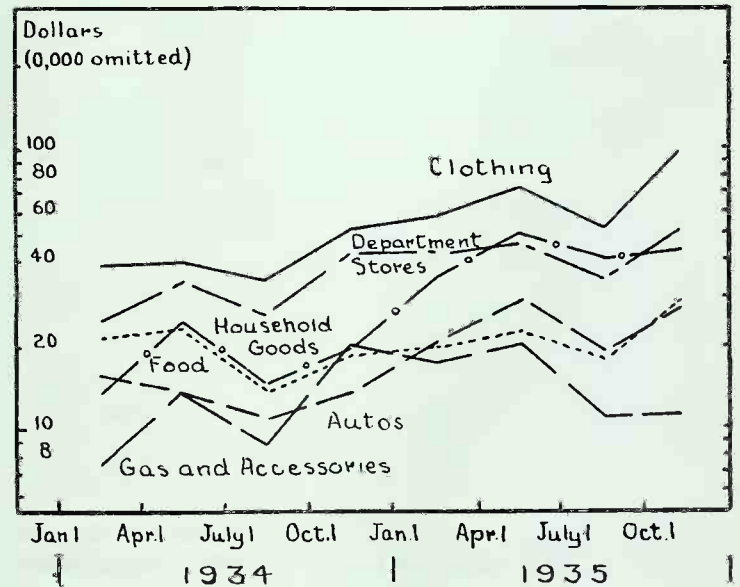
**LOCAL ADVERTISING BY PRODUCT CLASSES (QUARTERLY)**  
January, 1934 to December, 1935



**LOCAL ADVERTISING BY PRODUCT CLASSES (QUARTERLY)**  
January, 1934 to December, 1935



**BROADCAST ADVERTISING BY RETAIL ESTABLISHMENTS (QUARTERLY)**  
January, 1934 to December, 1935



**TABLE III**  
**NON-NETWORK BROADCAST ADVERTISING BY**  
**POWER OF STATION**

Power of Station	Gross Time Sales	
	1934	1935
Over 1,000 watts.....	\$13,408,584	\$16,564,505
250-1,000 watts .....	12,132,301	14,523,795
100 watts .....	3,982,086	5,257,213
<b>Total .....</b>	<b>\$29,522,971</b>	<b>\$36,345,513</b>

There has been little change in the proportion of non-network advertising placed over stations of varying power as compared with 1934. Clear-channel and high-powered regional stations accounted for 45.5% of non-network volume during 1935. Regional stations represented 40.0% of the total, and local stations 14.5%. The proportion represented by regional stations declined approximately 1.0% from the previous year, while the percentage accounted for by local stations rose a corresponding amount.

The southern and far western portions of the country experienced the most important increases in non-network volume during the year. Non-network advertising in the South Atlantic and South Central States increased 52.8% as compared with 1934, while Mountain and Pacific State volume rose 49.3%. Non-network broadcast advertising in the North Central States experienced a gain of 28.6%, while volume in the New England and Middle Atlantic States rose 9.7%. The comparatively small gain in the last-mentioned region is probably due to the relatively large proportion of total station facilities affiliated with the so-called basic networks of the national network companies. The decided rise in network business has thus acted as an automatic brake on non-network growth by absorbing much of the desirable time.

Non-network broadcast advertising in various sections of the country is set forth in Table IV.

**TABLE IV**  
**NON-NETWORK ADVERTISING BY**  
**GEOGRAPHICAL DISTRICTS**

Geographical District	Gross Time Sales	
	1934	1935
New England-Middle Atlantic Area...	\$9,815,695	\$8,945,782
South Atlantic-South Central Area....	3,944,650	6,060,358
North Central Area.....	10,822,445	13,941,087
Pacific and Mountain Area.....	4,940,181	7,398,286
<b>Total .....</b>	<b>\$29,522,971</b>	<b>\$36,345,513</b>

The rise in non-network volume in the west and south has materially affected the relative proportion of total advertising of this

**TABLE V**  
**NON-NETWORK BROADCAST ADVERTISING BY TYPE OF SPONSORING BUSINESS**

Type of Rendition	Gross Time Sales					
	National Non-network		Local		Total	
	1934	1935	1934	1935	1934	1935
Electrical transcriptions .....	\$5,090,925	\$5,870,614	\$1,308,265	\$1,743,894	\$6,399,190	\$7,614,508
Live talent programs.....	5,798,723	8,015,119	8,356,675	9,664,411	14,155,399	17,679,530
Records .....	55,847	103,914	407,280	745,157	463,127	849,071
Announcements .....	2,596,275	3,074,131	5,908,980	7,128,273	8,505,255	10,202,404
<b>Total .....</b>	<b>\$13,541,770</b>	<b>\$17,063,778</b>	<b>\$15,981,201</b>	<b>\$19,281,735</b>	<b>\$29,522,971</b>	<b>\$36,345,513</b>

**Broadcast Advertising Sponsorship**

With the exception of financial advertising, which declined 0.2% as compared to the preceding year, all forms of broadcast advertising sponsorship experienced gains during 1935. Automotive advertising increased 49.6% as against 1934. Automotive volume rose on all portions of the medium, national non-network business leading with a gain of 148.8%. Clothing advertising volume rose 52.8%, due principally to an increase in the local field. Housefurnishings advertising exceeded the 1934 level by 47.7%, local volume again being responsible in the main. Department store advertising increased 35.3%; national non-network volume, composed of advertising by the retail branches of mail order houses, rose 93.8%.

Other increases as compared to 1934 were as follows: Amusements, 1.4%; gasoline and accessories, 5.6%; drugs and pharmaceuticals,

type accounted for by each section of the country. Whereas the New England and Middle Atlantic States accounted for 33.2% of total non-network volume in 1934, they represented but 24.5% in the following year. Non-network advertising represented by the South Atlantic and South Central States amounted to 16.6% during the year under review as compared to 13.5% in 1934.

The increase in the proportion accounted for by the Mountain and Pacific States was from 16.9% to 20.7%. Whereas the North Central States were responsible for 36.4% of total non-network advertising in 1934, they accounted for 38.2% in 1935.

**Non-network Advertising by Type of Rendition**

Live talent programs, produced in station studios, experienced the greatest increase of any major type of rendition during the year, gaining 25.1% over the 1934 level. Transcription volume rose 18.9%, while announcement business increased 19.6%. Records, representing but a small proportion of total non-network advertising volume by type of rendition, registered a gain of 83.7% over the previous year.

The marked gain in live talent business was due principally to a decided trend toward the use of this type of rendition by national advertisers in their non-network broadcasting. National non-network live talent advertising rose 38.2% during the year, as compared to a rise of 15.3% in transcription volume and of 19.1% in announcement business.

Compared to the last six months of 1933, for which data alone are available, national transcription advertising for the corresponding period of 1935 rose 59.6%, live talent volume increased 146.0%, and announcement revenues declined 9.6%.

Local broadcast advertising presented a somewhat different picture as to trends in the use of various types of rendition. Largely because of a marked rise during the latter portion of the year, local transcription volume showed a gain of 33.5% over 1934. Record volume rose 82.4%, live talent business 15.5%, and announcement revenues 20.3%.

Comparing the latter half of the year under review to the corresponding period of 1933 emphasizes, even more clearly, the local transcription trend during the past two seasons. Transcription volume is found to have gained 54.9%, live talent 10.3%, records 12.1%, and announcements 13.9%.

The proportion of total non-network broadcast advertising represented by various types of rendition differed very little from that of the previous year, both in the national and local fields. With regard to total non-network advertising, transcriptions represented 20.9%, live talent 48.3%, records 2.3%, and announcements 28.5%.

In the case of national non-network advertising, transcriptions accounted for 37.7% of total volume, live talent 42.9%, records 0.4%, and announcements 19.0%. Transcription volume amounted to 9.0% of the local broadcast advertising total, live talent 50.0%, records 3.8%, and announcements 37.2%.

Broadcast advertising by type of rendition is represented in Table V.

18.3%; cosmetics, 9.0%; foodstuffs, 20.6%; beverages, 1.0%; confectionery, 30.0%; soap and kitchen supplies, 3.8%; radio sets, 66.0%; tobacco products, 26.5%; and miscellaneous advertisers, 11.8%.

Foodstuffs again lead the sponsor field, accounting for 19.0% of the total broadcast advertising volume of the year. This was the same as in 1934. The combined food, beverage and confectionery group represented 26.7% of the year's radio advertising volume, as compared to 27.4% in 1934.

Cosmetics ranked second, with 13.1% of the medium's total as compared to 14.4% in the previous year. Drugs and pharmaceuticals ranked third with 12.1% in 1935 and 12.3% in the year prior to that. The miscellaneous group again ranked fourth, accounting for 10.2% of the total revenues of the medium during the year under review,

and 11.3% in 1934. Accessories placed fifth, as in the preceding year, accounting for 7.6% in 1935 and 8.6% in 1934.

The most marked change in proportion of total broadcast advertising represented by it occurred in the automotive field, which, though

remaining in sixth place, rose from 5.7% of the medium's revenues to 7.1%.

Broadcast advertising in 1934 and 1935 by different product and service groups is found in Tables VI (A) and VI (B).

**TABLE VI(A)**  
**BROADCAST ADVERTISING BY TYPE OF SPONSORING BUSINESS**  
**(1935)**

Type of Sponsoring Business	National Networks		Regional Networks		Gross Time Sales National Non-network		Local		Total	
1a. Amusements	—	—	—	—	\$53,740	.3%	\$504,515	2.6%	\$558,255	.6%
1-2. Automobiles and accessories:										
1. Automobiles	\$3,466,379	6.9%	\$8,174	.7%	1,795,853	10.5%	949,056	4.9%	6,219,462	7.1%
2. Accessories, gas and oils	4,311,909	8.6%	156,937	14.1%	1,152,268	6.6%	966,093	5.0%	6,587,207	7.6%
3. Clothing and apparel	456,743	.9%	54,103	4.9%	367,420	2.2%	2,757,916	14.3%	3,636,182	4.2%
4-5. Drugs and toilet goods:										
4. Drugs and pharmaceuticals	6,145,306	12.3%	76,627	6.9%	3,480,850	20.5%	918,934	4.8%	10,621,717	12.1%
5. Toilet goods	10,294,126	20.6%	33,769	3.0%	851,281	5.0%	276,395	1.4%	11,455,571	13.1%
6-8. Food products:										
6. Foodstuffs	10,456,847	20.9%	272,317	24.5%	3,513,948	20.6%	2,405,326	12.5%	16,648,438	19.0%
7. Beverages	3,016,912	6.0%	31,963	2.9%	658,622	3.9%	1,063,642	5.5%	4,771,139	5.5%
8. Confections	1,317,113	2.6%	48,122	4.3%	431,733	2.5%	126,307	.7%	1,923,275	2.2%
9-10. Household goods:										
9. Household equipment and furnishings	566,610	1.1%	83,212	7.5%	670,221	3.9%	2,096,064	10.9%	3,416,107	3.9%
10. Soaps and kitchen supplies	2,816,578	5.6%	51,246	4.6%	940,083	5.5%	87,743	.5%	3,895,650	4.5%
11. Insurance and financial	442,425	.9%	5,350	.5%	208,429	1.2%	673,867	3.5%	1,330,071	1.5%
12. Radios	1,081,460	2.2%	—	—	129,565	.8%	191,543	1.0%	1,402,568	1.6%
13. Retail establishments	59,119	.1%	860	.1%	109,008	.6%	1,659,122	8.6%	1,828,109	2.1%
14. Tobacco products	3,528,790	7.1%	169,565	15.3%	457,380	2.7%	79,611	.4%	4,235,346	4.8%
15. Miscellaneous	2,107,369	4.2%	118,494	10.7%	2,243,287	13.2%	4,525,601	23.4%	8,994,751	10.2%
<b>Total</b>	<b>\$50,067,686</b>	<b>100.0%</b>	<b>\$1,110,739</b>	<b>100.0%</b>	<b>\$17,063,688</b>	<b>100.0%</b>	<b>\$19,281,735</b>	<b>100.0%</b>	<b>\$87,523,848</b>	<b>100.0%</b>

**TABLE VI(B)**  
**BROADCAST ADVERTISING BY TYPE OF SPONSORING BUSINESS**  
**(1934)**

Type of Sponsoring Business	National Networks		Regional Networks		Gross Time Sales National Non-network		Local		Total	
1a. Amusements	—	—	—	—	\$35,742	.3%	\$514,986	3.2%	\$550,728	.8%
1-2. Automobiles and accessories:										
1. Automobiles	\$2,785,685	6.2%	\$5,853	.9%	721,743	5.3%	644,545	4.1%	4,157,826	5.7%
2. Accessories, gas and oils	3,827,158	8.6%	222,266	31.0%	1,287,053	9.5%	901,302	5.6%	6,237,779	8.6%
3. Clothing and apparel	372,776	.8%	15,723	2.2%	301,563	2.2%	1,690,076	10.6%	2,380,138	3.2%
4-5. Drugs and toilet goods:										
4. Drugs and pharmaceuticals	4,804,381	11.1%	23,922	3.2%	3,134,909	23.1%	1,012,440	6.3%	8,975,652	12.3%
5. Toilet goods	9,400,764	24.2%	7,883	1.1%	795,945	5.8%	305,868	1.9%	10,510,460	14.4%
6-8. Food products:										
6. Foodstuffs	8,450,701	20.1%	178,726	25.1%	2,778,730	20.5%	2,404,898	15.1%	13,813,055	19.0%
7. Beverages	3,358,805	7.5%	71,319	10.0%	517,721	3.8%	774,948	4.8%	4,722,793	6.4%
8. Confections	1,081,363	2.4%	9,210	1.3%	335,975	2.4%	46,514	.3%	1,473,062	2.0%
9-10. Household goods:										
9. Household equipment and furnishings	417,168	.9%	20,502	2.8%	535,848	3.9%	1,345,497	8.4%	2,319,015	3.2%
10. Soaps and kitchen supplies	2,210,178	5.1%	796	.1%	515,415	3.7%	94,403	.6%	2,820,791	3.8%
11. Insurance and financial	611,822	1.3%	21,904	3.0%	201,369	1.5%	497,758	3.1%	1,332,853	1.8%
12. Radios	656,090	1.4%	—	—	50,382	.4%	138,938	.9%	845,410	1.0%
13. Retail establishments	—	—	—	—	56,256	.5%	1,295,026	8.1%	1,351,282	1.9%
14. Tobacco products	3,181,988	7.1%	3,835	.5%	125,544	.9%	35,853	.2%	3,347,220	4.6%
15. Miscellaneous	1,488,202	3.3%	135,178	18.8%	2,147,575	16.2%	4,278,149	26.8%	8,049,105	11.3%
<b>Total</b>	<b>\$42,647,081</b>	<b>100.0%</b>	<b>\$717,117</b>	<b>100.0%</b>	<b>\$13,541,770</b>	<b>100.0%</b>	<b>\$15,981,201</b>	<b>100.0%</b>	<b>\$72,887,169</b>	<b>100.0%</b>

**National Network Advertising in 1935**

With but two exceptions, all fields of national network advertising increased as compared to 1934. The exceptions in question were a decline of 27.7% in network financial advertising and a decrease of 10.2% in the beverage field.

The most important gains in the national network field were an increase of 24.4% in automotive advertising, a rise of 23.7% in food sponsorship, and one of 27.9% in the drug and pharmaceutical field. Network drug advertising declined toward the end of the year, how-

ever, as the new policies with regard to this type of advertising began to take effect. The miscellaneous group showed a rise of 41.6% during the year, indicating a widening sponsorship of broadcast advertising over networks. Radio set advertising, representing a somewhat less important segment of the network total, experienced the most pronounced relative increase over the previous year, rising 64.8%.

Other increases in the national network field were as follows: Accessories and gasoline, 12.7%; clothing, 22.5%; cosmetics, 9.5%; confectionery, 21.8%; household equipment, 35.8%; soap and

kitchen supplies, 27.5%; tobacco, 10.9%. National network retail volume represents mail order advertising. None of this class was broadcast in 1934.

Foodstuffs lead the national network field in 1935, accounting for 20.9% of the total volume. Cosmetics, which ranked first in 1934 with 24.2% of the year's total, moved to second place, accounting for 20.6% of 1935 revenues. Drugs were third with 12.3%; accessories and gasoline fourth with 8.6%; tobacco fifth with 7.1%; and automotive advertising sixth with 6.9%. With the exception of the decline in relative importance of cosmetics, the proportion of total volume represented by the leading sponsor groups changed but little from 1934.

### Regional Network Advertising

The outstanding development of the year in the regional network field was the increasing diversity of products utilizing this form of broadcast advertising. In addition to several comparative newcomers among the users of regional network advertising, there was a general increase in many sponsoring groups.

Tobacco advertising, principally cigars, rose from \$3,835 in 1934 to a total of \$169,565 during the year under consideration. Soap and kitchen supply advertising increased from \$796 in the previous year to \$51,246 in 1935.

Other fields to experience marked gains included the following: Clothing, 244.1%; cosmetics, 328.8%; drugs and pharmaceuticals, 220.3%; confectionery, 422.5%; and household equipment, principally paints, 305.9%. Foodstuffs, the most important sponsoring group in the regional network field, registered an increase of 52.4% over the 1934 level. Automotive volume rose 39.7%.

Decreases in the remainder of the sponsor group were as follows: Accessories and gasoline, 29.4%; beverages, 55.2%; financial, 75.6%; and miscellaneous, 12.3%. Of these, only gasoline and the miscellaneous group represented important segments of the regional network total.

The important developments in the regional network field with respect to advertising sponsorship brought with them a marked realignment of product groups with regard to their relative importance. Foodstuffs remained in first place, and accounted for 24.5% of the regional total, as compared to 25.1% in 1934. Tobacco climbed from fifteenth in 1934 to second during the year under review and accounted for 15.3% of the regional network total. Gasoline and accessories dropped from first in 1934, when they amounted to 31.0% of the total, to third in 1935, with 14.1%.

The miscellaneous group represented 10.7% in 1935 and ranked fourth. This group accounted for 18.8% of regional revenues in the previous year. Household equipment ranked fifth with 7.5% and drugs sixth with 6.9%. In 1934 drugs ranked fifth with 3.2% and household equipment sixth with 2.8%.

### National Non-network Advertising

National non-network advertising experienced increases with regard to all sponsoring product and service groups with but a single exception, gasoline and accessories, which decreased 10.5%. The decline in this field occurred principally since August 1935.

Several highly important gains were recorded during the year. Tobacco advertising, principally cigars and pipe tobacco, increased 264.3% during the year. Automotive advertising rose 148.8%, soap and kitchen supply advertising 82.4%, and mail order retail store advertising 93.8%. The automotive rise began in February 1935 and continued steadily since that time.

Other increases in the national non-network field were as follows: Amusements, 50.4%; clothing, 21.8%; drugs, 11.0%; cosmetics, 7.0%; foodstuffs, 26.3%; beverages, 27.2%; confectionery, 28.5%; household equipment, 25.1%; financial, 3.5%; radios, 57.2%; miscellaneous, 4.5%.

As in the case of national and regional network advertising, foodstuffs comprised the largest single class of national non-network advertising, accounting for 20.6% of the total volume in 1935. This was the same proportion as in the preceding year. However, in 1934, drugs ranked first and represented 23.1% of national non-network revenues. This class of goods dropped to second place, with 20.5%, during the year just closed.

The miscellaneous group ranked third in the national non-network field, comprising 13.2% and 16.2% of total revenues in 1935 and 1934, respectively. Automotive advertising ranked fourth in 1935, with 10.5% of the total, as against sixth in 1934 with 5.3%. Gasoline and accessories ranked fifth in the year just completed with 6.6% as compared to fourth, with 9.5%, in the preceding year. Soap and kitchen supplies ranked sixth in 1935 with 5.5% of the national non-network total. This class of commodity was ninth in the previous year with 3.7%.

### Local Broadcast Advertising

Increases again were fairly general in the local broadcast advertising field, though in practically no instance were they as spectacular as in other portions of the medium. Automotive, clothing and house furnishing advertising, fields enjoying considerable growth in sales during the past year, gained especially. Local automotive advertising exceeded the 1934 level by 47.2%. Clothing volume rose 63.2%, while house furnishing advertising increased 55.8%. Local department store sponsorship gained 28.1% over the previous year.

Other gains included the following: Gasoline and accessories, 7.2%; beverages, 37.3%; confectionery, 171.5%; financial, 35.3%; radio sets, 37.9%; tobacco products, 22.0%; and miscellaneous, 5.8%.

Several decreases occurred during the year in the local field. Amusement advertising declined 2.0%, drug volume 9.2%, cosmetic advertising 9.6%, and soap and kitchen supplies 7.0%. Foodstuff volume remained practically unchanged from the previous year's level.

As in 1934, the miscellaneous group comprised the largest single classification in the local broadcast advertising field, accounting for 23.4% of the total revenues of this type. Clothing volume ranked second, and comprised 14.3% of the local total. In 1934 this class of local advertising ranked third and represented 10.6% of local business.

Foodstuffs ranked third in 1935, with 12.5% of the total. House furnishings ranked fourth with 10.9%, automotive advertising fifth with 8.6%, and beverages sixth with 5.5%.

### Retail Broadcast Advertising

Broadcast advertising by retail establishments of various types is set forth in Table VII. It will be noted from the table that broadcast advertising by retail establishments increased 48.1% over the previous year.

TABLE VII  
RETAIL BROADCAST ADVERTISING OVER  
INDIVIDUAL STATIONS

Type of Sponsoring Business	Gross Time Sales	
	1934	1935
Automobiles and accessories:		
Automobile agencies and used car dealers . . . . .	\$594,400 8.3%	\$991,595 9.3%
Gasoline stations, garages, etc. . . . .	525,997 7.3%	638,195 6.0%
Clothing and apparel shops	1,681,573 23.3%	2,810,962 26.4%
Drugs and toilet goods:		
Drug stores . . . . .	180,220 2.5%	245,428 2.3%
Beauty parlors . . . . .	59,358 .8%	108,393 1.0%
Food products:		
Grocery stores, meat markets, etc. . . . .	568,157 7.9%	587,265 5.5%
Restaurants and eating places . . . . .	222,461 3.1%	245,506 2.3%
Beverage retailers . . . . .	11,187 .2%	42,739 .4%
Confectionery stores, etc.	23,535 .3%	26,459 .3%
Household goods:		
Household equipment retailers . . . . .	413,340 5.7%	652,914 6.1%
Furniture stores . . . . .	612,223 8.5%	1,045,802 9.9%
Hardware stores . . . . .	134,525 1.8%	220,838 2.0%
Radio retailers . . . . .	145,805 2.0%	172,219 1.6%
Department and general stores . . . . .	1,351,282 18.7%	1,768,990 16.6%
Tobacco shops . . . . .	8,896 .1%	8,702 .1%
Miscellaneous . . . . .	650,109 9.5%	1,074,192 10.2%
Total . . . . .	\$7,183,069 100.0%	\$10,640,199 100.0%

The most spectacular increase in the field was with regard to beverage retailers, the advertising volume of which rose 282.0% as compared to the preceding year. This class of retail trade, however, is comparatively unimportant and represents but 0.4% of the total retail radio advertising volume.

The most significant increases in retail broadcast advertising included the following: Automotive, 66.8%; clothing, 67.2%; household equipment dealers, principally electrical appliances, 57.9%; furniture stores, 70.8%; hardware retailers, 64.2%; miscellaneous retail establishments, 65.2%; and department stores, 30.9%.



Gasoline and accessory retail advertising rose 21.3%, drug store volume 36.2%, that of beauty parlors 82.6%, grocery stores 3.4%, restaurants 10.4%, confectionery shops 12.4%. Retail tobacco shop business alone declined, dropping 2.2%. This class, however, is quite negligible.

As will be noted from the percentages appearing on Table VII, clothing store volume led the retail field with 26.4% of the entire radio volume. Department stores ranked second with 16.6%, miscellaneous third with 10.2%, furniture stores fourth with 9.9%, automotive fifth with 9.3%, and household equipment dealers sixth with 6.1%.

### Comparison with Latter Half of 1933

Since the year of 1933 represented the low point of broadcast advertising during the depression, a comparison of 1935 sponsorship with that period will be of interest. Since complete data are available only for the second half of the former year, all comparisons have been made on the basis of that period and the corresponding months of the year just closed.

Interesting shifts are to be observed in the national network field. The miscellaneous group showed the greatest gain as compared to 1933, rising 162.6%, again pointing to an increasing diversity of broadcast advertising sponsorship.

Soap and kitchen supply volume rose 158.0%, while automotive

advertising increased 156.8%. Other gains were as follows: Radio sets, 111.3%; drugs, 81.4%; cosmetics, 99.4%; and foodstuffs, 78.8%.

Advertising in several fields declined. Clothing dropped 14.2%, beverage volume 7.5%, house furnishings 49.0%, tobacco 5.0%, and financial 59.0%.

In the regional network field comparison with 1933 merely confirmed the trends noted in the past year. There were no important decreases.

Marked gains were indicated throughout the entire national non-network field. Automotive volume more than tripled. Tobacco advertising increased more than thirty times the 1933 figure, while radio set volume rose sevenfold. House furnishing and beverage advertising doubled. Clothing and food advertising rose materially, as did drug sponsorship.

Principal decreases in the national non-network field were a decline of 31.2% in gasoline and accessory volume as compared with the latter half of 1933, a drop of 41.0% in cosmetic advertising and of 27.7% in confectionery business.

In the case of local broadcast advertising volume, most gains were comparatively slight as compared to the latter half of 1933. Outstanding increases were as follows: Clothing, 73.1%; house furnishings, 88.0%; beverage and radio set advertising, more than doubled. Food advertising remained at the 1933 level. Amusement volume declined 34.6%, drug advertising 70.0%, and soap and kitchen supply business 54.7%.



# The National Association of Broadcasters

NATIONAL PRESS BUILDING \* \* \* \* \* WASHINGTON, D. C.

JAMES W. BALDWIN, Managing Director

## NAB REPORTS

Copyright, 1936. The National Association of Broadcasters

Vol. 4 - - No. 9  
FEBRUARY 13, 1936

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### PRATT NEW NAB ATTORNEY

Elmer W. Pratt, for some years attorney and Examiner for the Federal Radio Commission, has been appointed attorney for the NAB.

Mr. Pratt was born at Salt Lake City, Utah, on October 28, 1900, educated in the grade and high schools and a business college of that city and graduated from the National University Law School, this city.

He was employed by former Senator Reed Smoot of Utah for five years, the last two years of which he was private secretary to Senator Smoot as well as clerk of the Senate Finance Committee of which the Senator was chairman.

Mr. Pratt was the first attorney to enter the employ of the old Federal Radio Commission as well as the first Examiner. He was employed by the Commission for five years and left on June 30, 1933, since which time he has been engaged in the practice of law specializing in radio.

He will devote all of his time to the NAB work and will deal primarily with matters relating to state and municipal taxation. He will, however, be given time to dispose of his present active law cases.

### BOARD OF DIRECTORS MEETING

The NAB Board of Directors held a meeting in Chicago, Illinois, February 3rd, on the subject of copyright. The full text of a report on copyright, with conclusions and recommendations of the Managing Director, and the actions taken thereon by the Board, will be furnished to the members in a special edition of NAB Reports which will be mailed about February 18th. The mailing of this report was delayed at the request of a member of the Board in order that he might file a minority report.

### ADDITIONAL POWER RECOMMENDED FOR WJAS

Broadcasting Station WJAS, Pittsburgh, Pa., operating on a frequency of 1290 kilocycles applied to the Federal Communications Commission to increase its power from 2,500 to 5,000 watts daytime. It now operates with 1,000 watts night full time.

Examiner Ralph L. Walker in Report No. I-190 recommended that the application be granted. The Examiner found that "there is a need for the additional service proposed" and that "the interest of existing stations will not be adversely affected by reason of interference."

### GARDNER NURSERY COMPANY, OSAGE, IOWA

Members are advised to communicate with NAB headquarters before contracting with Gardner Nursery Company, Osage, Iowa.

### DUFFY COPYRIGHT BILL

Members are urged to wire or telephone their Congressmen at once urging them to sign petition No. 26 filed February 12, 1936, by Congressman Marion A. Zioncheck to report the Duffy Copyright Bill (S. 3047) to the House. It is necessary that 218 signatures be affixed to the petition.

### RULE RELAXED TEMPORARILY

At a general session of the Federal Communications Commission it was decided to relax until February 15, Rule 100.6 pending further study. This rule now reads:

"Subject to the provisions of Sections 4 (j), 412 and 606 of the Act, the files of the Commission shall be open to inspection as follows:

- (a) Tariff schedules required to be filed under Section 203 of the Act and annual and monthly reports required to be filed under Section 219 of the Act.
- (b) Hearing dockets, only as to applications, licenses, and other instruments of authorizations, notices, appearances, motions, petitions, and other pleadings, depositions, transcripts of testimony, exhibits, examiners' reports, exceptions, and orders of the Commission.
- (c) Other files, in the discretion of the Commission, upon written request describing in detail the document to be inspected, and the reasons therefor."

### R. R. MINTON

The Managing Director is desirous of learning the present address of R. R. Minton, who has been putting on "BY-NOW" programs.

### NEW SACRAMENTO STATION RECOMMENDED

Application was filed by the Golden Empire Broadcasting Company with the Federal Communications Commission for a construction permit for a new station at Sacramento, Cal., to use 1310 kilocycles, 100 watts unlimited time. Royal Miller also applied for a permit for a station to be located at the same place to use 1210 kilocycles, 100 watts power and daytime power.

Chief Examiner Davis G. Arnold in Report No. I-199 recommends that the application of Royal Miller be granted but that of the Golden Empire Broadcasting Company be denied. The Examiner found that there is not need for two additional radio stations at Sacramento. The Examiner states that Mr. Miller has been "for more than twenty years a resident of the city of Sacramento and is in a better position to know, and to render, the class and character of the radio service need in the area proposed to be served."

### SECURITIES ACT REGISTRATIONS

The following companies have filed registration statements with the Securities & Exchange Commission under the Securities Act:

- American Centrifugal Corporation, New York City (2-1890, Form A-1).
- American Lime & Stone Company, Bellefonte, Pa. (2-1891, Form A-2).
- James Talcott, Inc., New York City (2-1893, Form A-2).
- Holland Furnace Company, Holland, Mich. (2-1894, Form A-2).
- Rome Cable Corporation, Rome, N. Y. (2-1896, Form A-1).

Washington Garden, Inc., Washington, D. C. (2-1897, Form A-1).

General Finance Corporation, Detroit, Mich. (2-1898, Form A-1).

## RECOMMENDS DENYING NEW CALIFORNIA STATION

F. W. Atkinson, applied to the Federal Communications Commission for authority to erect a new broadcasting station at Watsonville, Cal., to use 1310 kilocycles, 250 watts power and daytime operation.

Examiner John P. Bramhall in Report No. 191 recommended that the application be denied. He found that the area proposed to be served is already receiving ample radio service. The Examiner states also that there are now two applications pending before the Commission which might cause interference. "The interference which might be created," says the Examiner, "by the granting of this application with the proposed station would be only slight, since the required separation is 74 miles and the actual separation is 70 miles." He found, however, that granting the application will not serve the public interest.

## INCREASED POWER AND TIME SUGGESTED

Broadcasting Station KRSC, Seattle, Wash., filed an application with the Federal Communications Commission asking that its power be increased from 100 to 250 watts and that its operation be increased from daytime to unlimited. The station operates on a frequency of 1120 kilocycles.

Examiner P. W. Seward in Report No. I-192 recommends that the application be granted. He found that a need for local service in the area proposed does exist and therefore that granting of the application would be in the public interest.

## BROOKLYN HEARING DATE SET

The Federal Communications Commission has extended the present licenses of all Brooklyn radio stations involved in Dockets Nos. 1780, 1936, 2039, 2641, 1882, 2013, 2014, 1967, 2643, 1883, 1968, 2642, for an indefinite period, but not beyond the expiration of the present license period—May 1—and ordered that the cases be opened de novo before the Commission en banc. Hearings will begin in this case on April 6.

## NEW GEORGIA STATION RECOMMENDED

E. F. and S. F. Sapp applied to the Federal Communications Commission for a construction permit for the erection of a new broadcasting station at Waycross, Ga., to use 1200 kilocycles, 100 watts and unlimited time on the air.

Examiner R. H. Hyde in Report No. I-193 recommended that the application be granted. He states that granting of the application would not cause any interference and that it is "shown that there is no available radio service of primary signal quality in the area proposed to be served, and that there is an active interest on the part of the public in the establishment of local broadcast facilities. From this it is concluded that there is a need for the proposed new station."

## FEDERAL TRADE COMMISSION ACTION

### Complaints

The Federal Trade Commission has alleged unfair competition in complaints issued against the following companies. The respondents will be given an opportunity for hearing to show cause why cease and desist orders should not be issued against them.

**No. 2692.** Alleging the use of a sales scheme involving a lottery, a complaint has been issued against **General Concessions Corporation**, 6545 Carnegie Ave., **Cleveland**, manufacturer and distributor of candies.

Every package of candy sold by this company contained a prize but some prizes were of greater value than the ordinary run, in fact, exceeded in value the retail price of the package of candy itself, according to the complaint. Purchasers receiving packages containing the more valuable prizes did so entirely by chance, it is alleged.

**No. 2694.** Deceptive use of the initials of the International Seamen's Union of America and of names which falsely imply a connection with that union is alleged in a complaint issued against the **I. S. U. Rank and File Group**, and others, of No. 1 Union Square, **New York City**, associations publishing the "I. S. U. Pilot," "I. S. U. Guide," "Union Seaman," and "The Pilot."

Operating from its New York office and from branch offices in Baltimore, New Orleans, Philadelphia, and other cities, the respondents are alleged to be in competition with other associations engaged in the sale of magazines in interstate commerce, including the International Seamen's Union of America, which, according to the complaint, has become known and has been referred to for more than twenty years as the "I. S. U." The International Seamen's Union of America publishes a monthly magazine called the "Seamen's Journal."

**Nos. 2695-2696-2697-2698-2699-2702-2704-2705-2706-2707-2708-2709.** Unfair methods of competition are alleged in complaints issued against 12 companies engaged in the manufacture and sale of candy. It is charged that the respondents pack their products in assortments so as to involve the use of lottery schemes when the candy is sold and distributed to consumers.

The complaints set out that some of the respondent companies use push boards in their sales plans. Others rely upon lottery schemes by which the purchaser, for a stated price, selects a piece of candy from the assortment and may, if his choice is lucky, win a larger piece of candy, bars of candy, a box of candy, or an article of merchandise. Similar prizes may be won under the push board method, which also involves an element of chance.

The complaints were issued against the following respondents: **Bunte Bros., Inc., Chicago**; **Walter T. Hall and Minnie M. Hall**, individually, and doing business under the name of **Walter T. Hall & Co., Ottumwa, Iowa**; **Woody Candy Co., 609 N. W. 2nd St., Oklahoma City, Okla.**; **Avalon Candy Corporation, 2064 Marengo St., Los Angeles**; **Fine-Reding Candy Manufacturing Co., Inc., 323 N. Queens St., Oklahoma City, Okla.**; **Pearson Candy Co., 108 Glenwood Ave., Minneapolis**; **Williams-Crahan Co., One N. W. First St., Oklahoma City, Okla.**; **Startup Candy Co., Provo, Utah**; **J. G. McDonald Chocolate Co., Salt Lake City**; **Raleigh Candy Co., First and Vine Sts., St. Louis, Mo.**; **Shupo-Williams Candy Co., Wall Avenue and 26th St., Ogden, Utah**; **John H. Dockman & Son, Inc., 32 E. Montgomery St., Baltimore.**

**No. 2700.** Alleging that **Julius Abrahams**, trading as **Philadelphia Badge Co.**, practiced unfair competition by falsely advertising that his products were purchased by the United States Government, a complaint has been issued against Abrahams, whose address is 942 Market St., **Philadelphia.**

Manufacturing and selling stamp photos, Abrahams is alleged to have advertised that among his nationally known users is the United States Government. This representation, when applied to the respondent's products, is alleged to be false, misleading and deceptive, tending to deceive buyers into believing that Abrahams' commodity is purchased in large quantities by the Government, and, by inference, that it is endorsed by the Government.

**No. 2701.** A complaint has been issued against **George Landon** and **M. M. Warner**, of 360 North Michigan Ave., **Chicago**, trading as **Landon & Warner**, charging unfair competition in the sale of an elastic fabricated belt.

Designed for use as an abdominal support, and to provide a means of massaging in reduction of surplus fat, this belt, called the "Director", was advertised as being capable of reducing the waistline from 4 to 6 inches, of eliminating practically all adipose tissue, and doing away with a tired and bloated feeling after meals.

**Nos. 2703-2713.** Two California wine companies have been served with complaints alleging unfair competition in the designation of their wines for sale in interstate commerce.

**E. A. and H. L. Wente, of Livermore, Calif., and Roma Wine Co., Inc., San Francisco**, are charged with unfairly using the name "Chateau Yquem" to designate their wines, when, the complaints point out, this name means to the trade and public a specific wine produced from grapes grown on the estate of the Marquis de Lur-Saluze, in the Sauterne country, Province of Bordeaux, France.

The complaints cite findings of the Federal Alcohol Administrator that "Chateau Yquem" is a name of geographic significance known to the consumers and the trade to distinguish the specific wine made of grapes from the Lur-Saluze estate in France.

**No. 2710.** Alleging unfair representation in advertising matter and radio announcements in aid of the sale of a solution for household uses, a complaint has been issued against **Strong, Carlisle & Hammond Co., 1392 West Third St., Cleveland**, manufacturer of "SIB, Sunshine in Bottles", a sodium hypochlorite solution.

Among representations alleged to have been made are the following: That "SIB, Sunshine in Bottles", will completely and safely remove stains, kill odors instantly, destroy or kill germs, disinfect as it cleans, sterilize dishes, and representations to the effect that it may be taken internally, as "rigid tests prove it safe".

The complaint alleges that these assertions are misleading and that their use constitutes unfair competition with dealers in the same class of products who do not untruthfully advertise them.

**No. 2711.** Use of false and misleading statements in advertisements is charged in a complaint issued against **Foster-Milburn Co.**, 1280 Main St., **Buffalo, N. Y.**, engaged in the manufacture and sale of Doan's Pills, offered as "a stimulant diuretic to the kidneys".

Claims in the advertisements that the pills contain certain cleansing properties beneficial in kidney disorders, that they restore vigor and vitality, etc., are untrue, according to the complaint.

The complaint alleges such representations are misleading in that they give the impression that the pills are a cure for the conditions described in the advertisements, whereas it is alleged no diuretic is a cure for kidney troubles, and the symptoms enumerated might not indicate a condition for which a diuretic would be prescribed by a qualified physician.

### Stipulations

The Commission has issued the following stipulations and cease and desist orders.

**No. 2343.** An order to cease and desist has been issued against the **Rossett Manufacturing Corporation**, 8 Astor Place, **New York City**, engaged in the sale of hats and caps in interstate commerce, is directed to discontinue representing that it is a manufacturer, by use of the words "manufacture", "manufacturing", or "mills", unless and until it actually does own plants where its products are made.

The order prohibits the respondent from making the assertion "We buy cloth direct from the mills, manufacture caps at our own plant, and sell them direct to you at a small profit—That is the reason we can sell you winter caps at these prices", until such representation is true.

**No. 2348.** **Universal Extract Co., Inc.**, 380 Throop Ave., **Brooklyn, N. Y.**, has been ordered to discontinue representing by labels, newspaper advertising or radio broadcasts, or by any other method, that it imports or exports the flavoring extracts it manufactures and sells in interstate commerce, or that the ingredients composing the extracts are imported from foreign countries.

The order prohibits use on extract container labels of words in a foreign language or in any language which imply that the respondent is the sole representative in America in the sale of preparations of certain extracts.

**No. 2358.** **The Blind Weavers, Inc.**, 2215 South Turner Ave., **Chicago**, engaged in selling hand-woven and machine-made chenille rugs, has been directed to cease and desist from representing that it is a charitable institution for the blind, also from representing to purchasers of its merchandise that they are buying products of blind people domiciled in such institutions, instead of the products of a private commercial enterprise.

The respondent, under the order, is to discontinue advertising for sale or selling machine-made chenille rugs without a statement in clear and legible type, in its advertising matter or on tags affixed to the rugs, that such products are not made or woven by the blind.

**No. 2457.** Simulation of the dress and appearance of containers used by competitors in the sale of toothpaste is forbidden under an order to cease and desist issued against **New England Collapsible Tube Co.**, 170 Broad St., **New London, Conn.**, manufacturer and seller of dentifrices and other merchandise, and against **Robert P. Gust Co., Inc.**, 529 South Franklin St., **Chicago**, manufacturers' sales agent, which sold the dentifrices of the New England firm.

The order requires the respondents to discontinue selling toothpaste or other merchandise in tubes, boxes, cartons or packages which in dress and appearance simulate the containers used by competitors and thus tend to deceive and mislead dealers and the purchasing public into the belief that the respondents' toothpaste and other products are those of competitors.

**No. 2464.** **Frederick W. Dobe**, of near **Libertyville, Ill.**, doing business as **Dobe School of Drafting** and as **Engineer Dobe**, has been ordered to cease and desist from certain unfair methods of competition in the sale of his correspondence course of instruction in drafting.

Representations that draftsmen are in demand and that jobs in their field are plentiful at times when such is not the case, or that salaries of beginners and experts in the field are other than the salaries actually prevailing at the time the representations are made, are to be discontinued, under the order. The respondent is required by the order to cease representing that he maintains an employment agency for his students, and will refund money paid to him by students if they do not obtain jobs, unless such assertions are truthful.

**No. 2584.** **Union Pencil Co., Inc.**, 305 Broadway, **New York City**, has been ordered to cease and desist from certain unfair methods of competition in selling its products in interstate commerce.

The respondent is required, under the order, to discontinue representing through advertising, letterheads, or other stationery, that its pencils will outlast other brands in the same price range by three or four times, or that they have been tested by the United States Bureau of Standards, or tested for comparison with competing pencil products by an independent and unbiased agency.

**No. 2609.** **The Stetson Pants Co.**, 212 East 8th St., **Cincinnati**, has been ordered to cease and desist from making, publishing, or circulating statements falsely creating the belief among potential purchasers that it manufactures the trousers it sells in interstate commerce.

Representations that the respondent company is exclusive owner of a particular form of merchandise or that it holds any patent or copyright on a so-called "Vizulizer", which is an integral part of a sales promotion plan, are prohibited under the order.

**No. 2640.** An order has been issued against the **American White Cross Laboratories, Inc.**, prohibiting certain unfair competitive methods in the sale of absorbent cotton products. The company has its headquarters at 52 Webster Ave., **New Rochelle, N. Y.**, and a branch plant at **Cape Girardeau, Mo.** It distributes merchandise to chain and syndicate stores, drug stores, surgical supply companies and hospitals.

This company is directed to cease advertising, labeling or otherwise representing packaged cotton as "sterilized" or "sanitary", unless it is sterilized and free from bacteria after it has been packaged and while in its original unbroken package.

**No. 2653.** **Harry Kapust**, 2557 West North Ave., **Chicago**, has been ordered to discontinue unfair methods of competition in the sale of men's clothing. Kapust is in business under the trade names **Roselile Manufacturing Co.** and **Roselile Clothing Manufacturing Co.**

The order prohibits representation by advertisements or other means that the respondent or his companies are manufacturers of men's suits, until he operates or controls a factory where such merchandise is made.

**No. 2659.** **H. T. Poindexter & Sons Merchandise Co.**, 801 Broadway, **Kansas City, Mo.**, has been ordered to cease and desist from representing, directly or indirectly, that the cotton print goods it sells in interstate commerce are "tub fast", or that such goods will not fade when washed in the normal course of use, unless and until such goods are in fact dyed with a "tub fast" dye and will not fade when so washed.

**No. 2669.** **The General Tire & Rubber Co.**, **Akron, Ohio**, is directed to discontinue representing or advertising that its tires are "blow-out proof", until such is a fact, under an order to cease and desist.

The order prohibits the respondent company from phrasing its advertisements so as to cause the public to believe that its tires are "blow-out proof", and from furnishing its dealers and distributors with advertising copy which represents or implies that its tires are "blow-out proof", until and unless they are proof against blow-outs.

**No. 2581.** **Eton Knitting Corporation**, 13 West 36th St., **New York City**, is directed to discontinue unfair methods of competition in the sale of wearing apparel knitted or crocheted from yarn, under an order to cease and desist.

The order prohibits the respondent from using the word "knitting" as a part of its corporate name, and from advertising or otherwise representing, directly or by implication, that it is a manufacturer or knitter of the wearing apparel it sells, until and unless it owns, operates and controls a factory where its products are actually knitted or crocheted from yarn.

## FEDERAL COMMUNICATIONS COMMISSION ACTION

### HEARING CALENDAR

Thursday, February 20

### ORAL ARGUMENT BEFORE THE BROADCAST DIVISION

Examiner's Report No. I-130:

NEW—Dudley J. Connolly, Elliot Knight, Roy W. Knight & Fred Sullivan, d/b as Dudley J. Connolly & Co., Chattanooga, Tenn.—C. P., 1200 kc., 100 watts, daytime.

#### Examiner's Report No. I-136:

- KMA—May Seed & Nursery Co., Shenandoah, Iowa—Modification of license, 930 kc., 1 KW, 2½ KW LS, unlimited time. Requests facilities of KGBZ. Present assignment: 930 kc., 1 KW, 2½ KW LS, shares with KGBZ.
- KGBZ—KGBZ Broadcasting Co., York, Nebr.—Renewal of license, 930 kc., 1 KW, 2½ KW LS, shares with KMA.
- KGBZ—KGBZ Broadcasting Co., York, Nebr.—Modification of license, 930 kc., 1 KW, 2½ KW LS, unlimited time. Requests facilities of KMA. Present assignment: 930 kc., 1 KW, 2½ KW LS, shares with KMA.
- KMA—May Seed & Nursery Co., Shenandoah, Iowa—Renewal of license, 930 kc., 1 KW, 2½ KW LS, shares with KGBZ.

#### Examiner's Report No. I-168:

- NEW—W. A. Patterson, Chattanooga, Tenn.—C. P., 1420 kc., 100 watts LS, daytime.

#### Examiner's Report No. I-108:

- NEW—Robert E. Herbst, Moorhead, Minn.—C. P., 1310 kc., 100 watts, unlimited time.

### APPLICATIONS GRANTED

- KWJJ—KWJJ Broadcast Co., Inc., Portland, Ore.—Granted C. P. to install new antenna; move transmitter and studio locally.
- WIS—Station WIS, Inc., Columbia, S. C.—Granted modification of C. P. to extend completion date from 2-10-36 to 5-10-36.
- KOMO—Fisher's Blend Station, Inc., Seattle, Wash.—Granted modification of C. P. to extend completion date from 2-25-36 to 4-25-36.
- WSAY—Brown Radio Service & Lab., Rochester, N. Y.—Granted modification of C. P. to change type of equipment; move transmitter and studio sites locally; extend commencement date to this date.
- WIL—Missouri Broadcasting Corp., St. Louis, Mo.—Granted license to cover C. P. authorizing installation of new equipment; 1200 kc., 100 watts night, 250 watts day, unlimited.
- WSYR-WSYU—Central New York Broadcasting Corp., Syracuse, N. Y.—Granted license to cover C. P. authorizing installation of new equipment; 570 kc., 250 watts, unlimited time.
- KIEV—Cannon System Ltd., Glendale, Calif.—Granted license to cover C. P. authorizing new equipment and increase in day power to 250 watts, 850 kc.; daytime.
- KMLB—Liner's Broadcasting Station, Inc., Monroe, La.—Granted license to cover C. P. authorizing changes in equipment; 1200 kc., 100 watts, unlimited time.
- WPFB—Forrest Broadcasting Co., Inc., Hattiesburg, Miss.—Granted license to cover C. P. authorizing new equipment; change in hours of operation from S.H. to unlimited, and move transmitter locally, installing new antenna; 1370 kc., 100 watts, unlimited time.
- WMFR—Hart & Nelson (J. A. Hart & Wayne M. Nelson), High Point, N. C.—Granted license to cover C. P. authorizing new station; 1200 kc., 100 watts, daytime.
- KHJ—Don Lee Broadcasting System, Los Angeles, Calif.—Granted license to cover C. P. authorizing new station; 900 kc., 1 KW night, 5 KW day, unlimited; also granted license for auxiliary transmitter for auxiliary purposes only.
- KPRC—Houston Printing Co., Houston, Tex.—Granted license to cover C. P. authorizing removal of transmitter to Deepwater; installing new equipment, and increasing day power to 5 KW; 920 kc., 1 KW night, unlimited.
- KGMB—Honolulu Broadcasting Co., Ltd., Honolulu, T. H.—Granted license to cover C. P. authorizing move of transmitter and studio locally, installing new equipment, and increase in power to 1 KW; 1320 kc., unlimited time.
- KNET—John C. Welch, Wm. M. Keller, Bonner Firzzell, d/b as Palestine Broadcasting Assn., Palestine, Tex.—Granted license to cover C. P. authorizing new station; 1420 kc., 100 watts, daytime.
- KRLH—Clarence Scharbauer, Midland, Tex.—Granted license to cover C. P. authorizing new station; 1420 kc., 100 watts, daytime.
- Standard Radio Inc., Hollywood, Calif.—Granted authority to transmit electrical transcription to foreign stations.
- KPRC—Houston Printing Co., Houston, Tex.—Granted authority to determine operating power by direct measurement of antenna input in accordance with Rule 137.
- KDYL—Intermountain Broadcasting Corp., Salt Lake City, Utah—Granted amended C. P. to move transmitter site to near Salt Lake City to site to be determined; install new equipment; increase day power from 1 to 5 KW.

- W7XBD—Oregonian Publishing Co., Portland, Ore.—Granted modification of C. P. extending commencement date to 1-15-36 and completion date to 8-15-36.
- W2XJH—General Electric Co., Portable-Mobile, Schenectady, N. Y.—Granted license to cover C. P. (Exp. Gen. Ex.); frequencies 31100, 34600, 37600, 40600 kc., 15 watts, unlimited, in accordance with Rule 308.
- W4XBT—Radio Station WSOC, Inc., Portable-Mobile (Charlotte, N. C.)—Granted license to cover C. P.; frequencies 31100, 34600, 37600, 40600 kc., 2 watts, unlimited, in accordance with Rule 308.
- WLBC—Donald A. Burton, Muncie, Ind.—Granted C. P. to change equipment and increase power to 100 watts night, 250 watts day, inasmuch as Rule 131 has now been complied with.
- WJBC—Wayne Hummer & H. J. Dee, d/b as Kashaskia Broadcasting Co., Bloomington, Ill.—Granted consent to voluntary assignment of license to Arthur Malcolm McGregor and Dorothy Charlotte McGregor, his wife, a partnership.
- WFBC—Greenville News-Piedmont Co., Greenville, S. C.—Granted modification of C. P. to make changes in equipment.
- KMLB—Liner's Broadcasting Station, Inc., Monroe, La.—Granted application in part, authorizing station to move locally and install new antenna system.
- WIBA—Badger Broadcasting Co., Inc., Madison, Wis.—Granted extension of special temporary authority to operate with reduced power of 500 watts night, employing non-directional antenna, for the period Feb. 9 to March 9, 1936, in order to facilitate completion of construction authorized by C. P.
- NEW—G. D. Goff, Tampa, Fla.—Reconsidered action in denying application for new station at Tampa, Fla., and granted applicant a re-hearing. Desires to operate on 1500 kc., 100 watts.

### RENEWAL OF LICENSES

The following stations were granted renewal of licenses for the regular period:

- KEHE, Los Angeles; KFDY, Brookings, S. Dak.; KFEL, Denver, Colo.; KFRU, Columbia, Mo.; KFSD, San Diego, Cal.; KGFX, Pierre, S. Dak.; KGKO, Wichita Falls, Tex.; KHJ, Los Angeles; K LZ, Denver, Colo.; KMJ, Fresno, Cal.; KOAC, Corvallis, Ore.; KOMO, Seattle, Wash.; KPRC, Houston, Tex.; KSAC, Manhattan, Kans.; KTAR, Phoenix, Ariz.; KVI, Tacoma, Wash.; KVOB, Denver, Colo.; KWTO, Springfield, Mo.; WAAF, Chicago, Ill.; WBAA, W. Lafayette, Ind.; WBEN, Buffalo, N. Y., and auxiliary; WCAC, Storrs, Conn.; WCHS, Charleston, W. Va.; WCOC, Meridian, Miss.; WEAN, Providence, R. I.; WEEI, Boston, Mass.; WGBF, Evansville, Ind.; WGBI, Scranton, Pa.; WGR, Buffalo, N. Y.; WGST, Atlanta, Ga.; WHJB, Greensburg, Pa.; WILL, Urbana, Ill.; WIP, Philadelphia, Pa.; WJAR, Providence, R. I.; WKRC, Cincinnati, Ohio; WKY, Oklahoma City, Okla.; WKZO, Kalamazoo, Mich.; WLBZ, Bangor, Me.; WMAL, Washington, D. C., and auxiliary; WMC and auxiliary, Memphis, Tenn.; WNAX, Yankton, S. Dak., and auxiliary; WORL, Needham, Mass.; WOSU, Columbus, Ohio; WPEN, Philadelphia, Pa., and auxiliary; WPRO, Providence, R. I.; WQAM, Miami, Fla.; WRAX, Philadelphia, Pa., and auxiliary; WREC, Memphis, Tenn.; WSPA, Spartanburg, S. C.; WSUI, Iowa City, Iowa; WTAR auxiliary, Norfolk, Va.; WWNC, Asheville, N. C.; WCAO, Baltimore, Md., and auxiliary; WDAF, Kansas City, Mo.; WDBO, Orlando, Fla.; WICC, Bridgeport, Conn.; WKBN, Youngstown, Ohio; WSVA, Harrisonburg, Va.; WTAD, Quincy, Ill.; KGW, Portland, Ore.; KPOF, Denver, Colo.; KSD, St. Louis, Mo.
- WCBD—WCBD, Inc., Waukegan, Ill.—Granted renewal of license for the period ending Aug. 1, 1936.

### ACTION ON EXAMINERS' REPORTS

- WKZO—Ex. Rep. 1-8: WKZO, Inc., Kalamazoo, Mich.—Granted C. P., subject to Rule 131, to move transmitter; make changes in equipment; change power from 1 KW day, to 250 watts night, 1 KW day, and change time from daytime to unlimited; 590 kc. Examiner Geo. H. Hill sustained. Order effective, April 7, 1936.
- NEW—Ex. Rep. 1-54: Helena Broadcasting Co., Helena, Mont.—Denied C. P. for new station to operate on 1420 kc., 100 watts, unlimited time. Examiner Melvin Dalberg reversed.
- NEW—Montana Broadcasting Co., Freda Wessell, Sec'y, Helena, Mont.—Denied C. P. for new station to operate on 1420 kc., 100 watts, specified hours. Examiner Dalberg sustained.
- NEW—E. B. Craney, Helena, Mont.—Denied C. P. for new station to operate on 1420 kc., 100 watts, unlimited time. Examiner Dalberg sustained. Order effective April 7, 1936.

KPPC—Ex. Rep. 1-102: Pasadena Presbyterian Church, Pasadena, Calif.—Denied C. P. to install new equipment and increase power from 50 to 100 watts night, 250 watts day; **1210 kc.**, share with KFXM. Examiner P. W. Seward sustained.

KPPC—Pasadena Presbyterian Church, Pasadena, Calif.—Granted modification of license to increase power from 50 to 100 watts; **1210 kc.**, share with KFXM. Examiner Seward sustained. Order effective April 14, 1936.

KGBU—Ex. Rep. 1-128: Alaska Radio & Service Co., Inc., Ketchikan, Alaska—Granted C. P., subject to recommendations of Engineering Department with respect to antenna construction, to make changes in equipment, and increase power from 500 watts to 1 KW night, 5 KW day; **900 kc.**, unlimited time. Examiner Melvin H. Dalberg sustained. Order effective April 14, 1936.

NEW—Ex. Rep. 1-172: Eastern Utah Broadcasting Co. (Sam G. Weiss), Price, Utah—Granted C. P. for new broadcast station to operate on **1420 kc.**, 100 watts, unlimited time. Examiner P. W. Seward sustained. Order effective April 7, 1936.

NEW—Ex. Rep. 1-177: Wisconsin Broadcasting Co., Oshkosh, Wis.—Denied C. P. for new broadcast station to operate on **1310 kc.**, 100 watts night, 250 watts day, unlimited time. Examiner John P. Bramhall sustained. Order effective April 14, 1936.

NEW—Edward Hoffman, St. Paul, Minn.—Reaffirmed original grant of C. P. for new radio station at St. Paul, Minn., to operate on **1370 kc.**, 100 watts, unlimited time, sustaining Examiner Melvin H. Dalberg in Report No. 1-76.

#### ACTION ON CASES HEARD BEFORE BROADCAST DIVISION

KFYR—Meyer Broadcasting Co., Bismarck, N. Dak.—Granted renewal of license, **550 kc.**, 1 KW night, 5 KW day, unlimited time. Order effective April 21, 1936.

NEW—Ward Walker, Seattle, Wash.—Denied C. P. for new broadcast station to operate on **760 kc.**, 250 watts night, 500 watts day, unlimited time (facilities of KXA). Order effective April 21, 1936.

NEW—Symons Investment Co., Seattle, Wash.—Denied C. P. for new broadcast station to operate on **760 kc.**, 250 watts night, 500 watts day, limited time (facilities of KXA). Order effective April 21, 1936.

KXA—American Radio Tel. Co., Seattle, Wash.—Granted renewal of license, **760 kc.**, 250 watts night, 500 watts day, limited time. Order effective April 21, 1936.

#### MISCELLANEOUS

WCFL—Chicago Federation of Labor, Chicago, Ill.—Granted regular renewal of license.

KOB—New Mexico College of Agriculture and Mechanic Arts, Albuquerque, N. Mex.—Granted petition asking continuance of hearing on application for renewal of license. New date set for March 25. Hearing was scheduled for Feb. 11, 1936.

C. G. Hill, Geo. D. Walker, and Susan H. Walker, Winston-Salem, N. C.—Granted request to take depositions in support of application for new station at Winston-Salem, N. C.

WDOD—WDOD Broadcasting Corp., Chattanooga, Tenn.—Granted petition to intervene in application of J. R. Maddox and Dr. W. B. Hair for C. P. for new radio station at Chattanooga to operate on **590 kc.**, 1 KW, unlimited.

Wyoming Tribune Leader and Wyoming Eagle, Cheyenne, Wyo.—Denied petition to intervene "to oppose granting of application of Wyoming Educational Society (Wyoming Radio Educational Assn.), or any other pending application for radio facilities in Cheyenne."

WHO—Central Broadcasting Co., Des Moines, Iowa.—Granted renewal of license for regular period.

KMMJ—The M. M. Johnson Co., Clay Center, Nebr.—Granted renewal of license for regular period.

WLS—Agr. Broadcasting Co., Chicago, Ill.—Granted renewal of license for regular period.

WWVA—West Virginia Broadcasting Corp., Wheeling, W. Va.—Granted renewal of license for the regular period.

WATR—The WATR Company, Inc., Waterbury, Conn.—The Commission, Broadcast Division, today granted the petition of WATR, Waterbury, Conn., and ordered the issuance to said station of special experimental authority to operate for the hours 1 to 3 a. m., EST, for a period of 30 days, provided station WOAI, San Antonio, Tex., does not operate during

said hours, and provided further that said authority be issued only upon the express condition that it may be withdrawn at any time by the Commission without advance notice or hearing.

#### ORAL ARGUMENTS POSTPONED

NEW—Ex. Rep. 1-138: Big Springs Herald Broadcasting Co., Big Springs, Tex.—Oral arguments scheduled for February 27 changed to March 12, 1936.

NEW—Vernon Taylor Anderson, Mgr., ABC Broadcasting Co., Big Springs, Tex.—Oral arguments scheduled for February 27 changed to March 12, 1936.

NEW—Plainview Broadcasting Co., Plainview, Tex.—Oral arguments scheduled for February 27 changed to March 12, 1936.

NEW—North Texas Broadcasting Co., Paris, Tex.—Oral arguments scheduled for February 27 changed to March 12, 1936.

#### SET FOR HEARING

NEW—Emilio Daffilo Ramirez, Mayaguez, P. R.—Application for C. P. for new station, **1370 kc.**, 100 watts night, 250 watts day, S.H. (6 to 9 a. m., 12 M-3 p. m., 6 to 9 p. m. daily).

NEW—A. W. Mills, Gallup, N. Mex.—Application for C. P. for new station, **1310 kc.**, 100 watts, unlimited.

NEW—Berks Broadcasting Co., Pottsville, Pa.—Application for C. P., **640 kc.**, 250 watts, daytime. Site to be determined.

NEW—Charles E. Wilkinson, Mason City, Iowa.—Application for C. P., **1370 kc.**, 100 watts, unlimited time. Site to be determined.

NEW—Alex F. Suss, Sacramento, Calif.—Application for C. P., **1310 kc.**, 100 watts, unlimited time. Site to be determined.

WPRO—Cherry & Webb Broadcasting Co., Providence, R. I.—Application for C. P. to install new equipment, increase power from 250 watts to 500 watts night, 1 KW day, employing directional antenna system night-time.

WTJS—The Sun Publishing Co., Inc., Jackson, Tenn.—Application for C. P. to move transmitter from Jackson, Tenn., to another site to be determined; install new equipment; increase power from 100 watts night, 250 watts day, to 250 watts night, 500 watts day; change frequency from **1310 kc.** to **920 kc.**, using directional antenna.

NEW—The Press Democrat Pub. Co., Santa Rosa, Calif.—Application for C. P. for new station, **1310 kc.**, 250 watts, daytime.

KFBI—The Farmers & Bankers Life Ins. Co., Abilene, Kans.—Application for C. P. to move transmitter site from Milford to 3 miles west of city limits on No. 54 Highway, Wichita, Kans., and studio from Abilene to Wichita; and make changes in equipment.

WEST—Associated Broadcasters, Inc., Easton, Pa.—Application for modification of C. P. to change time of operation from sharing with WKBO to unlimited daytime, share with WKBO night; extend commencement date to 30 days after grant and completion date to 6 months thereafter.

WIL—Missouri Broadcasting Corp., St. Louis, Mo.—Application for C. P. for new equipment; change frequency from **1200 kc.** to **1250 kc.**; increase power from 100 watts night, 250 watts day, to 1 KW day and night.

KIUN—Jack W. Hawkins and Barney H. Hubbs, Pecos, Tex.—Application for modification of license to change frequency from **1420 kc.** to **1310 kc.**

WRAX—WRAX Broadcasting Co., Philadelphia, Pa.—Application for modification of license to increase power from 250 watts night and 500 watts day, to 1 KW night, using directional antenna, and 1 KW day.

WPEN—Wm. Penn Broadcasting Co., Philadelphia, Pa.—Application for modification of license to increase power from 250 watts night (directional antenna), 500 watts day, to 1 KW night (directional antenna), 1 KW day.

NEW—Albert E. Davis, Brownwood, Tex.—C. P., already in hearing docket, amended to read: **1420 kc.**, 100 watts, daytime. Site to be determined.

NEW—Herbert Hollister, Emporia, Kans.—Application for C. P. for new station, **1500 kc.**, 100 watts, unlimited time.

NEW—Ruth W. Adcock and S. E. Adcock, d/b as General Broadcasters, Rossville, Ga.—Application for C. P., already in hearing docket, amended to read: **1120 kc.**, 250 watts daytime. Site to be determined.

NEW—Ruth W. Adcock and S. E. Adcock, d/b as General Broadcasters, Johnson City, Tenn.—Application for C. P., **880 kc.**, 250 watts daytime. Site to be determined.

NEW—Struble, Strong & Fagan, The Dalles, Ore.—Application for

- C. P., already in hearing docket, amended to read: **1200 kc.**, 100 watts, unlimited. Site to be determined.
- NEW**—C. A. Rowley, Ashtabula, Ohio.—Application for C. P., already in hearing docket, amended to read: **940 kc.**, 250 watts, daytime only.
- NEW**—Wm. H. Davis, Dixon Pyles, W. H. Johnson, d/b as Magnolia Broadcasting Co., Jackson, Miss.—Application for C. P. for new station, **1420 kc.**, 100 watts, unlimited time.

#### APPLICATIONS DENIED

- WEDC**—Emil Denmark, Inc., Chicago, Ill.—Denied request for temporary authority to operate from 12 midnight to 6 a. m., CST, for a period not to exceed 30 days, pending application for modification of license, requesting same authority on a permanent basis.
- KARK**—Arkansas Radio & Equipment Co., Little Rock, Ark.—Denied authority to operate with power of 500 watts night, 1 KW day, at present location with present antenna system, pending the installation of antenna system meeting requirements of Rule 131.
- NEW**—Northern Commercial Co., Fairbanks, Alaska.—Denied as in cases of default application for C. P. for new station to operate on **550 kc.**, 250 watts, unlimited time, for failure to file an appearance and statement of facts in accordance with Rule 104.6(c). Application heretofore set for hearing.

#### APPLICATIONS RECEIVED

##### First Zone

- WREC**—WREC, Inc., Memphis, Tenn.—Modification of construction permit (B3-P-161) for changes in equipment; installation of directional antenna; move of transmitter; and increase of power from 500 watts, 1 KW day, to 1 KW, 2½ KW day, requesting extension of completion date from 2-29-36 to 4-29-36.
- NEW**—Maine Broadcasting Co., Inc., Portland, Maine.—Construction permit for a new station to be operated on **620 kc.**, 500 watts, 1 KW day, unlimited time.
- WLBZ**—Maine Broadcasting Co., Inc., Bangor, Maine.—Modification of license to change frequency from **620 kc.** to **970 kc.**, and hours of operation from unlimited time to daytime until sunset at Chicago, Ill., contingent upon the granting of B1-P-966 requesting a new station at Portland, Maine.
- WFBR**—The Baltimore Radio Show, Inc., Baltimore, Md.—Modification of license to use present licensed transmitter as an auxiliary and the auxiliary transmitter as a main transmitter.

- WFBR**—The Baltimore Radio Show, Inc., Baltimore, Md.—License **1270** to cover construction permit (B1-P-847) for changes in auxiliary equipment.
- NEW**—Auburn Publishing Co., Auburn, N. Y.—Construction permit for a new station to be operated on **1420 kc.**, 100 watts, unlimited time. Amended to make changes in equipment.
- NEW**—Atlantic Broadcasting Corp., Portable-Mobile.—Construction permit for a new general experimental station to be operated on **31100, 34600, 37600, 40600, 86000, 400000, 401000 kc. and above**, 50 watts.

##### Second Zone

- WHBC**—Edward P. Graham, Canton, Ohio.—Voluntary assignment **1200** of license and construction permit from Edward P. Graham to The Ohio Broadcasting Co.

##### Third Zone

- NEW**—Van Luke Walling, Huntsville, Ala.—Construction permit **1210** for a new station to be operated on **1210 kc.**, 100 watts, unlimited time.
- NEW**—Earl Weir, St. Petersburg, Fla.—Construction permit for a **1370** new station to be operated on **1370 kc.**, 100 watts, unlimited time.
- KILU**—Arkansas Radio & Equipment Co., Little Rock, Ark.—Modification of license to add frequencies **2060** and **2790 kc.**
- NEW**—Voice of Longview, Portable-Mobile.—Construction permit for a new broadcast pickup station to be operated on **1622, 2060, 2150, 2790 kc.**, 40 watts.

##### Fourth Zone

- WOWO**—The Main Auto Supply Co., Fort Wayne, Ind.—Consent **1160** to transfer of control of corporation from Fred C. Zieg, C. R. Durbin and J. A. Becker to Westinghouse Electric & Manufacturing Co., 800 shares common stock.
- WGL**—F. C. Zieg (Allen-Wayne Co.), Fort Wayne, Ind.—Voluntary **1370** assignment of license from F. C. Zieg (Allen-Wayne Co.) to Westinghouse Electric and Manufacturing Co.

##### Fifth Zone

- KLZ**—The Reynolds Radio Co., Denver, Colo.—Modification of **560** license to change name from The Reynolds Radio Co., Inc., to KLZ Broadcasting Co.



# The National Association of Broadcasters

NATIONAL PRESS BUILDING \* \* \* \* \* WASHINGTON, D. C.

JAMES W. BALDWIN, Managing Director

## NAB REPORTS

Copyright, 1936. The National Association of Broadcasters

*Special*  
FEBRUARY 18, 1936

### REPORT ON COPYRIGHT

Submitted to the Board of Directors at a meeting held in Chicago, Illinois, February 3, 1936

*To the Board of Directors of the National Association of Broadcasters:*

You have been called to this meeting held February 3, 1936, primarily for the purpose of considering questions of vital importance to the broadcasting industry in the field of copyright. To assist in your determination of these questions, I have prepared this report setting forth the facts as I find them, and closing with certain conclusions and recommendations submitted for your consideration.

By resolution adopted on December 17, 1935, at your last meeting, you conferred broad authority on me to negotiate in behalf of independently-owned stations for copyright licenses. Pursuant to that resolution, over 300 broadcasters gave me powers of attorney to act for them in the crisis which was at hand. This response far exceeded the fondest hopes even of those who voted for the resolution, and represented a unified action in the broadcasting industry beyond anything yet seen. Further pursuant to that resolution, I assembled an advisory committee which I am sure you will agree was truly representative of various classes of independent stations and was composed of able and conscientious men. These men worked long and laboriously with me through two sessions in New York, one of them from December 27 to December 31, 1935, and again on January 10-11, 1936, and I had the constant advice and assistance of several of them in the interim between the two sessions.

Notwithstanding these facts, I regret to report that, so far as ASCAP is concerned, the result was a complete and humiliating failure. This fact is a challenge to the Officers and Directors of the NAB, and to every broadcaster in the United States. How did it come about that the combined negotiating power of over 300 broadcasting stations (including most of the larger independent stations) could be not only utterly ignored but be treated with contempt? One of the principal purposes of this report is to set forth and analyze the facts to determine the answer to this question. This, it seems to me, is necessary in order to decide upon the future course of action of the NAB in the field of copyright, and to avoid any mistakes that may have been made in the past.

In Parts VII and VIII of this report I have set forth my conclusions and my recommendations and shall not anticipate them in detail here. It is necessary, however,

to say a word in advance. Whatever approach is made to the study of the causes of the repeated failure of NAB negotiations with ASCAP, the path leads inevitably to certain basic causes which are familiar to everyone, such as ASCAP's monopolistic power, combined with lack of availability of sufficient non-ASCAP music and with defects in the copyright law. More recently, however, there has been added to these basic causes a factor so important as to have been well nigh a determining influence in all negotiations. I refer to the discriminatory contracts enjoyed by the two national network companies, combined with the power indirectly given to ASCAP by the contracts which those companies have with affiliated stations, under which the latter are obligated to have ASCAP (and other) licenses. As I shall point out, this factor (in addition to the basic causes) more than anything else brought about our recent defeat, and will continue to stand in the way of success of any fair and equitable copyright program NAB may adopt, whether it be per-piece, measured service, or some other kind of system.

If I am correct in this conclusion, then, if NAB is to continue to function in the field of copyright and fairly to represent the great majority of its membership, among its principal objectives should be

1. Elimination of all discriminations in contracts with ASCAP and other licensing pools.
2. Elimination of the requirement in network-affiliate contracts that affiliate stations have licenses from ASCAP or any other licensing pool.
3. Clearance of copyright at the source on network programs, to the end that the network is responsible for the obtaining of licenses and the payment of fees on network programs broadcast by affiliate stations.

Obviously, in the absence of assent by the network member stations of the NAB, these objectives cannot be striven for without a division in the ranks of the Association with all the consequences this would entail. On the other hand, these objectives cannot be ignored without forcing upon the great majority of independent stations a realization that to have any measure of success in future copyright negotiations they must unite outside of NAB and act independently of it. As I see it, the issue for them is not whether they shall or shall not have a per-piece or measured service plan (although, in view

of the fact that the NAB has gone on record in favor of such a plan at its last three conventions, this issue is extremely important). The issue is, whether they are to have *any voice whatever* in determining what agreements they will enter into with licensing pools. So far they have been denied that voice.

Broad as were the powers given me by the resolution of December 17, 1935, I do not construe them as authorizing me definitely to commit either the Board or the Association to either course. It seems to me that a choice must quickly be made between

1. a comparatively innocuous course avoiding any issue wherein the interests of the networks are opposed to those of the independent station, and
2. a militant course which would include the objectives above set forth.

This report is, therefore, also a request for instructions from the Board of Directors by whom I am employed and to whom I am responsible. It may be that the Board will feel that this issue is so far-reaching that it should be submitted to the membership either at the next Annual Convention or at a Special Meeting to be called at an earlier date.

In view of the importance which attaches to the discriminatory contracts, I have, at some length, summarized their nature, their history and their effect on our negotiations, in order that, as nearly as is in my power, the correct facts shall be before the Board. Other headings included in this report explain themselves.

## I. ANALYSIS OF TOTAL COPYRIGHT FEES PAID BY BROADCASTERS IN 1935

This analysis is of fundamental importance to an understanding of the present situation. First, it explains the basis for one of the principal complaints against ASCAP by the overwhelming majority of independent broadcasters, as well as the principal obstacle to negotiation of a per-piece or measured service plan. Second, it explains one of the principal reasons leading to the withdrawal of the Warner Brothers group of music publishing houses from ASCAP, i.e., that, because of the discriminatory contracts in favor of the networks, a large portion of the broadcasting industry's net receipts is escaping the payment of fees for the use of copyright music.

For the sake of simplicity and because of lack of data on other licensing organizations, this analysis will be confined largely to copyright fees paid to ASCAP, and will be made in round numbers.

The broadcasting industry paid ASCAP approximately \$2,995,000 in 1935, or, in round figures, \$3,000,000. Of this sum about \$850,000 consisted of sustaining fees, and about \$2,150,000 of fees paid on so-called net receipts of broadcasters on commercial programs. The sum of \$2,150,000 represents 5% of \$43,000,000. The term "net receipts," as defined in ASCAP contracts, refers to the full amount paid to the broadcaster for the use of his broadcasting facilities after deducting commissions not exceeding 15%, if any, paid to advertising agents or

agencies not employed or owned in whole or in part by the broadcaster. Even if it be assumed that 15% has been paid in all cases (which is, of course, not the fact), net receipts of \$43,000,000 would correspond to less than \$51,000,000 of gross receipts.

The fact is that, as nearly as can be calculated on the basis of data now available, the gross receipts of the broadcasting industry for 1935 were about \$87,500,000 and, if a 15% commission were deducted in all cases (which, as already stated, is not the fact), the net receipts were about \$74,000,000. From these figures it is clear that about \$30,000,000 or more of net receipts (corresponding to about \$35,000,000 of gross receipts) is escaping the payment of copyright fees.

The overwhelming majority of independent broadcasters are paying ASCAP 5% of their net receipts and the discrepancy is not due to them. The discrepancy is due primarily to the discriminatory contracts mentioned at the outset.

Let it be assumed that \$74,000,000 represents the net receipts of the broadcasting industry and that \$2,150,000 represents the sum (exclusive of sustaining fees) paid to ASCAP for the year 1935. If the entire broadcasting industry were paying on a uniform non-discriminatory percentage basis, each broadcaster would have paid 3% of his net receipts (instead of 5% as at present). If sustaining fees were abandoned and all fees reduced to a percentage basis, the total of \$3,000,000 received by ASCAP in 1935 would represent about 4% of each broadcaster's net receipts (instead of 5% plus a large sustaining fee as at present). If the percentages be figures in terms of the gross receipts of \$87,500,000, each broadcaster need have paid only about 2.5% plus his sustaining fee, or less than 3.5% without any sustaining fee.

The discriminatory ASCAP contracts, so far as they are known, consist (1) principally in the contracts of the two national network companies, and, to a much smaller extent, (2) in the contracts of about 48 newspaper-owned stations, and (3) the contract of WCAU, Philadelphia. The nature of the discriminations will be briefly described.

1. *The Network Contracts.* The two national network companies (NBC and CBS) pay nothing to ASCAP as networks. Each company pays a sustaining fee plus 5% of net receipts with respect to each station owned or controlled by it, NBC with respect to 14 stations (KDKA, KGO, KOA, KPO, KYW, WBZ, WEA, WENR, WGY, WJZ, WMAL, WMAQ, WRC and WTAM) and CBS with respect to 7 stations (KMOX, WABC, WBBM, WBT, WCCO, WJSV and WKRC).

Neither company pays any sustaining fee or percentage of net receipts on revenue received from advertisers for the facilities of affiliated stations, not owned or controlled by the network company. For example, Station A, independently owned but affiliated with NBC, may have a rate of \$300 an hour at which rate its facilities are sold by NBC to a network advertiser. Of this \$300, NBC pays only \$50 to Station A and keeps \$250. Station A pays ASCAP 5% of the \$50 received by it; NBC pays ASCAP nothing on the remaining \$250.

Furthermore, neither company pays 5% on the total net receipts even of its own stations. By a process of bookkeeping or by use of subsidiary corporations, only a portion of what is paid by a network advertiser is credited to these stations and subjected to the 5% fee. For example, Station B, owned by NBC, may have a rate of \$1200 an hour at which rate its facilities are sold by NBC to a network advertiser. Of this \$1200, NBC may credit the station with only \$400 and retain \$800 as "network" receipts. NBC pays the 5% fee only on the \$400.

While complete exact figures are not available (due in part to the unwillingness of the networks to supply them), sufficient are at hand to give some idea of the amount of net receipts which thus escape taxation by ASCAP. The following figures show what was actually paid to ASCAP by the two national network companies during 1934 and during the first six months of 1935.

	1934		
	<i>Sustaining Fee</i>	<i>Advertising Fee</i>	<i>Total</i>
NBC .....	\$173,500.00	\$137,541.96	\$311,041.96
CBS .....	68,500.00	106,778.44	175,278.44
Total ...	\$242,000.00	\$244,320.40	\$486,320.40

<sup>1</sup> One of NBC's 14 stations, KYW, was not acquired until December 3, 1934.

	January 1-July 1, 1935		
	<i>Sustaining Fee</i>	<i>Advertising Fee</i>	<i>Total</i>
NBC .....	\$ 89,250.00	\$ 89,794.79	\$179,044.79
CBS .....	34,249.92	68,633.06	102,882.98
Total ...	\$123,499.92	\$158,427.85	\$281,927.77

Multiplying the six-months figures by two, we arrive at the following payments made by the two national network companies to ASCAP in 1935:

	<i>Sustaining Fee</i>	<i>Advertising Fee</i>	<i>Total</i>
NBC .....	\$178,500.00	\$179,589.58	\$385,089.58
CBS .....	68,499.84	137,266.12	205,765.96
Total ...	\$246,999.84	\$316,855.70	\$563,855.54

According to the above figures, the two network companies paid substantially \$247,000 out of the total of \$832,000 in sustaining fees received by ASCAP from broadcasting in 1934, or 29.7%.

According to the above figures, the two network companies paid substantially \$317,000 out of the total of \$2,150,000 in advertising fees received by ASCAP from broadcasters in 1935, or 14.7%. The sum of \$317,000 represents 5% of \$6,340,000 net receipts.

It is now appropriate to compare the total net receipts of the two national networks with the total net receipts of the rest of the broadcast industry. Exact figures for the net receipts are not available and a calculation must, therefore, be made on the basis of gross receipts (gross time sales). Even these involve an approximation since

exact figures for the month of December are not yet available. The gross and net receipts for 1935, thus calculated, are as follows:

	<i>Gross Receipts for 1935</i>	
	<i>1st 6-mos.</i>	<i>Total</i>
National Networks .....	\$26,120,410	\$50,067,686
Regional Networks .....	465,899	1,110,739
National non-Network .....	8,591,053	17,063,688
Local .....	9,898,610	19,281,735
Total .....	\$45,075,972	\$87,523,848

The national network business, therefore, represents slightly over 57% of the total broadcasting business for 1935. At this point, however, we meet with a lack of information which makes it difficult to reach even approximate conclusions. It is not known how much of the net receipts of the national networks are (a) paid over to affiliate stations, or (b) paid over or credited to stations owned or controlled by the networks. It is also not known how much of the national non-network and the local receipts represent receipts on business of stations owned or controlled by the national network companies. Even with the making of liberal allowances, however, it seems clear that at least the sum of \$25,000,000 (and probably more) of national network net receipts is escaping the payment of any tax to ASCAP. Or, to state the matter in another way, the national network companies are paying ASCAP only about 1% of their net receipts, in contrast to the 5% paid by independent broadcasters.

2. *The Newspaper Contracts and the WCAU Contract.* While the discriminatory features in these contracts permit the licensees to escape a certain amount of the burden borne by other stations, the amount of saving is not known. In any event, the total saving is not large enough so that elimination of the discriminations would make possible any material reduction in the percentage paid by other stations.

## II. ORIGIN OF DISCRIMINATORY ASCAP CONTRACTS

For some years prior to 1932 broadcasters paid ASCAP on the basis of flat annual license fees, payable in monthly installments. The total paid ASCAP in 1932 was approximately \$960,000. The licenses were for short term periods, such as a year or two; the end of each period brought a bitter controversy and almost invariably an increase in fees. While undoubtedly ASCAP attempted in a general way to relate the size of the fee to the importance of the station there was little uniformity and the amounts paid by stations were kept secret. Such discriminations as there were, however, are irrelevant to the present discussion.

In the latter part of 1931, as licenses terminated, renewals were placed on a month-to-month basis and ASCAP let it be known that it was working out a new system of fees. On April 11, 1932, the new basis was

announced by E. Claude Mills, General Manager of ASCAP, effective June 1, 1932, as follows:

### *Sustaining License*

"At approximately present rates, with such readjustments either upward or downward as will equalize the fee paid by stations operating under similar or equal conditions \* \* \*."

### *Commercial License*

"At 5% of the amounts charged for use of the facilities of the station in respect to all commercially sponsored non-network programs. In the case of network programs, the fee of 5% is payable by the key station based upon the gross amount charged for use of broadcasting facilities \* \* \*."

Thus it will be noticed ASCAP's first proposal recognized that in network programs copyright should be cleared at the source. At that time it was estimated that the gross receipts of the broadcasting industry were between \$50,000,000 and \$60,000,000. The proposal therefore meant an increase in the total fees to be paid ASCAP of over 300%.

An emergency meeting of the NAB Board was held in New York April 18-19. As a result of conferences with Mills a moratorium until September 1st was decided upon in order to permit negotiations. A special copyright committee was appointed by the NAB Board to carry on negotiations with ASCAP, consisting of Morency, WTIC, Chairman; Ashby, Vice President of NBC; Klauber, Vice President of CBS; Cummings, WOAI; and Shaw, WMT. Cummings and Shaw were thereafter unable to be present or to participate in the committee's work, so that the committee in reality consisted of Morency, Ashby and Klauber. A plenary committee was created to survey the entire music situation. The NAB addressed a formal communication to ASCAP in which it refused to accede to the ASCAP proposal and pointed out, among other things, the unsoundness of the proposed basis for assessing fees, particularly with respect to programs in which no use is made of copyrighted music controlled by ASCAP.

The negotiating committee thereupon proceeded to have conferences with ASCAP representatives. The plenary committee considered a survey of music in the public domain as well as a study of the foreign music copyright situation. Oswald F. Schuette was engaged as a sort of generalissimo, with his principal duties on the legislative front. Since the legislative history of this period, while important, is of only incidental relevancy to this discussion, it will be passed over. A further meeting of the NAB Board was held in Chicago on May 24th. A special meeting of the NAB negotiating committee, the plenary committee and others (including the presidents of the two networks) was held in New York on July 6th. No progress, however, had yet been made by the negotiating committee.

Finally, Mills and the NAB negotiating committee worked out a proposition whereby the broadcasters would

pay a flat increase of 25% for one year beginning January 1, 1933, during which period a legislative truce in Congress would be declared and further negotiations would be undertaken towards an acceptable basis. The NAB Board was called into a special session in New York on July 21st. It rejected the proposal, principally because of the provision for legislative truce, and made a counter-proposal calling for a 25% increase for two years during which time a joint committee of the NAB and ASCAP would cooperate in drafting a scale based on a "per-piece" arrangement. This proposal was submitted to Mills on July 26th by the Negotiating Committee and was rejected by the ASCAP Board on the following day, apparently by a very close vote.

On July 28th Mills made an announcement virtually breaking off negotiations. Orally, however, he announced new terms consisting of a modification of the proposal first made on April 11th. These terms consisted of a sustaining license fee, as previously proposed, plus a percentage of gross receipts for a period of three years, the percentages being 3% the first year, 4% the second year and 5% the third year. The same principle was followed with respect to network programs as in the proposal of April 11th; namely, that the networks should bear the entire cost on network programs, in other words, that copyright should be cleared at the source. In response to a letter from the NAB Negotiating Committee, Mills indicated willingness to reopen negotiations by letter dated August 3rd, in which he stated the modified proposal in written form.

What happened between this date and August 24th is a matter of speculation. A meeting of the NAB Board was held on August 24th in New York and at that meeting the Negotiating Committee presented *another* proposition from ASCAP with the following recommendation:

"The committee believes that the foregoing settlement is the most favorable that can be reached and recommends that the Board accept it and recommend its acceptance by the independent stations."

This final proposal was the same as that announced by Mills on July 28th *with one very important exception*. The exception was that the networks would not pay anything on their receipts as networks but would pay only royalties on the net sales of each station owned and operated by them, whereas network affiliates would pay the percentage rate on their receipts on network as well as on non-network commercial programs. After a tumultuous session the Board voted acceptance of the report, with four representatives of independent stations not voting. A number of the Directors that voted for it did so only because under the circumstances they felt they had no alternative.

In the course of the weeks that followed more favorable contracts were also negotiated by a group of newspaper-owned stations. Under the terms of these contracts the newspaper-owned stations were to pay (1) a sustaining fee of 50% of the fee previously paid; (2) 3% of receipts up to an amount equal to 50 times the sustaining

fee, and 5% of receipts above that amount, and (3) in any event, a minimum fee of not less than 4 times the sustaining fee.

WCAU, Philadelphia, also negotiated a more favorable contract. In its case the percentage is based on receipts from programs using music and the contract contains other advantageous provisions, consisting chiefly of a low sustaining fee and the privilege of deducting legitimate salesmen's commissions.

While a number of incidental facts are in doubt and open to controversy, the conclusion is inescapable that during the final hours of the negotiations the NAB Negotiating Committee directed its efforts toward relieving the networks of the burdens that would have fallen on them under Mills' proposal of July 28th, and transferring a substantial share of this burden to the independently-owned affiliate stations. Under these circumstances it is not surprising or open to serious criticism that in their later negotiations other stations, including the newspaper group, attempted to secure concessions. In fairness to the newspaper group it should be stated that its leaders and spokesmen have regularly proved willing to cooperate with other independent stations in the attempt to obtain from ASCAP a per-piece or a measured service plan available to all stations on a non-discriminatory basis. So far as publicity is concerned (including the allegations in the government's suit against ASCAP), however, the newspaper contract has been the chief target as an example of discrimination, while comparatively little has been printed about the much greater discrimination involved in the network contracts which, as hereinafter shown, were fundamentally responsible for the recent failure in NAB's negotiations with ASCAP.

### III. RENEWAL OF THE DISCRIMINATORY CONTRACTS IN JUNE, 1935.

Assurances given by Mills in 1932 that the forced acceptance of the new ASCAP contracts did not foreclose further negotiations and that ASCAP stood ready to consider a revision at any time were, with minor exceptions, not borne out by later events. On October 10, 1932, ASCAP did announce that it would not require payment of royalties on political speeches, the national election campaigns being then in full progress, and, in the case of many of the smaller stations, there were reductions in sustaining fees, the total reduction, however, not amounting to very much.

During the fall of 1932, Mills assured Schuette that he was willing, subject to the approval of the ASCAP Board, to limit royalties to programs using ASCAP music, but on November 2nd the ASCAP Board went through the familiar process of refusing to ratify the proposal. Tactics such as these were to be repeated over and over again during the ensuing three years, principally on occasions when ASCAP had reason to fear some concerted or effective action on the part of the broadcasting industry and desired to delay such action.

At the NAB Annual Convention, held in St. Louis on November 14-16, 1932, Schuette was given broad authority and a resolution was unaimously adopted declaring that

"the composers and publishers are entitled to fair compensation, measured in proportion to the actual use of their compositions"

and, by other actions, the basis was laid for the three-point program of the NAB discussed under a later heading, which was formally put into motion at a NAB meeting held in New York on April 5, 1933.

Immediately after the Convention Schuette made a proposal that royalties be 4% of revenue from programs using ASCAP music, plus a sustaining fee. Mills responded that action on this proposal must await an ASCAP Board meeting in January. In a letter dated January 18, 1933, Mills offered to reopen negotiations but declared that under no circumstances would he deal with Schuette (who was sending out some rather vigorous circulars to all stations, having to do principally with "plugging" and "restricted" ASCAP numbers).

On January 24, 1933, announcement was made that Hon. Newton D. Baker had been retained and on February 20-21, 1933, an NAB Board meeting was held in Washington at which Mr. Baker's partner, Mr. Hostetler, was present and stated his plans for future activity. It was decided that Schuette's work was henceforth to be confined principally to the Radio Program Foundation proposal. Mills immediately extended an invitation to Baker to enter into negotiations. These negotiations came to an abrupt end on April 4, 1933, when at a meeting with Hostetler, Levy and McCosker, Mills announced point blank that there would be no revision of the contracts except upward.

Immediately after the NAB Board meeting of April 5, 1933, when the three-point program was definitely decided upon, Mills communicated with Baker and informed him that he was again ready to talk over matters. Baker replied on April 6th that he would be willing to talk only if it were understood in advance that the basis would be in the direction of a per-piece plan and that, during the working out of such a plan, the present scale would be amended so that royalties would be paid only on programs using ASCAP music. The ASCAP Board met to consider this proposition April 27th. It turned the matter over to its general counsel, Nathan Burkan, while Mills departed for Europe.

From that time on, for a period of two years, while there were occasional conversations, no progress whatsoever was made in negotiations with ASCAP and nothing occurred in connection with these negotiations that would add to the picture given by the foregoing account. This brings us to the early Spring of 1935.

Before resuming the story of the negotiations at this point, I must call your attention to the situation as a whole in April, 1935. I do this because of some of the statements which have been so widely made as to the reasons for events which took place the following June,

and the charges that those who have worked for the per-piece or measured service plans have been "dividing the industry."

First, let us consider the per-piece or measured service plan. It had been endorsed by the NAB at the St. Louis Convention in November, 1932, after a proposal made by Schuette for a measured service plan had been turned down by ASCAP. It was endorsed again by the NAB at the White Sulphur Springs Convention in October, 1933. It was endorsed again by the NAB at the Cincinnati Convention in September, 1934. It was endorsed again by the NAB at the Colorado Springs Convention in July, 1935. Throughout this period the plan was expressly or impliedly endorsed at many meetings of the NAB Board of Directors, among which need be mentioned only the meetings held in Washington, May 14, 1934, and in New York on June 22, 1935. It was the basis of all negotiations with ASCAP conducted, first by Schuette and later by Baker and Hostetler, for the entire three-year period, and this fact was made clear beyond question in reports made by Hostetler and others at the White Sulphur Springs, the Cincinnati, and Colorado Springs Conventions. Prior to the Spring of 1935, either expressly or tacitly the two networks and Levy gave approval to what was being done by Hostetler and others negotiating in behalf of the industry. Large contributions were sought from and made by independent stations, as well as by the networks and Levy, for the carrying forward of the program of which this was an integral part. The Government suit against ASCAP, instituted August 30, 1934, had, as one of its principal express purposes, a reorganization of ASCAP so as to establish a system of fees based upon actual use of music and competition between copyright-owners. This was thoroughly explained to and understood by the NAB membership.

Secondly, we should note the progress which had been made on the NAB three-point program by the Spring of 1935. With reference to the Government suit against ASCAP, the Government had won an overwhelming victory on March 26, 1935, when the Court granted the Government's motion to strip the case of irrelevant issues and denied ASCAP's motion seeking to delay trial by permitting the taking of depositions all over the world. By the second week in May, it was clear that trial would be had at an early date, beginning on June 10th. On the legislative side, the Duffy Copyright Bill was moving slowly but surely toward enactment, it being certain by the second week in May that it would be favorably reported by the Senate Patents Committee and would eventually be passed by the Senate. A surprise attempt to commit the United States to the International Copyright Convention had been frustrated and on April 22, 1935, the Senate had rescinded its ratification of that treaty. The only point in which no recent progress had been made was that represented by the Radio Program Foundation, which had lain dormant for a year or more. In addition to all this, ASCAP was torn with internal dissensions and a number of its important members were threatening to withdraw as of December 31, 1935. There was even talk

among some of them of the per-piece plan and there was open talk of a consent decree in the Government suit. As early as December, 1932, it had been reported that ASCAP was working out a revised system of distributing royalties to its own members based on a per-piece plan.

On the whole, therefore, it may be said that never before had the broadcasting industry been in as strong a position to demand justice from ASCAP as it was in the Spring of 1935. By June 1, 1935, it was possible for comments to be made such as appeared in the issue of *Broadcasting* for that date, such as the editorial caption "Old ASCAP—Last Curtain," and the statement "ASCAP appears to be on its last legs as the hard-hearted music trust." Proof of this, if proof is necessary, is furnished by the fact that shortly prior to April 26, 1935, ASCAP invited the broadcasters into a conference which was held that day. With this conference the all too familiar tactics of the past began once more. In behalf of the NAB Hostetler made it clear that any agreement reached must be acceptable to the Government; also, that NAB was on record in favor of a per-piece or measured service plan and that such a plan was contemplated in the Government suit. A six-months' license extension under present terms was suggested, contingent upon any action taken in the Government's suit. The ASCAP spokesmen promised a recommendation to that effect to the ASCAP Board, but it was later turned down.

A meeting of the NAB Copyright Committee was held in New York May 13th. It was understood that representatives of both the broadcasting industry and ASCAP would meet at noon for further discussions to work out a temporary arrangement. There were present McCosker, Chairman of the Copyright Committee; Ward, NAB President; Allen, WLVA; Klauber, CBS; Ashby, NBC; Damm, WTMJ; Russell, NBC; Levy, WCAU; Loucks, NAB Managing Director; and Hostetler. Bennett, special assistant to the Attorney General in charge of the ASCAP suit, was called in. There is a marked difference of opinion as to whether Bennett did or did not make certain statements. According to Levy's statement made later (in the Convention in July), Bennett had said in substance that it would jeopardize the Government's case if the NAB were to ask for anything except an extension of the present contract, and particularly if the NAB were to ask for and secure a more favorable contract. Hostetler has no recollection of Bennett's saying that nothing better could be accepted. Among the others, some apparently corroborate Levy and some Hostetler. Several months later the Department of Justice, through the Hon. John Dickinson, addressed a letter to NAB stating that it is not, and never has been, the position of the Department of Justice that a better contract should not be sought.

In any event, at the meeting with ASCAP that day, ASCAP offered a straight five-year extension. Hostetler opposed this on the ground that it would affect the Government suit adversely. At a meeting held May 23rd the NAB Copyright Committee rejected the proposal and made a counter-proposal of extension of all existing contracts until the conclusion of the litigation. According

to Levy, Bennett had advised the Committee that if this were turned down by ASCAP the broadcasters would then be in the position of having been coerced into accepting the five-year extension and the extension would not be prejudicial to the Government's case. The chairman of the ASCAP committee agreed to submit the proposition to the ASCAP Board, with a reply expected the following week. The ASCAP Board not only rejected the proposal but, pursuing the oft-repeated tactics of the past, sought to alarm the broadcasters by withdrawing the offer of a straight five-year extension.

In the meantime, on May 20, 1935, Loucks, NAB Managing Director, had reached an agreement with Mills for an extension of all licenses from their expiration date, September 1, 1935, to January 1, 1936. This date coincided with the date on which the existing contracts between ASCAP and its members were to expire. The form of extension was approved and, by public announcement in the *NAB Bulletin* (as well as in *Broadcasting*), broadcasters were advised that they might execute and return the extensions.

During this same period there were other proposals made and informally discussed, as to which the record is not clear enough to justify my attempting to describe them. With possibly one or two exceptions, they do not add anything to the picture as a whole. At one point Mills made a proposal which, in the judgment of Hostetler and his associates, was simply intended to divide the industry by arraying the independent stations against the networks, and which therefore was not submitted to broadcasters generally. Failing in this, he apparently decided to pursue the opposite tactics and, by dealing with the two networks and WCAU, to array them against the independent stations. At least, that is what he succeeded in doing and, as is well known to those who have had dealings with him, he has frequently asserted that such was his intent.

It should be noted at this point that during this entire period at least one and probably both of the networks were negotiating for the purchase of the Warner Brothers group and perhaps other publishing houses. I am informed that these negotiations were broken off on June 2, 1935. The fact of these negotiations was not, so far as I know, communicated to the officers, directors or copyright committee of the NAB.

On June 3, 1935, a meeting of the copyright committee was held on short notice in New York. A quorum was not present. Those present were McCosker, Russell, Levy, Klauber, Colin, Kaye, Ashby, Sprague, Loucks, and Hostetler. Mills sent over a proposal contemplating a five-year renewal based on the available catalog rather than on the present catalog, i.e., on whatever catalogs ASCAP happened to have. This, of course, raised a question as to the effect of the threatened withdrawal of the Warner Brothers group. By about 6 p. m., on that date, no progress had been made. Hostetler and Loucks still opposed a straight five-year extension; Levy and others were in favor of it.

Finally, Levy telephoned Mills and asked whether ASCAP would agree to a straight five-year extension. Mills assented. The Committee, after discussion, came to no decision. Levy then informed the Committee that he would meet with ASCAP the following morning and arrange for a five-year extension for his station. He also stated that he would send out a letter to all broadcasters informing them of his action and advising them to do likewise. Hostetler told Levy that if he sent such a letter he should inform all stations of the advantageous features of the WCAU contract. According to Hostetler, Levy said he would. According to Levy, Levy said it was unnecessary since the WCAU contract was well-known, its terms having been voluntarily disclosed at the St. Louis and later Conventions. In any event, it was Hostetler's and Loucks' understanding that McCosker was to get Mills' offer in written form so that it could be submitted to the Copyright Committee and in turn to the NAB Board before it was executed.

The following day Hostetler and Loucks waited at the St. Regis Hotel until about 3:30 p. m. when they had to leave to catch a train for Washington. On arriving in Washington in the evening they learned for the first time that during the day, Levy and the two networks had concluded 5-year extensions of their contracts from January 1, 1936, Levy's contract being renewed without change, and the network contracts being subject to an increase in sustaining fees of \$25,000 each for three of their stations (WEAF, WJZ and WABC). Late in the afternoon Levy had advised Bennett of these renewals by telephone to Washington.

Hostetler, arriving in Cleveland on the morning of June 5th, immediately sent Loucks a letter summarizing his recollection of the understandings at the meeting of June 3rd and expressing his views on the actions of Levy and of the networks. Levy sent out a letter to all stations informing them of the extensions, and advising them to do likewise. He gave, as reasons for the advice, that the Government suit would not be terminated for several years, and that the suit would in no wise be affected by a 5-year extension. He mentioned that Hostetler and Loucks held contrary views to his, but was silent on the subject of the WCAU contract. Thereupon, Loucks circulated the material portions of Hostetler's letter. On June 11th, Levy sent out a second letter, setting forth his views at length. In addition to defending his failure to mention the WCAU contract and reiterating his contention that the Government's suit could not possibly be prejudiced, he asserted that the Copyright Committee

"had been reliably informed that the minutes of ASCAP showed that they intended to increase our payments up to 25% of our gross receipts."

So far as I can discover, the sole basis for this assertion was a statement which had been made by Bennett at the Committee's meeting of May 13th; he told the Committee that the ASCAP minutes showed that one Sol Bernstein had made that proposal to ASCAP.

In his letter Hostetler had referred to the network contracts and stated that he did not see how it was now possible to avoid calling the Court's attention

"to this preference in explanation of the willingness of the chains to execute an extension agreement on the very eve of trial of the Government suit."

Levy replied

"Mr. Hostetler knows full well that reference to the chain contracts are without justification. He is fully acquainted with the situation and *knows* that ASCAP always intended to exact the highest possible tribute from all independents, irrespective of charges against the chains."

This last statement is also apparently based on a statement made by Bennett at the meeting of May 13th as to what he had seen in ASCAP minutes.

On June 11, 1935, trial of the Government's suit commenced. It was apparent from the outset that ASCAP was going to make capital out of the 5-year extensions. Its counsel referred repeatedly to them, and asserted that there could be no question of oppression or unreasonableness because several of the most important units in the industry had entered into extensions at even higher figures than before.

On June 17, 1935, Mills sent a letter to McCosker, advising that all license agreements would be extended to December 31, 1935, and offering (for the first time in writing) a 5-year extension from January 1, 1936.

A special meeting of the NAB Board was called for and held on June 22, 1935, at New York. The opposing parties were heard at length, including Levy, Klauber, Ashby and Hostetler. No useful purpose would be served by a detailed account of their contentions further than to note that emphasis was placed on an alleged lack of preparedness by the Government in its suit, as a reason of the networks seeking 5-year extensions. Also, for the first time, intense opposition to the per-piece plan by both Levy and the networks came out into the open. At the conclusion of the meeting, two resolutions were unanimously adopted by the Board. In one, it reiterated its support of the per-piece or measured service plan and absolved the networks and WCAU of anything improper in their negotiation of extensions. In the other, it upheld Loucks in sending Hostetler's letter to all NAB members.

At the Colorado Springs Convention held July 8-10, 1935, McCosker, Kay, Levy and Hostetler addressed the members at length. Again, no useful purpose would be served by even attempting to summarize their statements. At the conclusion, the Convention approved the resolution of the Board of June 22nd, declaring in favor of the per-piece or measured service plan and absolving WCAU and the networks. Other resolutions were adopted favoring continuation of the Government suit, instructing the NAB officers and directors to support it, and warmly commending Hostetler for his efforts and recommending that he be given an opportunity to continue giving the same service to NAB.

One excerpt from the Convention discussion is, I believe, of sufficient importance to deserve quotation. Church, KMBC, stated that as a network affiliate he had a contract with a network requiring him to have the necessary copyright arrangements. He asked Levy the direct question as to whether such stations now had any choice in the matter. The following colloquy ensued:

"ISAAC D. LEVY: In a legal manner or business manner?"

"MR. CHURCH: Both. In other words, has the action of the networks and yourself almost automatically bound us to the five-year contract with ASCAP?"

"ISAAC D. LEVY: Yes—but pleasantly so."

"MR. CHURCH: I am not questioning that. The point is: do we have a choice in the matter?"

"ISAAC D. LEVY: I don't believe you do."

By the end of July, some 55 stations had applied for and received 5-year extensions of their ASCAP licenses. The 55 included the 21 chain-owned or controlled units, WCAU and several of the newspaper-owned stations; very few of the independent stations not enjoying discriminatory advantages had sought extensions. Mills was promulgating the statement (as he has both before and since then) that ASCAP would still like to secure from the NAB a definite formula for the payment of copyright fees, which he said had never been forthcoming from the Association.

Before the end of the summer it became apparent that, in spite of the assurance given by Mills to McCosker on June 17th, stations other than the original 55 would not be given unqualified extensions of their contracts. Mills was now insisting on adding a rider protecting ASCAP against any obligation to maintain its catalog at substantially its size at the time and limiting the license to the empty right of cancellation of the license "in case there shall be a substantial diminution in the quantity of musical numbers." The rider obviously anticipated the withdrawal of the Warner Brothers group.

On September 23rd the NAB Executive Committee (Fitzpatrick, Levy and Baldwin) met with Mills informally to discuss provisions of the contract offered stations as well as the per-piece method of payment of royalties. In the meantime, it seems, ASCAP officials were privately advising stations to defer signing ASCAP contracts until that organization had put its own house in order, it being felt there was still some possibility that the Warner group would remain with ASCAP. An NAB Board meeting was called for October 17th.

At the Board meeting on October 17th in New York, there was discussion of the advisability of advising stations to seek 5-year extensions of their ASCAP contracts, and the Board instructed the Managing Director to do so. It also instructed him to prepare a report and recommendations dealing with the possible working out of a per-piece or measured service plan. By November 15th, only about 80 stations had signed ASCAP renewals and Mills was quoted as saying that full opportunity would be given all stations to negotiate "new contracts" in the



event of withdrawal by the Warner group. He asserted that the basis for negotiations naturally could not be foretold.

For reasons later explained to the Board, I did not send the letter. On December 3rd, Levy, calling from Klauber's office, insisted that such a message be sent. After consultation with Fitzpatrick, NAB President, I polled the NAB Board and, as a result of a vote of 10 to 9, I sent a telegram instructing them to accept 5-year extensions. Two of the directors thereupon changed their votes, with the result that the vote was 11 to 8 against sending the telegram. Thereupon, I sent a second telegram notifying members not to ask for extensions. In the meantime, a small number of stations had sought and secured extensions so that the total of those who, in addition to the original 55, had such extensions (but with the rider as to repertoire) was slightly over 70.

An NAB Board meeting was called and held in New York on December 9th, 10th, 16th and 17th. The results of this meeting are best treated under the next heading.

#### IV. THE RECENT FAILURE IN ASCAP NEGOTIATIONS

On December 17, 1935, the last day of its meeting held in that month in New York, the NAB Board of Directors designated its Managing Director to act in the emergency created by the approaching copyright crisis created by the expiration of ASCAP licenses on December 31, 1935 and the withdrawal of the Warner Brothers group from ASCAP effective after that date. He was given authority to act for such stations as desired to have him do so, and stations were urged to send him powers of attorney enabling him to negotiate in their behalf. He was also given authority to name and assemble an Advisory Committee to confer and advise with him in New York.

Pursuant to the Board's action over 300 broadcasters executed and sent in powers of attorney. This number included a large proportion of the important independent stations in the country and far exceeded the response which had been hoped for.

Further pursuant to the Board's action, I selected an Advisory Committee, consisting of Messrs. Allen, Caldwell, Carpenter, Church, Clark, Craig, Cowles, Damm, Fitzer, Gough, Loucks and Myers, and on December 24, 1935, sent each of them a wire as follows:

"Will greatly appreciate your advice and counsel during further negotiations on copyright beginning Friday, December 27, St. Regis Hotel Stop I make this request because I believe you are free and willing to exercise your best judgment for industry as whole Stop If I have erred in judgment and circumstances are such that you must be guided by your personal interests or the interests of any group then I expect you to decline invitation Stop Am sure you can appreciate importance of premise upon which invitation is extended Stop Similar invitation extended to (here follows list of names other than the party to whom addressed) Please advise will be in Washington until Wednesday evening."

Of those invited, Messrs. Allen, Caldwell, Carpenter, Clark, Damm, Fitzer and Loucks were able to accept and to be present. Mr. Craig accepted but was unable to be present at the first session.

The Advisory Committee met with me at the St. Regis Hotel, New York, on the morning of Friday, December 27th, and were in continuous session until Tuesday, December 31st. Due to the appearance of the first Warner contract Friday morning, and the necessity for attempting to secure a revision of it, the committee had to subdivide its labors, and a subcommittee consisting of Messrs. Caldwell, Damm and Loucks devoted themselves principally to the Warner negotiations, described under the next heading.

Mills, ASCAP's general manager, left New York just prior to the day on which the Advisory Committee assembled, and remained out of town until Tuesday, December 31st. Buck, president of ASCAP, was out of town from Friday until Monday. This left only Burkan, the ASCAP General Counsel, with whom to negotiate.

On Friday, I had arranged a meeting with Burkan for late in the afternoon. The meeting was delayed by Burkan from hour to hour and finally I was told that he could not see me that day. This, I learned, was because of conferences he was having with network representatives. During the day, the network companies secured from Burkan a letter as follows:

"Confirming our conversation today, this is to inform you that from and after January 1, 1936, you may continue to broadcast and to publicly perform for profit the compositions in the repertory of the American Society of Composers, Authors & Publishers as of January 1, 1936, under your network system without any interruption on and after January 1, 1936, until further notice from the American Society of Composers, Authors and Publishers, such notice to be not less than two-day period. It is understood, of course, that we are not relieving these affiliates of the obligation to pay us performing fees in accordance with existing contracts."

They immediately advised their affiliates of this arrangement by telegraph.

On Saturday morning, December 28th, I succeeded in seeing Burkan. In the course of the discussion, I was clearly given to understand that ASCAP would be willing to grant temporary extensions of the same sort as those accorded to network affiliates on network programs with the understanding that a joint committee representing all interested elements would meet shortly after January 1st to arrive at a definite and permanent solution. I was also given to understand that ASCAP might be willing to accord an extension for a definite period, e. g., 6 months, to broadcasters who had not accepted five-year renewals. With this understanding I returned to discuss such an extension with the Advisory Committee, and, with their approval, sent the stations a telegram as follows:

"Am assured by ASCAP general counsel that temporary extensions all ASCAP licenses will be granted by letter to me at present rates and without signing contracts,

stations and ASCAP each to have right to cancel on two days' notice with understanding joint committee all interested elements meeting shortly after January 1 to arrive definite permanent solution. On Monday expect to ask and obtain six-month extension on this basis. Advise whether I may use if necessary your power attorney on this basis with ASCAP. Negotiations with Warner proceeding today. Langlois & Wentworth, New York City, can furnish 60 fifteen-minute programs public domain music. Transcontinental Broadcasting Company, Los Angeles, can furnish 200 musical selections which can be performed without copyright license cost 60 cents per selection. Both copyright libraries should offer opportunity to avoid Warner music pending adjustment their proposed contract."

Nothing further occurred, so far as ASCAP is concerned, until Monday morning. At that time I conferred with Buck and Burkan. They refused to grant a 6-months or any other definite extension and I was able to secure only an indefinite extension represented by the following letter, signed by Buck, President of ASCAP:

"This is to inform you that such of your member stations and such stations, in respect to which your Mr. James W. Baldwin holds power of attorney to act for them, as do not have licenses from the American Society of Composers, Authors & Publishers (for brevity called "Society"), from and after January 1, 1936, may continue to broadcast and to publicly perform for profit the compositions in the repertory of the Society, as of January 1, 1936, without any interruption on and after January 1, 1936, until further notice from the Society, such notice to be not less than two (2) days.

"It is understood, of course, that we are not releasing these stations (those which are members of your Association and those which are represented by Mr. Baldwin by virtue of powers of attorney) of the obligation to pay the Society performing fees in accordance with the existing contracts."

I accepted this extension in writing.

On the same day, December 30th, ASCAP sent out a wire to all stations which had not already secured 5-year renewals, as follows:

"This is to notify you that the American Society of Composers, Authors & Publishers is prepared to extend your present license agreement with it upon the same terms and conditions for five additional years from January 1, 1936, except that the rights granted by the Society shall be limited to compositions of the membership as constituted on January 1, 1936. The Society challenges the claims made by others to ownership in the small performing rights of various compositions published by them but written and composed by members of the Society. The Society controls the performing rights of many of such compositions and within a very short time will publish a list thereof. As our examination of individual contracts progresses we are confident that our repertory will be increased in respect of many compositions the performing rights of which are exclusively claimed by others. To illustrate published reports that the Society can no longer license small performing rights in the works of George M. Cohan, Victor Herbert and some others are absolutely without foundation. The Society

has the right to grant licenses in respect of these works and will protect all its licensees broadcasting the same. While we of course have no objection to your taking any other licenses which you may desire to take we feel it only fair to tell you that your fee to the Society will not be reduced and the formula will not be altered except that the license will be limited to works in Society's repertory as of January 1, 1936, and furthermore to advise that with respect to any composition the licensing rights of which are exclusively vested in us we will not recognize any license which you may obtain from others."

I immediately sent out wires to all stations advising them of the temporary extension accorded by Buck's letter and advising them not to accept the 5-year extensions offered in the above-quoted telegram. It is my understanding that approximately 400 stations followed this advice and refrained from taking the 5-year extensions.

We immediately turned to the task of preparing the way for the joint discussions with ASCAP which Burkan had given me to understand would now take place. Since one of the oft-reiterated complaints of ASCAP had been the lack of definite proposals by NAB which could be used as a basis for discussion, I set to work to prepare a statement of principles which should guide our negotiations and state our objectives, in a manner suitable for serving both as a basis for discussion and as a proper way to advise the NAB membership of our activities. With the completion of a draft statement I called the Advisory Committee to meet with me again in New York on January 10th, to discuss it with me and, after putting it in final form, to take it up with ASCAP. Both ASCAP and the networks knew that this meeting was being held.

On Friday, January 10th, we spent the entire day in putting the statement into final form and by evening it was completed. At a late hour, approaching midnight, I was called by a third party and was told for the first time that during the evening the following wire had been sent by ASCAP to about 400 stations:

"On December 30, 1935, the ASCAP offered to extend your present license agreement upon the same terms and conditions for five additional years from January 1, 1936, except that the rights granted by the Society to you shall be limited to compositions of the membership as constituted on January 1, 1936. To this wire the Society has received no answer and unless we hear from you by January 15 that you accept such offer the Society will deem you to be an infringer in respect of the performances and broadcasting of any of its works and you shall be held to strict accountability on account of all performances of its works beginning January 1, 1936."

I immediately made every effort to get in touch with the ASCAP officials, without success. I also immediately telephoned Ashby and Klauber and found that both knew of the telegram. Both of them vigorously defended ASCAP's action. Several days later, an ASCAP official informed a member of the NAB Board of Directors that the telegram had been sent at the insistence of the two networks. If this be true it means, of course, that over 300 independent broadcasting stations in this country

were deprived of their liberty of contract and of their last opportunity to negotiate by joint action of the networks and ASCAP.

The following day, Saturday, January 11, every effort was made, both directly with ASCAP and by contact with the networks, to secure a reconsideration of ASCAP's action. During the day I sent a wire to stations as follows:

"Am advised ASCAP last night wired all stations that unless they communicate acceptance of five-year offer by January 15 they will be deemed infringers. This in effect appears to be cancellation of temporary arrangement based on Buck's letter of December 30. Consequently, if you need ASCAP music suggest you wire acceptance to ASCAP on January 15 but not before in order that give me benefit of such last-minute desperate efforts as I can make."

For a while there seemed a faint hope that I might be permitted to appear at an ASCAP Board meeting to be held Tuesday, January 14th, and to argue in favor of a withdrawal of the ultimatum. The statement which had been agreed upon with the Advisory Committee on the preceding Friday was printed and circulated to the members on January 13th as an NAB Bulletin with the title "Tentative Program of Activity in Behalf of the NAB." Copies were immediately sent to ASCAP and the two networks. All efforts, however, were unavailing and on January 14, I sent the following telegram to all stations who had given me powers of attorney:

"ASCAP has refused request for stay of their action taken tenth Stop This leaves no alternative for stations that must use ASCAP music but to accept offer contained Buck's telegram December 30 Stop Have not used your power of attorney to bind you in any way Stop Because some stations for which I hold power attorney have already accepted ASCAP offer per my wire eleventh and others have indicated they may not accept suggest it is best under all circumstances and my future plans toward reformation of contracts that you clear matter yourself by addressing telegram to ASCAP not later than fifteenth stating you accept Buck's offer thirtieth."

On January 15th the ASCAP ultimatum went into effect and by the close of that day practically all broadcasting stations had been forced to wire ASCAP for extensions of their 5-year contracts.

## V. NEGOTIATIONS WITH THE WARNER BROTHERS GROUP OF MUSIC PUBLISHERS

By May 15, 1935, it became generally known that the Warner Brothers group of music publishing houses (Harms, Inc., T. B. Harms, Witmark, Remick and New World) had stated that they were planning not to renew their memberships in ASCAP, which memberships expired December 31, 1935, and that thereafter they would deal in their own right with broadcasters and other groups of music-users. How long before May 15th they had evidenced such an intention within a limited circle, I do not know. In addition, several other important houses (said

to include Feist, Mills, Marks, Fisher, Schirmer, Berlin and Robbins) were reported as indicating that they might follow the lead of the Warner Brothers group.

The Warner Brothers group controls a very large percentage of all music broadcast. They claim it is 40% of ASCAP music. The fact seems to be, however, that, in the case of the networks and the larger stations at least, the percentage was not more than about 20% of ASCAP music, while, in the case of smaller stations and particularly stations making a heavy use of phonograph records, the percentage is considerably higher. The other important houses who were considering withdrawal controlled, it is said, an additional 40% of ASCAP music. There was also a rumor that the Austrian and German societies might withdraw from ASCAP and follow the lead of SESAC as new and separate licensing pools.

Until about June 2, 1935, at least one of the networks had been negotiating for the purchase of the Warner Brothers group and perhaps others of the houses. On that date negotiations were broken off.

On June 24, 1935, the Warner Brothers group made public announcement of their withdrawal from ASCAP, effective December 31, 1935, and, in a letter to all stations, notified broadcasters that after that date all licenses for performing rights of their compositions must be obtained from them and that any infringement would be prosecuted.

Passing over relatively unimportant developments, we find that on November 26, 1935, the Warner Brothers group put all doubts at rest by issuing a public statement in which their resignation from ASCAP was announced and explained, principally on the ground of "insufficient and inadequate royalties collected by the society from radio broadcasters." It organized a corporation, known as Music Publishers Holding Corporation (MPHC) through which it proposed to issue licenses.

Prior to the morning of December 27, 1935, the Warner Brothers group had not, however, offered or submitted any definite proposal or formal contract to the NAB or, so far as we know, to broadcasters generally. There had been informal discussions earlier in December, but without result. It was known, however, that

(a) the Warner Brothers group was dissatisfied with the amount it has been receiving from ASCAP (\$340,000, which when combined with the like amount paid to the group's composers, made a total of \$680,000 out of a total of slightly under \$3,000,000 paid by broadcasters to ASCAP during 1935);

(b) that it was demanding a total of not less than \$2,000,000 (\$1,000,000 to the publishers and \$1,000,000 to the composers) or approximately three times as much as in the past;

(c) that it proposed to obtain this amount by (1) charging sustaining fees equal to 40% of those charged by ASCAP; (2) charging 2% of net receipts of the broadcasters, and (3) applying the 2% percentage to what it considered a hitherto untapped source of revenue, i. e., the revenue of networks as networks (as distinguished from the network-owned or -controlled stations).

In the course of the NAB Board meeting December 9th to 17th, no action was taken with regard to the Warner Brothers group. The matter was one which was covered by the authority vested in me as Managing Director, by action taken by the Board December 17th, described under the preceding heading.

In the course of Friday morning, December 27th, a definite formal contract was presented by the Warner Brothers group for the first time.

The contract was immediately read over to the Advisory Committee. It was obvious from a single reading that its terms were not only exorbitant and objectionable, but, in certain respects, impossible to comply with. With the approval of the Advisory Committee, I wired the stations as follows:

"Am informed Warner Brothers contract mailed to all stations today stop Together with committee and attorneys have examined it and believe terms wholly unacceptable stop Am endeavoring negotiate modification of contract but there is chance negotiation will prove unsuccessful and that you should be prepared to face alternative of signing this contract or doing without Warner music January first stop Negotiations continuing on ASCAP contract stop Will keep you informed."

In the meantime a sub-committee was designated to study the contract and draw up a memorandum analyzing it and pointing out its objectionable features. This memorandum was completed in the course of the afternoon, and was mimeographed and mailed to stations with a covering letter signed by me as follows:

"Herewith enclosed is an analysis of proposed Warner Brothers contract. It has been prepared hurriedly. Some of the criticisms are of minor importance but on the whole it will be observed that the terms and conditions of the contract are entirely too severe. Conversations had this evening indicate that there is a possibility of meeting a few but not all the objections raised. The conversations will be pursued tomorrow."

The memorandum was used as the basis for conversations held that Friday evening with Mr. Herman Starr, executive in charge of the Warner Brothers group, and as the basis for negotiations conducted Saturday and Sunday with Mr. Starr and Mr. A. M. Wattenburg, general counsel for the group.

It is unnecessary to repeat what was set forth in that memorandum. It will be sufficient if attention is called simply to the amount and the basis for calculating compensation that would have been required under its terms. It would have required each licensee to pay 40% of the sustaining fee paid ASCAP and 2% of the licensee's net receipts (the term "net receipts" to include not merely the actual net receipts of the licensee *but also, in the case of a network affiliate, the receipts of the network for the affiliate's facilities*).

Starr appeared before us at about 8:00 p. m. Friday evening. The conference lasted until about midnight. He was adamant in refusing to modify his position with reference to the principal objections. He stated that the Warner Brothers group would not depart from its funda-

mental premise that the Warner Brothers group was entitled to a total of \$2,000,000 yearly for use of its music by broadcasters and evidenced no inclination to depart from the means, methods and percentages specified in the contract.

With reference to some of the minor objections, Starr was impressed with the arguments presented by us. He explained that he was not familiar with the practical side of broadcasting and that he was perfectly willing, with his attorney, to sit down with our group and attempt to improve mistakes that might have been made in the contract due to his lack of knowledge of the effect of its provisions on practical operations. This left, of course, only a very slender thread on which to pursue negotiations. We felt, however, that it was better to pursue this narrow thread for what it was worth than to abandon all hope of improving the terms of the first contract.

At this point, certain premises and assumptions on which we were in agreement should be set forth. They were as follows:

1. It would not be proper for the NAB, or for me as its Managing Director, to advise members of the NAB not to sign any contract with the Warner Brothers group or to dispense with Warner Brothers music, both for reasons hereinafter stated and because, taken in conjunction with the actions of the network and of ASCAP, such a procedure ran the risk of being held to be an illegal boycott.

2. A considerable number of broadcasters needed or wanted to use Warner Brothers music after December 31, 1935, and, if no other alternative were presented, many of them would sign the contract on the 40%-2% basis.

3. An even greater number of broadcasters, whether or not they needed or wanted to use Warner Brothers music, would be unable to avoid infringements and liability therefor at the rate of a minimum of \$250 per infringement. Their inability would proceed from insufficient facilities, records and staffs, from lack of any lists from either ASCAP or Warner, from the difficulty of controlling music played by remote control orchestras, etc.

4. For want of information and lack of opportunity for obtaining it, we were in no position to form any opinion on the merits of the issues in dispute between ASCAP and the Warner Brothers group as to control over the performing rights on a number of musical compositions. The course taken by the two national network companies, who had had much greater opportunity to look into the matter, was some indication that it would be extremely hazardous to broadcast any Warner music without a license from the Warner Brothers group.

During Saturday a sub-committee conferred with A. M. Wattenburg, general counsel for the Warner group, and later in the afternoon, with Wattenburg and Starr. Its starting point consisted merely in certain concessions which, as already stated, Starr had shown himself willing to make the evening before, having to do principally with requirements as to records and reports. The sub-committee, however, succeeded in re-opening the entire subject and by the end of the afternoon had made substantial progress. Among other things, Starr and Wattenburg began to appreciate more fully the justice of the broadcast-

ers' claims that compensation should be based not on revenue but temporarily on card rates and eventually on a *per-piece* system; that broadcasters have a right to trustworthy lists of compositions controlled by the licensor; and that copyright should be cleared at the source, particularly in connection with network programs and electrical transcriptions. While no agreement was reached at this session, sufficient progress was made so that the sub-committee agreed to make calculations showing what revenue might be expected by Warner if compensation were based on card rates. The sub-committee returned to the hotel and made these calculations from the December issue of *Radio Advertising*, reducing their calculations to itemized statements showing the highest quarter-hour and the highest half-hour rates for each station in the United States; the deductions that would have to be made on a proportional basis for stations having less than full time; and the number of stations whose quarter-hour rate was \$18.00 or less. It proved impossible to use an hourly rate as a basis of calculations as so many stations do not publish such rates, and in fact the same was partially true of the one-half-hour rate. The sum total of the highest quarter-hour rates of all stations, thus calculated, came to slightly over \$23,000.

Up to this point, Warner had not receded from its demand that the total costs be \$2,000,000 annually from broadcasters. Obviously, to reach this amount it would be necessary for each station to pay a monthly compensation of approximately seven times its highest quarter-hour rate. This seemed impossible on its face and was very disheartening. The sub-committee, however, reported back to the full committee and in spite of the apparent obstacles it was agreed that the group was to continue the negotiations for the sake of whatever advantages might be secured.

Negotiations, therefore, were resumed early on the following day (Sunday, December 29). They were accompanied by discussions of all the other points raised and, in particular, discussion of the *per-piece* plan. Members of the full committee participated from time to time. Finally, by late in the afternoon, Starr agreed to reduce the basis for compensation for independently-owned stations from seven times the highest quarter-hour rate to four times the highest quarter-hour rate, the license to cover only non-network programs. It was apparent to all present that no further concession in total amount of compensation would be made. It was also apparent that, for lack of information on both sides, it would be impossible to put into effect immediately a *per-piece* plan although considerable consideration was given to working out a *per-piece* plan which would be based on the highest quarter-hour rate (that is, a certain percentage such as  $\frac{1}{2}$  of 1% of such rates for each piece broadcast). Because of this lack of information and because of the fact that the contract might serve as a precedent, Warner felt it would have to fix a fee per-piece that would be high enough to protect it in the future while the committee felt, for somewhat the same reasons, it must in-

sist on a fee sufficiently low to meet all situations. Both sides recognized that the matter needed further study. The result was that Warner chose the flat fee basis for its revised contract for a temporary period of three months, the flat fee being based on four times the highest quarter-hour rate and covering all non-network programs, and agreed to cooperate in working out a per-piece plan in that period.

By late Sunday afternoon when the committee was convinced that Warner would make no further concessions, Wattenburg proceeded with drafting the revised contract in the presence of the committee. During the course of revision a number of further points arose, some important and some not, but all of them entailing a certain amount of delay and discussion. It was not until well after midnight that the draft was completed and even then one or two points were left open in cases where the parties did not differ in principle but had not succeeded in finding the precise language which would be appropriate. These were settled early the following morning. Somewhere between 2 a. m. and 3 a. m., Monday morning, after conferring with members of the committee, I sent out the following telegram:

"Disregard Warner contract sent you this last week. Warner Brothers now offering revised three months contract which will remedy many of objections pointed out by us and which in opinion of committee and myself will be substantially more favorable. Basis for compensation for full time station for all non-network programs is to be monthly payment of four times your highest quarter-hour rate. Other stations proportionally. Stations where highest quarter-hour rate less than \$18 basis of compensation not to exceed twice highest quarter-hour rate. Networks to have responsibility for clearing copyright on all network programs over their own stations, and over affiliate stations. Warner agrees to attempt to work out per-piece plan during contract period and to furnish complete catalogue by Feb. 1. Several other improvements in contract agreed to by Warner. Printed revised contract cannot be delivered to you for a day or two. If you desire to use Warner music after December 31 Warner assures me you can gain rights given by this contract by instructing me to accept in your behalf. Please wire immediately."

During Monday, December 30th, the revised contract was printed and by that evening it was on its way to most of the stations.

Space will not permit a detailed comparison of the provisions of the revised contract with those of the first contract. It will be helpful, however, to point out what progress was made with respect to the principal objections.

(a) *The amount of compensation.* Instead of asking for a total of \$2,000,000, the revised contract is based on asking a theoretical total of \$1,104,000 from all stations (including those owned and operated by the networks), for non-network programs. This sum represents 48 times the total of the highest quarter-hour rates of all stations. It must, however, be reduced by the amount of the concessions made by Warner to small stations and to stations

having various kinds of time limitations. For example, stations having quarter-hour rates less than \$18.00 were to pay only twice the highest quarter-hour rate monthly; since then Warner has made further concessions and raised the dividing line to \$25.00. Also since the network companies have not accepted Warner's contract, the total must be reduced by another very substantial sum, possibly in the neighborhood of 20%, assuming that all independently-owned stations accept the contract.

(b) *Method of calculating compensation.* As already noted, for the temporary period covered by the contract, the basis is a flat rate based on the highest quarter-hour rate. The contract recites the intention of the licensor to attempt to work out a *per-piece* plan. The principle of payment of copyright fees at the source is given complete recognition with respect to network programs and to some extent with reference to electrical transcriptions. Finally, very significant progress was achieved in the provision requiring Warner to furnish a complete list of its compositions not later than February 1, 1936.

(c) *The agreement to indemnify.* Only partial success was had under this heading. Warner did not agree to remove the limitation on the amount of guarantee, claiming that for a station having both ASCAP and Warner licenses no greater protection is necessary; its reason for this conclusion is that the only serious issue likely to arise on its music is ASCAP's claim to have the right to license performing rights on some of it and therefore the only thing likely to affect any station is that money paid to Warner should have been paid to ASCAP. Considerable progress was made through the inclusion of the item already mentioned; i.e., the furnishing of lists by February 1, 1936. In Starr's statement made public late in the afternoon of December 30th, the agreement of indemnity is given an entirely satisfactory construction in the following language:

"3. For the first time radio stations will be furnished with a complete catalogue of the compositions of which we warrant ourselves to be the owners."

(d) *Records and reports.* Under this heading the revised contract still calls for weekly reports of all compositions including those not controlled by licensor. This feature is objectionable. On the other hand, the requirements were considerably lightened with respect to reporting on compositions contained in network programs, electrical transcriptions, and phonograph records, so as to make compliance at least possible if not to relieve the burden.

Other improvements will be noted at several points in the revised contract in line with some of the suggestions made in the committee's memorandum drawn up on Friday, December 27th.

During Monday, December 30th, a large number of replies were received from stations to the telegram above quoted sent out early that morning. The same was true of days which followed. Many of the stations communicated by telephone. Without attempting to tabulate the results by days, it may be said that by the morning of January 1, 1936, the totals indicated that 154 stations were accepting the contract, 67 more were doing so tentatively, and 64 (in addition to the networks) had indi-

cated that they were not accepting the contracts. Most recent reports indicate that considerably over 200 stations have taken the contract.

In letters sent to their clients and agencies on December 24th, the two networks notified them that, effective December 31st, and until further notice, no music controlled by the Warner Brothers group would be performed. These letters set forth at length their reasons. They will be found reprinted in full in *Broadcasting*, January 1, 1936 (Vol. 10, No. 1), at page 7.

The developments beginning with Monday, December 30th, were complicated by telegrams sent by Gene Buck, President of ASCAP, to stations which had not yet agreed to a five-year extension, by the National Broadcasting Company, Inc., and Columbia Broadcasting System, Inc., to all (or most) of their affiliated stations respectively; and by Leo J. Fitzpatrick, President of the NAB, to all member stations.

A copy of Buck's wire has been set forth under the preceding heading. The NBC wire was substantially as follows:

"We have had a number of telegraphic and telephone inquiries today asking our position in regard to a telegram received this morning by many associated stations from Mr. Baldwin regarding negotiations he has apparently had with Warner Brothers. Baldwin did not send us a copy of his message nor has he consulted us about it nor has the National Broadcasting Company agreed to any of the terms therein. National Broadcasting Company's position continues to be the same as outlined in Kobak's letter of December Twenty-third sent you by Brophy and accordingly National Broadcasting Company does not intend to schedule Warner publications on and after January First and will not agree to the terms outlined in Baldwin's telegram. We will continue with ASCAP catalogue on and after January First in accordance with my wire to you dated December Twenty-seventh quoting Mr. Burkan's letter."

The CBS wire was substantially as follows:

"For your information CBS is in no wise a party to the contract we understand is being offered to stations by Warner publishers group nor does any CBS owned station intend to take this contract stop On contrary we intend to abide by our decision to rely on ASCAP license but to play no Warner Brothers music until confused legal status is clarified stop Signing of Warner Brothers contract will not relieve you of obligation to pay copyright fees on local and network programs broadcast by you stop Printed list of Warner numbers mailed you today represents best information on what Warners claim to control but we are informed by ASCAP counsels that many compositions in list can be licensed only through ASCAP."

Mr. Fitzpartick's wire was substantially as follows:

"In answer to numerous telegrams I feel I should clarify my position in the present copyright controversy stop As Vice-President of WJR Detroit and WGAR Cleveland I am not entirely in accord with the course pursued by the Managing Director of NAB stop In July of this year I renewed my present contract with ASCAP for period of five years and do not intend dividing the

industry by signing any other contracts stop I do not want this telegram to be construed as advising members as to what course to pursue but as one of the owners of two stations I urge a united front."

Since January 1, 1936, the Warner Brothers group have instituted a large number of suits for infringement against the two networks (or their subsidiaries) and against a few independent stations not having Warner contracts. I am advised that in the case of the networks ASCAP is undertaking the defense of these cases; I do not know whether it intends to do the same for independent stations.

## VI. THE NAB THREE-POINT PROGRAM

Resolutions adopted at the St. Louis Convention in November, 1932, laid the basis for a three-point program of activity in the field of copyright. This program was formally adopted at an NAB Board meeting held April 5, 1933, as follows:

1. Immediate incorporation and establishment of the Radio Program Foundation.
2. Immediate steps toward litigation against ASCAP under the anti-trust laws.
3. The securing of remedial legislation to check ASCAP's activity.

A brief account of the progress made on each point of this program is helpful both because of the light it throws on the course of the negotiations and because of the assistance it may afford in determining NAB's future course of action.

*Radio Program Foundation.* In a general way, the idea of making public domain music available had been considered at meetings of the NAB Board and by the so-called Plenary Committee in the spring and summer of 1932. At the St. Louis Convention in November, 1932, Schuette strongly advocated the creation of an industry-owned radio music supply through a new corporation which would become a subsidiary of NAB, to rid the industry of its dependence upon ASCAP. He offered a resolution providing that a Radio Program Foundation, with a capitalization of about \$150,000, be subscribed by the industry. His resolution was referred to the NAB Board for consideration.

In a bulletin sent out to all stations on December 31, 1932, Schuette took an initial step to test out the plan. Two compositions published by a non-member of ASCAP were sent out to all stations for performance. Further steps of the same sort were taken at later dates, but none of them was attended by any great amount of success, primarily because of the quality of the music.

At the NAB Board meeting held in Washington, February 20-21, 1933, the proposal for a Radio Program Foundation was adopted, and a special committee was designated to carry forward the project. On February 23rd, Schuette sent out a bulletin describing the purposes of the Foundation.

On April 5th after negotiations with ASCAP were again broken off, it was decided to proceed immediately with the establishment. It was incorporated as a Delaware

corporation in the second week in April with Messrs. McCosker, Loucks, Hostetler, Schuette, and Flamm as its incorporators, and with Schuette as its operating head. Among others, its objectives were to establish relations with independent copyright owners and publishers and at once set up an organization competitive with ASCAP, to open up negotiations with certain other copyright pools probably along with certain foreign associations, and to explore public domain music.

Organization of the Radio Program Foundation was completed at a meeting of its Board of Trustees in New York, May 3, 1933. McCosker was elected chairman of the Board, Schuette president, Hostetler, secretary, and Loucks, treasurer. Schuette immediately began conferences with owners and their representatives owning titles not included in the ASCAP pool. Headquarters were opened in Washington.

On June 14, 1933, the Foundation secured the American radio rights to the catalogue of G. Ricordi & Co., of Milan, Italy, containing more than 123,000 numbers in all branches of music, including the hitherto restricted Puccini catalogue. Ricordi had, several years before, withdrawn its affiliation with ASCAP because of meager royalties. The Foundation offered the catalog to NAB members at monthly royalties ranging from \$2.50 to \$25.00, with higher fees for non-members. On network programs, the principle of clearing copyright at the source was given full recognition in these licenses. Licenses were offered to NBC and CBS and, if they were consummated, the Foundation was to pay additional sums to Ricordi, which arranged the transaction on a sliding scale providing for increased charges for network participation as well as for stations outside the NAB. After considerable delay, both networks took licenses. The amount of the license was calculated on a non-profit basis to the Foundation and NAB. It is true, of course, that a large portion of the Ricordi catalog was not protected by copyright in the United States, but it was also true that much of the catalog had already been recorded and had the advantage of being immediately available.

Shortly afterwards Schuette sent to all NAB members a compilation of records that are in the public domain.

At the Annual Convention held in Cincinnati September 16-18, 1934, a resolution offered by Schuette was adopted directing the NAB Board

"to organize a music pool, either by a reorganization of the Radio Program Foundation or otherwise for the purpose of obtaining for radio broadcasting stations the air rights to such music as may not otherwise be available or which may be made more readily available by such a pool, and to enlist the cooperation of all radio stations and their program departments in promoting the widest possible use of such music."

Unfortunately, the Foundation met with apathy on the part of the NAB Board, the networks, and the broadcasters generally. It was never adequately staffed with trained and experienced personnel. During 1934 and 1935 it was virtually dormant. By arrangement between Schuette and Ricordi, stations were permitted to renew

licenses directly with Ricordi. Finally, as of December 31, 1935, the corporation was formally dissolved.

*Anti-Trust Proceedings Against ASCAP.* Proceedings against ASCAP under the anti-trust laws were vigorously urged by Levy, WCAU, at the St. Louis Convention in November, 1932, in a plea based on his own experience.

With the breaking off of negotiations again with ASCAP on April 4, 1933, the institution of litigation became an active part of the NAB program.

On September 1, 1933, a test suit was filed against ASCAP in the Federal District Court for the Southern District of New York, in the name of Pennsylvania Broadcasting Company operating WIP, Philadelphia. The suit sought dissolution of ASCAP as an illegal combination in violation of the anti-trust laws, and asked that WIP's contract with ASCAP be declared void.

The WIP suit never came to trial, although it is at issue. With the filing of the Government suit against ASCAP, however, it was felt that every effort should be concentrated on assistance to the Government rather than on the private suit.

On August 30, 1934, in the same Federal District Court, the United States Government instituted suit under the Sherman anti-trust law asking dissolution of ASCAP, the Music Publishers Protective Association (which in March, 1933, had demanded a new rate of 25c per number of electrical transcriptions, instead of 2c per record), and the Music Dealers Service, Inc., naming approximately 125 officers and directors of the organizations, including Buck, Mills, Burkan and Paine.

By this suit the Government sought to establish a system of fees based upon the actual use made of public performance rights and to substitute competition among copyright owners for the monopolistic control exercised by ASCAP. It prayed that existing contracts of ASCAP with broadcasters and other users be declared invalid, as well as contracts between ASCAP and MPPA, and authors, composers and publishers. The suit asked that the defendants be restrained from entering into similar contracts; from joining similar firm, corporation, or society unless the facilities of such firm, association, corporation or society are open to every copyright owner on equal terms and unless license fees to be collected pursuant to licenses are determined by individual copyright owners for each musical composition owned by them; and from instituting infringement suits against any licensee upon the giving of bond by such licensee to insure payment of a reasonable charge as the court may determine or as may be arrived at between licensee and individual copyright owners. The Government's petition called attention to the

"distinction and discrimination between the license agreements exacted of radio broadcasting stations owned at least 51 per cent by newspapers, and license agreements exacted from radio broadcasting stations not so owned" and verbatim copies of the two types of license agreements were appended as exhibits.

The suit was filed just as the existing ASCAP license agreements with broadcasters were entering upon the

third year of their life, and the percentage on receipts to be paid by broadcasters was increased from 4% to 5%. While naturally the suit was more than welcome, and a great hope was aroused by its institution, it was obvious that only a miracle could bring about a successful termination of the suit in the lower court alone by September 1, 1935, when the contracts expired.

At the Annual Convention held in Cincinnati September 16-18, 1934, the NAB adopted a resolution instructing its officers and directors to support the Government suit.

An answer by the great majority of the defendants (83) was filed November 1st. It was a voluminous document of 42 pages and for the most part was a repetition of the story so often told by ASCAP at Congressional hearings, with which broadcasters are already familiar. The answer declared that a system of royalties based on actual use would be unworkable, and that broadcasters and other users were really seeking a situation under which they would pay nothing for copyrighted music. It alleged dire consequences if ASCAP were dissolved. It attempted to justify the favorable newspaper station contracts.

In the Government suit, a motion was made by the Government that a great deal of irrelevant matter be stricken from the defendant's answer. ASCAP moved that a commission be appointed by the Court to take testimony both in this country and abroad. The Court heard arguments on the motions January 11, 1935.

On March 26th, Federal Judge Knox granted the Government's motion to strip the case of irrelevant matter and denied ASCAP's motion which sought to delay the case by taking depositions all over the world. He left the way open, however, for ASCAP to reapply to take testimony on 3 or 4 relatively minor points, but only if exceptional reasons should be advanced. The Court's ruling was tantamount to a holding that the case was henceforth limited to the important issue of illegal price-fixing by ASCAP, and the way was open for expediting trial of the case.

On May 7th Andrew W. Bennett, special assistant to the Attorney General in charge of the Government suit, appeared before Judge Knox on a motion previously filed that the Court fix a definite early date for trial. He called the Court's attention to the widespread apprehension in the broadcast industry and elsewhere as to the demands that might be made by ASCAP at the expiration of existing contracts on September 1, 1935. Shortly afterwards the case was set down for trial June 10th and the Department of Justice proceeded to prepare for trial.

A further attempt by ASCAP to delay the case by a motion for postponement until fall was denied. On June 11th the case got under way before Federal Judge Goddard.

A half-dozen witnesses were heard in behalf of the Government and were subjected to lengthy cross-examination by Burkan, ASCAP counsel. On several occasions Burkan referred to the 5-year extensions secured by WCAU and the networks and asserted that there was no question of oppression or reasonableness in the charges



for music involved because several of the most important units of the industry had entered into 5-year extensions at a figure even higher than before. After less than two weeks, when it became obvious that the case could not be completed by July 1st, the Court adjourned the case until November 4th.

At the NAB Convention held at Colorado Springs, July 8-10, 1935, resolutions were adopted favoring and approving a continuation of the activities of the Attorney General and his staff in the Government suit against ASCAP, and instructing the officers and directors of the NAB to support the suit.

“to the end that royalties for the public performance of music may be determined by free and open competition among copyright owners.”

On October 17, 1935, Government counsel conferred with ASCAP counsel and with the Court, and as a result the date of trial was again deferred from November 4, 1935, to January 6, 1936. This postponement was due primarily to delay on the part of counsel in agreeing on a stipulation of facts which the Court had asked them to prepare.

As a result of the public announcement of the withdrawal of the Warner Brothers group on November 26, 1935, trial was not resumed on January 6, 1936.

*Legislation.* Prior to September 1, 1932, there had, of course, been a great deal of important legislative activity which cannot be summarized here and which, in any event, did not result in any changes in the Copyright Act of 1909.

With the breaking off of negotiations again with ASCAP on April 4, 1933, remedial legislation again became an active part of the NAB program.

At the Annual NAB Convention held in Cincinnati September 16-18, 1934, a resolution was adopted petitioning Congress to amend the copyright law by omitting the language which fixes the minimum infringement penalty at \$250 and attorney's fees, leaving the court free, in each instance, to fix such penalty as in its discretion the court shall deem proper.

In January, 1935, a surprise move occurred in the form of an attempt to commit the United States to adherence to the International Copyright Convention. Technically this is not the correct title of the treaty (the Rome Revision of the Berne Berlin Convention for the Protection of Literary and Artistic Property) but it will be used for convenience. A bill to amend the Copyright Act of 1909, designed to lead to such adherence, was introduced with the sponsorship of the Department of State and had been referred, not to the Senate Committee on Patents, but to the Senate Committee on Foreign Relations. Due to vigilance on the part of Managing Director Loucks, a protest was filed in behalf of NAB and, in conjunction with protests filed by other organizations, caused the Senate Committee to refer the bill to the Department of State for the taking of further testimony.

The original bill already contained significant modifications of the existing law, some favorable and some un-

favorable to the broadcasting industry and other groups of users. Conferences were held before an Inter-Departmental Committee, with Mr. Wallace McClure of the Department of State as chairman. By March 28, 1935, the Committee was ready to submit a revised bill in which practically all the broadcasters' objections were met in a satisfactory manner. On April 1, the revised Bill (S. 3047) was introduced by Senator Duffy of Wisconsin and was referred to the Senate Committee on Patents.

Certain of the outstanding changes proposed by the bill were summarized by Managing Director Loucks in his report to the 1935 NAB Convention as follows:

(1) the establishment of “automatic copyright” (i. e. copyright without the necessity for complying with any formalities), but with sharp limitations on the right of recovery of damages for infringement wherever registration and notice of copyright have not been had;

(2) a material enlargement of the “writings” for which copyright may be secured, but no acceptance of the general European theory of “oral” copyright;

(3) a considerable limitation of the right of injunction in cases where infringement of copyright is claimed;

(4) the complete elimination of the fixed minimum statutory damage provision of the existing law, leaving the measure of damages in each case to be determined by the court;

(5) the grouping together of all infringements by any one infringer up to the date of judgment, with the provision that any unauthorized network performance shall be regarded as the act of one infringer;

(6) the reversal of the present law, as established in the Jewell-LaSalle case, by providing that there shall be no liability, civil or criminal, for the reception of any copyrighted work by the use of a radio receiving set, except where special admission fees are charged;

(7) a provision regarding the “author's moral right,” based on the very broad provisions of the Rome Convention but so modified as to give users considerable freedom in adapting copyright material for their special requirements.

Protection is given the copyright owner against unauthorized broadcasting of any copyrighted writing (including the reading of prose or poetry). The writings to which copyright protection is extended include

“Works prepared expressly for radio broadcasting, or for recording by means of electrical or mechanical transcription, including programs and continuities in so far as they embody original work of authorship.”

The Senate Foreign Relations Committee had already voted to report favorably on the proposed ratification of the International Copyright Convention. On April 19, 1935, the Senate suddenly ratified the treaty. On April 22nd, the action was rescinded and, at the request of Senator Duffy and with unanimous consent, the measure was returned to the executive calendar.

On May 8th the Senate Patents Committee, in executive session, heard eight witnesses (including ASCAP representatives) who opposed certain phases of the Duffy Copyright Bill, as the bill was now called. The witnesses were given opportunity to submit briefs.

On June 17th the Bill (S. 3047) was favorably reported by the Senate Patents Committee. In the report Senator McAdoo, Chairman of the Committee, explained at length the elimination of the \$250 statutory minimum penalty for infringement, saying that the purpose of the amended provision is

"to accord a remedy for infringement, not a weapon under which the owners of copyright may stimulate the sale of their works."

At the NAB Convention held at Colorado Springs, July 8-10, 1935, a resolution was adopted petitioning Congress speedily to enact the Duffy Copyright Bill. On July 26th the Managing Director, jointly with officials of the Motion Picture Theatre Owners of America and the American Hotels Association, issued a statement asking passage of the bill.

On August 7, 1935, the Senate passed the bill. On August 12th it was referred to the House Committee on Patents, but Congress adjourned before any action was taken by the House Committee.

Since the convening of Congress on January 3, 1936, no progress has been made with the bill in the House. No hearings have been held and no date is set for hearings. My best information is that it will be at least several weeks before hearings are held and I believe that there is justification for the conclusion that ASCAP is at least partly responsible for causing this delay. The House Committee has, at present prospects, only one calendar day, early in March, and if hearings have not been held and if the bill is not reported by that date, the chance of its becoming law are very slight.

Another interesting development was the introduction on January 27, 1936, of H. R. 10632, by Mr. Daly of Pennsylvania. It also is a bill to amend the Copyright Act of 1909 and follows very closely the Duffy Copyright Bill. It restores, however, most of the objectionable features of the present law and of the original State Department bill, including the minimum statutory damages of \$250 for each infringement. It gives extensive copyright protection to phonograph records as such. This bill has also been referred to the House Committee on Patents.

## VII. CONCLUSIONS

To some extent this heading overlaps the next heading in which I set forth my recommendations, and it will not be necessary to enumerate certain conclusions which are implied in some of these recommendations. There are, however, certain conclusions to which separate attention should be called, even though some repetition is involved.

### A. Reason for Failure of ASCAP Negotiations

That the combined efforts of over 300 stations to negotiate an improved contract with ASCAP and to give effect to just principles of compensation endorsed by several successive NAB Conventions met with complete failure must, I think, be attributed to the following causes:

1. *ASCAP's monopolistic power.* Even with the withdrawal of the Warner Brothers group, ASCAP controls 60% to 70% of the music used by a large proportion of broadcasting stations. This music is, at least in the present state of affairs, indispensable to practically all stations, both because it is necessary to meet the needs and desires of the listening public and because it would be virtually impossible for a station to avoid innocent infringements, with their attendant heavy penalties. So long as this power exists, and no element of competition is introduced or enforced among the members of the ASCAP group, the broadcasting industry must expect to be at a heavy disadvantage in negotiating with ASCAP.

The principal weapons open to the broadcasting industry against this power are:

- (a) proceedings under the anti-trust laws, such as the pending Government suit and the pending WIP suit;
- (b) amendment of the copyright law, and
- (c) the marshalling of an independent source of supply of non-ASCAP music, so as to be able to operate broadcasting stations temporarily without ASCAP music and without danger of innocent infringement.

These are referred to again below.

2. *Defects in the copyright law.* While I am treating this as a separate factor, it is closely interwoven with the first factor. The defects in the existing copyright law, which have made it possible for ASCAP to have and to wield arbitrary monopolistic power, are

- (a) The provision imposing minimum statutory damages of \$250 for each infringement, no matter how innocent;
- (b) The interpretation given to the law by the courts that, in the case of a network program, for example, not only the originating station but every affiliate station broadcasting the program and every receiving set in a hotel public room, restaurant, or other public place of a commercial character is infringing; in other words, the failure to recognize the principle of clearing copyright at the source;
- (c) The failure of the law to make provision for obviously innocent and unavoidable infringement, such as a broadcast of a football game during which a college band plays a copyrighted song;
- (d) The failure of the law to impose suitable restrictions on combinations and pools of copyright owners.

3. *The lack of an independent supply of music.* This is sufficiently covered both above and under a later sub-heading.

4. *The discriminatory ASCAP contracts of the networks.* The networks are obviously ASCAP's largest individual customers. In turn, they are very important members of NAB and as such have regularly been represented on NAB's Board of Directors and, until the last few weeks, have played an important role in all NAB copyright activities, including negotiations with ASCAP.

By securing more favorable contracts from ASCAP in 1932 than were given the rest of the industry, they were placed in a position where their interests in copyright have proved to be opposed to the interests of independent

stations from a financial point of view (although not, I believe, from a sound, long-range point of view). They face a substantially increased financial burden for copyright licenses if any method of compensation, such as a per piece or measured service basis, is adopted, even though the total paid to ASCAP is no larger than before. This accounts, I believe, at least in large measure, for their opposition to the per-piece or measured service plan, for their attitude toward five-year extensions of ASCAP contracts, for their opposition to the Government suit, and perhaps other points in the policies followed by them.

The discriminatory ASCAP contracts are, in my opinion, the fundamental reason for the lack of a united front on copyright in the broadcasting industry today.

5. *The network-affiliate contracts.* The group of stations affiliated with the two national network companies is very large and constitutes a very important group. When they are forced to follow a certain course of action in copyright, it is almost inevitable that the remaining independent stations will be forced to do likewise.

No more effective weapon was placed in the hands of ASCAP than the provisions contained in the network-affiliate contracts requiring the affiliate to have ASCAP and other licenses. These provisions subjected the affiliate stations to the danger of heavy liability not only to ASCAP but also to the networks.

6. *Pressure exercised by the networks.* As I have already stated, a member of the NAB Board has been informed by ASCAP that their telegraphic demand for signed contracts was *at the insistence of both major networks*. Certain other circumstances tend to corroborate this. If this is true, the loss of the last opportunity for negotiations must be ascribed to the networks as well as to ASCAP.

## B. Prospect of Success in Future Negotiations with ASCAP

By success in future negotiations with ASCAP, I mean primarily, of course, the establishment of a sound basis for compensation, such as the per-piece or measured service plan, without any substantial increase in the amounts paid to ASCAP. I mean also the achievement of certain related objectives which need not be summarized here.

It is my conclusion that no important objective will be accomplished by more negotiations with ASCAP during the period covered by the five-year renewals. This conclusion is based on the following reasons:

1. The obstacles enumerated under the preceding sub-heading are still present, and unless removed they will continue to be present, and to block any progress by more negotiation.

2. By their conduct after the 1932 contracts had been forced on the broadcasting industry, Mills and other ASCAP representatives made it clear that, in spite of their oft-repeated protestations of willingness to negotiate, they were not willing to revise the contracts in any respect except on the basis of substantially increased compensation, and that their invitations to negotiate were inspired,

at least in part, by a desire to delay steps contemplated by the NAB or for other reasons to gain time. There is no reason to believe that any different tactics will be pursued during the next five years.

3. The only occasions in the past on which ASCAP has seemed really willing to negotiate have been when by reason of developments on other fronts the broadcasting industry seemed on its way toward achieving a measure of progress toward bargaining equality.

A corollary conclusion is that, to have any hope of success, the broadcasting industry must concentrate on removing so far as possible the obstacles which have been enumerated under the previous sub-heading. Such a program includes litigation, legislation, the establishment of an independent source of music supply, doing away with the discriminatory ASCAP contracts, eliminating the objectionable features from network-affiliate contracts, and any and all steps and proceedings necessary to these ends.

## C. The Music Publishers Holding Corporation

No one contemplates with pleasure the prospect of increased cost for music due to (a) ASCAP's refusal to reduce its fees to a degree corresponding to the recent diminution of its repertoire and (b) the necessity of having to deal separately with, and pay license fees to, the Warner Brothers group, represented by Music Publishers Holding Corporation.

On the other hand, for the first time in the history of the broadcasting industry, progress was made toward sound objectives in the negotiation of the revised MPHC contract. The favorable features of this contract have already been summarized. If the broadcasting industry will give its support and cooperation, still further progress has been promised by MPHC and will be achieved with the negotiation of a further contract at the expiration of the current 3-months' period expiring March 31, 1936. If, on the other hand, broadcasters join in any movement to boycott Warner music, or refuse to take MPHC licenses for any reason other than a bona fide lack of need for such licenses, any further progress will be seriously prejudiced.

It is my conclusion that, in the present state of the law and the actual condition of affairs, it is to the advantage of all users of music and of the public that the Warner Brothers group be maintained as a separate licensing organization, for the following reasons:

1. Some possibility of competition is opened up in a field in which ASCAP now enjoys a virtual monopoly.

2. Important progress may be made toward developing a per-piece or measured service plan of compensation, demonstrating its feasibility and advantages and serving as an example to ASCAP and other licensing pools.

3. An ASCAP victory over the Warner group, whereby the latter is forced back into ASCAP, would be disastrous in its effect on music publishers and composers generally and on any tendency or willingness among them to work toward a sound solution of the problem.

Needless to say, my conclusions are *not* reached with a view to assisting the Warner Brothers group as such, but solely and simply because of the reasons above set forth.

#### D. The Government Suit

As stated in the NAB Bulletin sent out January 13, 1936, the Government suit "is as important now as it has been at any time in the past and its prosecution should be pursued with vigor."

Certain considerations must, however, be frankly faced. Among them are the following:

1. The Government's suit was definitely weakened and prejudiced by the action of the networks and WCAU in obtaining five-year extensions on the eve of trial.

2. The situation presented by the Government's petition has been somewhat altered by the withdrawal of the Warner Brothers group, and the actions of ASCAP and the networks in connection therewith.

3. The discriminatory network contracts (which are not mentioned in the Government's petition) and the objectionable provisions in the network-affiliate contracts have assumed an importance to the issues raised by the suit, not heretofore apparent.

4. The forcing of independent stations to accept five-year extensions with a diminished repertoire, by January 15, 1936, raises issues that may be of importance to the successful prosecution of the suit.

5. The terms of the new contracts between ASCAP and its members are not known and may contain provisions pertinent to the case.

Because of these considerations, it is my conclusion that the Attorney General should be informed of all the developments covered by this report and should be urged to have an intensive study made of the suit in the light of possible new issues and new evidence. It may be that the Government's petition should be amended or that new or supplemental proceedings should be instituted, and it would be unfortunate if the pending suit should result unfavorably for want of the taking of proper steps at this time. This study should be made and concluded at the earliest possible date, after which the suit in its present or in modified form should be prosecuted with all vigor.

#### E. The Duffy Copyright Bill

It is my conviction that no effort should be spared in attempting to secure enactment of the Duffy Copyright Bill in the form in which it was passed by the Senate in August, 1935. This is not because the bill remedies all the injustices worked by the present law or because it is free from objectionable new features. Neither is true. It *is* because it goes far to remedy one defect in the present law which overshadows all others; it eliminates the minimum statutory damage of \$250 for each infringement, no matter how innocent, without which the arbitrary power of ASCAP to force unacceptable and unjust contracts on the broadcasting industry and on other groups of users of music would be greatly lessened.

Recent developments, however, force me to the conclusion that

(1) without a determined effort on the part of the broadcasters and other groups of users, the Duffy Bill will not be passed by the House this session, or,  
(2) even if it reaches the state of being voted on by the House, there is serious danger that the \$250 minimum damage provision will be restored, and that only the utmost vigilance will prevent this.

If the bill is not passed this session, then the whole procedure must be recommenced, since the next session will be that of a new Congress. If this is so, then it is proper to consider whether the broadcasting industry should not then endeavor to secure a remedying of other defects in the present law not cured by the Duffy Bill. What I have in mind is that, after acquainting the Senate and House Patent Committees with the more recent developments and problems, we should ask definitely for provisions that would

(1) render any licensing pool illegal unless it operates on a per-piece or measured service basis, is open on fair and equitable terms to all persons owning or controlling performing rights, and preserves competition between such persons, and

(2) confine infringement suits, in the case of network programs, to the originating station.

#### F. An Independent Music Supply

It is my conclusion that the failure of the Radio Program Foundation to achieve the results expected of it is *not* due to any want of inherent merit in this part of the NAB program but rather (1) inadequate financing, (2) apathy on the part of the NAB, its directors and members and the networks, and (3) insufficient experienced personnel. There were, of course, minor defects and mistakes which, in my opinion, could all be remedied if another attempt is made.

It is my further conclusion that there is no more important feature of sound copyright program for the NAB than the establishing of an independent source of music supply such as was attempted in the Radio Program Foundation. This is not the place in which to present a detailed proposal; it should be made in a separate report confined to this one subject. Among the objectives to be accomplished by such an institution are the following:

1. The purchase, sales and licensing of performing rights.

2. The compilation and distribution of catalogs.

3. The collecting of information with respect to public domain music and, if necessary, the making of such music available.

4. The compilation and distribution of information regarding music (whether copyrighted, by whom controlled, and whether in the public domain) used in the manufacture of electrical transcriptions and phonograph records.

5. Entering into agreements with foreign copyright owners and licensing pools.

6. If necessary, the publication of music.

Not all these functions need necessarily be lodged in a separate corporation. Some of them (such as the distribution of catalogs) might well be considered to be more properly exercised directly by the NAB, through a copyright bureau.

There are, of course, problems with reference to the form of corporation, financing, the sale of stock, limitations on stock control, the profit or non-profit character of the enterprise, etc., which must be studied and in connection with which legal advice will be necessary. If the corporation is adequately financed and supported, none of those problems offers any serious difficulty.

### G. The International Situation

On February 27, 1936, a meeting of the *Union Internationale de Radiodiffusion* (U. I. R.) opens in Paris, and during a week or more one of the principal subjects of debate will be copyright. The U. I. R. is composed of practically all the European broadcasting organizations and of many outside of Europe. In this country, the NAB is a member. The two networks and one independent clear channel station are the only members from the broadcasting industry. The copyright problems revolve mainly on the forthcoming international conference on copyright to take place next September, and have to do with proposals that the manufacturers of electrical transcriptions and phonograph records, as such, be given extensive copyright protection, and likewise that performing artists be given similar protection. These proposals are being vigorously urged and cannot be ignored.

If the United States should ultimately adhere to the Convention, it will be bound to give effect to its provisions in the law of this country. It is my conclusion that within practical limits, the NAB should do everything in its power to support the U. I. R. in the position it is taking in opposition to the proposals. It is also my conclusion that any adherence to the Convention by the United States should be postponed until after it is known what the provisions of the Convention are to be.

## VIII. RECOMMENDATIONS

My recommendations must necessarily be somewhat in the alternative, depending on whether and how the Board of Directors chooses between the following courses of action:

1. To determine itself the copyright program for the NAB until the next Annual Convention, including the adoption or rejection of my recommendations hereinafter set forth, or

2. To call a special meeting of the NAB and to refer some or all of my recommendations to the membership for action, or

3. To refer this report with its conclusions and recommendations to the membership of the NAB, and to ask the members to determine whether a special meeting shall be called.

There is evidence of some sentiment in favor of a membership meeting at an early date but, without a poll of the members, I am unable to tell whether the sentiment

is sufficiently widespread to justify the calling of such a meeting, with its attendant expense and inconvenience to the members. Under the By-Laws, a special meeting of the members may be called on 15 days' notice on request of either eight directors or of one-third of the members. The suggestion has been made that the date of the Annual Meeting be advanced to some date in the early future but I am inclined to believe that a special meeting would be preferable. A special meeting could be more easily confined to the pressing problems (principally in copyright), would be free of election turmoils, and would not be so likely to be interrupted by social functions.

I am not making any recommendations, therefore, as to whether a special meeting should or should not be called. Both the advantages and the disadvantages of such a course are more or less obvious and need not be recited. It seems to me that the answer to the question depends largely on whether the Board chooses to act on certain of the recommendations set forth below or to refer them to the members for discussion.

My recommendations are as follows:

### Printing of the Report

1. That the Managing Director be authorized to print and distribute this report, together with a statement of the Board's actions thereon, to NAB members and to such other persons as in the judgment of the Managing Director have a legitimate interest therein.

### Approval and Ratification of Actions of the Managing Director and the Advisory Committee

2. That the actions of the Managing Director and his Advisory Committee in the field of copyright since the December meeting of the Board of Directors be approved and ratified, both generally and particularly with respect to the following:

(a) Their attempts to negotiate a better license arrangement with ASCAP and their acceptance in the interim of a temporary arrangement cancellable on two days' notice.

(b) Their attempts to negotiate a better license agreement with Music Publishers' Holding Corporation and their actions in advising broadcasters of the improved terms of the revised contract and in acting as intermediary for stations desiring to accept said contract.

(c) Their adoption of the "Tentative Program of Activity in Behalf of the NAB," as contained in the printed NAB bulletin and issued January 13, 1936.

### Policies with Respect to Copyright

3. That the resolutions adopted by the NAB at its 1935 and earlier Conventions, declaring in favor of the per-piece or measured service plan of compensation for performing rights be re-affirmed.

4. That all discriminations in ASCAP license agreements (as well as in the license agreements of any other copyright pool) be declared wrongful and against the best interests of the broadcasting industry and of the

public, including the discriminations involved in the network contracts, the newspaper-owned station contracts and the WCAU contract, and such discrimination should be done away with.

5. That those provisions in network-affiliate contracts requiring affiliate stations to have ASCAP or other licenses be declared to constitute an undue burden on affiliate stations, a serious obstacle to successful negotiations both in behalf of affiliate stations and of all other independent stations, and an unfair weapon in the hands of ASCAP and the networks, and such provisions should be eliminated from said contracts.

6. That, in the case of network programs, the NAB declare itself in favor of clearance of copyright at the source so that only the originating station will be held responsible for infringement and affiliate stations will be under no obligation to secure licenses with respect to such programs or to bear responsibility for any infringements that may occur therein.

7. That, generally, Part A of the above-mentioned "Tentative Program of Activity in Behalf of the NAB" be approved as a correct statement of the policies to be followed in negotiating license arrangements with ASCAP and other licensing pools.

8. That the action of ASCAP in refusing to reduce its fees by an amount corresponding to the diminution of its repertoire consequent on the withdrawal of the Warner Brothers group be declared to be arbitrary and unjust.

9. That the possibility of competition and of a sound basis for compensation offered by the withdrawal of the Warner Brothers group from ASCAP be declared, in the present state of the law and in view of the arbitrary power exercised by ASCAP, to be wholesome and in the interest of the broadcasting industry; that broadcasters be urged to do everything in their power to prevent a forcing of the Warner Brothers group to return to ASCAP, and that any attempt to refuse to deal with the Warner Brothers group for such purpose be condemned.

10. That the Officers and Directors of the NAB be authorized and instructed to take any and all necessary and proper steps to put the foregoing policies into effect.

#### The Government Suit

11. That the Managing Director be instructed to bring the contents of this report, together with any other facts pertinent thereto, to the attention of the Attorney General; to urge upon the Attorney General the imperative necessity for an immediate study of the Government suit against ASCAP and for a determination whether amendments or new or additional proceedings are necessary or advisable to attain the objectives sought to be accomplished by that suit; and to urge upon the Attorney General the imperative necessity for an early resumption of the prosecution of that suit either in its original or in amended or modified form.

#### The Duffy Copyright Bill

12. That the Managing Director be instructed to bend every effort to bring about enactment of the Duffy Copy-

right Bill (S. 3047) in the form in which it passed the Senate, and to oppose any attempt to insert or restore minimum statutory damages or penalties for infringement; and, if it should appear that enactment of the Bill in satisfactory form is impossible at this session, the Managing Director is further instructed to consider and to report back to the Board of Directors on the advisability of seeking further amendments to accomplish the following objectives:

(a) To render any licensing pool illegal unless it operates on a per-piece or measured service basis, is open on fair and equitable terms to all persons owning controlling performing rights, and preserves competition between such persons.

(b) To confine infringement suits, in the case of network programs, to the originating station.<sup>1</sup>

#### Radio Program Foundation

13. That the need for the immediate establishment of a corporation having substantially the same purposes and powers as the Radio Program Foundation be recognized, and that the Managing Director be instructed to prepare and submit to the Board at an early date a detailed plan and program for the establishment of such a corporation and its successful operation.

#### International Copyright Problems

14. That the importance of the copyright questions to be discussed at the U. I. R. Meeting to be held at Paris, beginning February 27, 1936, and to be determined at the Conference to be held at Brussels, beginning September 7, 1936, be recognized and that the Managing Director be instructed to take any steps that may be necessary to protect the interests of American broadcasters in the questions to be discussed and decided.

#### Assistance to the Managing Director

15. That the Managing Director be authorized to retain legal counsel and such other assistance as may in his judgment be necessary or advisable for the successful accomplishment of the objectives herein decided upon.

\* \* \* \*

In pursuing this or any other program it cannot be made too clear that it is in the best interest not only of the broadcasting industry but of the public that every encouragement be given to writers and composers of music, both for the sake of the advancement of their art as such and in order that a constant supply of music of the best quality be made available to listeners. To accomplish this, as I know is realized by the entire industry, no scheme will succeed that attempts to do anything less than compensate them, and compensate them generously, for their work and their talent. It is not that the broadcasting industry desires, or ever has desired, to escape this obligation that it has engaged in its copyright activi-

<sup>1</sup> The Duffy Copyright Bill, in its present form, goes a long way towards, but still falls somewhat short of, accomplishing this objective.

ties but rather that it desires, and justly, that it be required to pay only for what it uses and that the fees paid by it actually reach those to whom they are due.

Respectfully submitted,

JAMES W. BALDWIN,  
*Managing Director.*

## RECORD OF BOARD ACTION

In acting on the above recommendations, the Board by majority vote adopted the following:

### Printing of the Report

1. That the Managing Director be authorized to print and distribute this report, together with a statement of the Board's actions thereon, to NAB members and to such other persons as in the judgment of the Managing Director have a legitimate interest therein.

### Approval and Ratification of Actions of the Managing Director and the Advisory Committee

2. That the actions of the Managing Director and his Advisory Committee in the field of copyright since the December meeting of the Board of Directors be approved and ratified, both generally and particularly with respect to the following:

(a) Their attempts to negotiate a better license arrangement with ASCAP and their acceptance in the interim of a temporary arrangement cancellable on two days' notice.

(b) Their attempts to negotiate a better license agreement with Music Publishers' Holding Corporation and their actions in advising broadcasters of the improved terms of the revised contract and in acting as intermediary for stations desiring to accept said contract.

(c) Their adoption of the "Tentative Program of Activity in Behalf of the NAB," as contained in the printed NAB Bulletin and issued January 13, 1936.

### Policies with Respect to Copyright

3. That the resolutions adopted by the NAB at its 1935 and earlier Conventions, declaring in favor of the per-piece or measured service plan of compensation for performing rights be reaffirmed.

4. That all discriminations in license agreements in respect of commercial stations be declared wrongful and against the best interests of the broadcasting industry and of the public, and such discriminations should be done away with. (Note: Specific references to actual existing discriminatory contracts were stricken from the recommendation as originally made.)

6. That, in the case of network programs, the NAB declare itself in favor of clearance of copyright at the source so that only the originating station will be held responsible for infringement and affiliate stations will be under no obligation to secure licenses with respect to such programs or to bear responsibility for any infringements that may occur therein.

8. That the action of ASCAP in refusing to reduce its fees by an amount corresponding to the diminution of its repertoire consequent on the withdrawal of the Warner Brothers group be declared to be arbitrary and unjust.

10. That the Officers and Directors of the NAB be authorized and instructed to take any and all necessary and proper steps to put the foregoing policies into effect.

### The Duffy Copyright Bill

12. That the Managing Director be instructed to bend every effort to bring about enactment of the Duffy Copyright Bill (S. 3047) in the form in which it passed the Senate, and to oppose any attempt to insert or restore minimum statutory damages or penalties for infringements; and, if it should appear that enactment of the bill in satisfactory form is impossible at this session, the Managing Director is further instructed to consider and to report back to the Board of Directors on the advisability of seeking further amendments to accomplish the following objectives:

(a) To render any licensing pool illegal unless it operates on a per-piece or measured service basis, is open on fair and equitable terms to all persons owning controlling performing rights, and preserves competition between such persons.

(b) To confine infringement suits, in the case of network programs, to the originating station.

### Radio Program Foundation

13. That the need for the immediate establishment of a corporation having substantially the same purposes and powers as the Radio Program Foundation be recognized and that the Managing Director be instructed to prepare and submit to the Board at an early date a detailed plan and program for the establishment of such a corporation and its successful operation.

### International Copyright Problems

14. That the importance of the copyright questions to be discussed at the U. I. R. Meeting to be held at Paris, beginning February 27th, 1936, and to be determined at the conference to be held at Brussels, beginning September 7th, 1936, be recognized and that the Managing Director be instructed to take any steps that may be necessary to protect the interests of American broadcasters in the questions to be discussed and decided.

### Assistance to the Managing Director

15. That the Managing Director be authorized to retain legal counsel and such other assistance as may in his judgment be necessary or advisable for the successful accomplishment of the objectives herein decided upon.

The Board extended the authority given their Managing Director in December to select as Advisory Committee to confer and advise with him.

## Minority Report of Harry C. Butcher

I heard Jim Baldwin read the foregoing report at the Chicago Board meeting.

To attempt to answer or even to clarify a 21,000-word report covering several years of copyright history would require perhaps another 21,000 words. You would "tune-out" long before you got to me.

The apparent purpose of rehashing past history seems to be to make the networks the "goats." I notice particularly that the report disregards what to me is the unquestionable fact that all of the NAB copyright activities to date have resulted in increasing the cost of music to broadcasters generally and engendering bitterness among various groups of broadcasters.

Last summer after two years and a half of negotiation, the broadcasters had no idea on what terms they could renew their ASCAP licenses and they did not know whether they could renew for one year, or five, or ten, on any terms. It is perfectly true that the networks played a leading part in negotiating a new 5-year contract, enabling all broadcasters to go on without paying any more than they had been paying, with the sole exception of the networks themselves, who did consent—in order to get all broadcasters including themselves out of their difficulties—to pay substantially larger sustaining fees for their key stations. It is not the fault of the networks that many broadcasters were induced not to avail themselves of this opportunity.

But words, words and words—talk, talk and talk—are not what broadcasters want and need on copyright. They want action along constructive lines.

So I will content myself with a few observations—and the reiteration of a practical suggestion for constructive united action made at the Chicago meeting.

I have already said that I am not going to attempt to answer Jim Baldwin but I am tempted to hit a few of the high spots. On the authority of some anonymous informant in ASCAP, it is stated that the networks inspired or influenced the sending by ASCAP of the telegram which required all broadcasters to renew their contracts by January 15 of this year. That statement is untrue. Representatives of both networks were called into a meeting of the entire ASCAP Board on January 10 and the telegram was read to them and they were informed that it had already been sent. I have confirmed by numerous witnesses that this was the case and that the networks had no knowledge of the telegram in advance.

Jim Baldwin's report furthermore seems to me to be founded on basic misconceptions, the most important of which is that there is a fixed and definite amount of money to be paid for copyrights and that the question at issue is how much of that fixed amount the independent station should pay and how much the networks should pay. This is not the fact. All the copyright interests are unanimous in seeking larger and larger sums from all broadcasters, whether network or independent stations. Those who subscribe to this misconception have wittingly or unwittingly fallen for some of our opponent's

insidious propaganda which is intended to split the broadcasters and which, unfortunately, is showing rather ghastly success.

It also seems to me that undue stress is put on the fact that our network contracts require affiliated stations to have ASCAP licenses. This clause was put into contracts years ago for the protection of the local stations, ourselves and the clients of both. It is not practical to carry on network broadcasting without an ASCAP license. It is not practical to carry on network broadcasting without transmitters at local stations. But the local stations don't get indignant at us because they have to have transmitters.

Our contracts also recognize that affiliated stations must have licenses from the Federal Communications Commission and our mutual operations are based upon performance thereunder. If we were to remove the ASCAP clause from our contracts, would it lessen the local station's need for an ASCAP license any more than deletion of reference to the Government license in our contracts would lessen the local station's need of that license?

Furthermore, anyone who actually knows the temper and disposition of ASCAP is well aware that it would be utterly impossible to persuade ASCAP to allow local stations to go unlicensed. ASCAP on the contrary was utterly determined that there should be neither network broadcasting nor local broadcasting unless the stations were licensed for both. We don't control ASCAP. (We sometimes wish we did.)

Now, finally, for a constructive note. I find no mention in Mr. Baldwin's report or press release (in which he sums up the batting average of his own recommendations to the Board) of the most promising development at the Chicago meeting. I refer to a general agreement which was reached at the end of that meeting. This agreement was to the effect that the broadcasters, including the controlling and operating heads of the network companies, should sit down and try to put an end to the bickering and the name-calling, and see if together they could work out some constructive actions for and in behalf of all broadcasters. This suggestion, made by Ed Craig of WSM, Nashville, was endorsed by all who attended the Chicago meeting. The heads of my company stand willing to participate whole-heartedly in such a meeting. We are ready to support any fair and constructive measures which such a meeting may evolve. Such a meeting should consider among other things a practical plan for creating, financing and operating a music pool for all broadcasters. I urge that immediate action be taken to convene such a meeting. And until a program looking toward the future has been worked out, I deplore the issuance of statements and reports which serve only to split our own ranks to the advantage of our adversaries, and I suggest that until the results of such a meeting are made known, every broadcaster should preserve an open mind.

Respectfully submitted,

HARRY C. BUTCHER.



# The National Association of Broadcasters

NATIONAL PRESS BUILDING \* \* \* \* \* WASHINGTON, D. C.  
 JAMES W. BALDWIN, Managing Director

## NAB REPORTS

Copyright, 1936. The National Association of Broadcasters

Vol. 4 - - No. 10  
 FEBRUARY 20, 1936

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### FAVORABLE REPORT ORDERED ON WHEELER RADIO BILL

The Senate Committee on Interstate Commerce has ordered a favorable report on the Wheeler radio bill (S. 2243) relating to the allocation of radio facilities. The bill was slightly amended and as it was ordered reported it provides that Section 302 of the Communications Act of 1934 be repealed and that Section 2, subsection (b) of Section 307 of the Act be amended to read as follows:

"(b) In considering applications for licenses, and modifications and renewals thereof, when and in so far as there is demand for the same, the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient and equitable distribution of radio service to each of the same."

### COPYRIGHT HEARINGS ANNOUNCED

The House Committee on Patents on Wednesday announced that it will hold hearings on various copyright bills three days a week for four weeks.

The dates announced include February 25, 26 and 27, and March 3, 4, 5, 10, 11, 12, 17, 18 and 19.

The first hearings will be devoted to ASCAP, the next to the Authors League and the American Dramatists and other writing interests, while the third and fourth weeks' hearings will be devoted to radio, hotel and motion picture interests.

### FEDERAL RADIO EDUCATION COMMITTEE

Plans and methods of securing greater cooperation between educators and broadcasters for the extension and improvement of the use of radio, were the subjects of a two-day conference on Monday and Tuesday of this week.

United States Commissioner of Education, J. W. Studebaker, presided over the sessions of the Committee, which was named by the Federal Communications Commission.

After considering suggestions for a number of surveys and successful practices in the educational and public service uses of radio, and adequate training of personnel, the Committee voted to set up five sub-committees to report at the next meeting.

Members of the Federal Radio Education Committee attending the meeting were:

Waldo Abbot, University of Michigan; James W. Baldwin, National Association of Broadcasters; Morse A. Cartwright, American Association for Adult Education; W. W. Charters, Ohio State University; H. W. Chase, New York University; A. G. Crane, Uni-

### AMERICAN SOCIETY OF RECORDING ARTISTS

The new attempt by the American Society of Recording Artists to license stations apparently grows out of the decision in the so-called "Waring-WDAS" case. The decision rendered in this case by Judge McDevitt of the Court of Common Pleas in Philadelphia does not, in my opinion, justify the interpretation placed upon it by the Society. The opinion of Judge McDevitt, of course, has no effect outside the State of Pennsylvania. Further, through special counsel, the NAB has filed exceptions to Judge McDevitt's decision and these exceptions are scheduled for argument before a three-judge court on February 27. If Judge McDevitt's decision is affirmed we will take an appeal.

The important thing for members to consider is that the issues in this case *have not been finally adjudicated*. It is my recommendation that members do not recognize the American Society of Recording Artists until their rights have been finally determined.

JAMES W. BALDWIN,  
*Managing Director.*

versity of Wyoming; Walter Damrosch, National Broadcasting Company; M. S. Eisenhower, Department of Agriculture; Willard E. Givens, National Education Association; Tom C. Gooch, Daily Times Herald, Dallas, Texas; Rev. George Johnson, Catholic University of America; Lambdin Kay, Radio Station WSB, Atlanta, Georgia; John F. Killeen, Federal Communications Commission; Cline M. Koon, Office of Education; Mrs. B. F. Langworthy, President, National P. T. A.; Luella S. Laudin, Women's National Radio Committee; L. R. Lohr, National Broadcasting Company; H. B. McCarty, University of Wisconsin; C. S. Marsh, American Council on Education (for Dr. Zook); Allen Miller, University Broadcasting Council; E. R. Murrow, Columbia Broadcasting System; A. D. Ring, Federal Communications Commission; Morse Salisbury, Department of Agriculture; John Shepard, III, Yankee Network; Levering Tyson, National Advisory Council; Judith C. Waller, National Broadcasting Company; Frederick S. Willis, Columbia Broadcasting System; William Dow Boutwell, Office of Education; C. F. Klinefelter, Office of Education; J. W. Studebaker, U. S. Commissioner of Education, Presiding.

Other members of the Committee are: Edgar Bill, Radio Station WMBD; Dr. S. Parkes Cadman, Federal Council of Churches of Christ in America; Gardner Cowles, Jr., Des Moines Register; Lester E. Cox, Radio Station KWTO; Edwin Craig, Radio Station WSM; John Elmer, Radio Station WCBM; O. D. Fisher, Radio Station KOMO; Leo J. Fitzpatrick, president, National Association of Broadcasters; William Green, American Federation of Labor; Mrs. Rose Jacobs, Hadassah Women's Zionist Organization; Dr. C. B. Jolliffe, Radio Corporation of America; A. J. McCosker, Bamberger Broadcasting Service; Mrs. Harold B. Milligan, Women's National Radio Committee; Dr. Robert A. Millikan, California Institute of Technology; and Dr. William S. Paley, Columbia Broadcasting System.

### GEORGIA STATION MOVE RECOMMENDED

The Liberty Broadcasting Company (WTFI) applied to the Federal Communications Commission to move the station from Athens to Atlanta, Ga. The station operates on 1450 kilocycles, 500 watts power, and unlimited time.

Examiner Ralph L. Walker, in Report No. I-195, recommends that the change be granted on condition that the antenna to be installed shall comply with the provisions of the Commission's rules and regulations and upon the further condition that the exact station location to be hereafter selected shall be subject to the approval of the Commission. The Examiner said also that "it appears from the record that there is a need in the Atlanta area for the additional service which the applicant proposes to render, and that the operation of WTFI as contemplated will not result in any material increase in objectionable interference to existing stations."

### C. C. I. R. MEETING

In preparation for the participation of the United States in the Bucharest 1937 Conference of the International Consulting Committee on Radio, the Federal Communications Commission held a meeting on Friday, February 14, of the various governmental and private interests involved. T. A. M. Craven, chief engineer of the Commission, presided and was made chairman of the general committee. Four subcommittees were appointed. The names of the respective chairmen and vice chairmen and the questions to be handled by each of the subcommittees follow:

**ORGANIZATION AND TECHNICAL COMMITTEE**—Chairman, Dr. J. H. Dellinger; Vice Chairman, Major J. H. Gardner, Jr. Questions: Selectivity curves; wave propagation curves; revision and renumbering of opinions; radio symbols and terminology; methods of measuring field intensity and noise.

**FREQUENCY ALLOCATION AND RELATED PROBLEMS**—Chairman, E. K. Jett; Vice Chairman, Gerald C. Gross. Questions: Harmonics; shared bands; anti-fading antennas.

**OPERATIONS**—Chairman, Capt. S. C. Hooper; Vice Chairman, E. M. Webster. Questions: Wave characteristics in respect to direction finding; field intensities necessary for reception; high-frequency mobile calling.

**BROADCASTING QUESTIONS**—Chairman, A. D. Ring; Vice Chairman, Raymond Asserson. Questions: Synchronization of broadcast stations; broadcast frequency separation; reduction of electrical interference; single sideband in broadcasting; measurements and tolerances, electrical interference to broadcasting; mitigation of electrical interference in receiving equipment; measurement and tolerances, background noise.

These subcommittees will meet again March 3 and 4, and the full committee will meet March 26.

Attendance at the meeting was as follows:

Lieut. W. B. Ammon, Navy Department; R. D. Armiger, Shortwave Institute of America; Raymond Asserson, Federal Communications Commission; E. K. Cohan, Columbia Broadcasting System; H. L. Cornell, American Steamship Owners Association; A. J. Costigan, Radio Corporation of America; T. A. M. Craven, Federal Communications Commission; Roland C. Davies, Editor, Telecommunication Reports; Dr. J. H. Dellinger, Bureau of Standards; Francis C. de Wolf, Department of State; Lloyd Espenschied, Bell Telephone Laboratories; Maj. J. H. Gardner, Jr., War Department; E. J. Girard, Mackay Radio and Telegraph Company; Gerald C. Gross, Federal Communications Commission; Capt. S. C. Hooper, Navy Department; C. W. Horn, National Broadcasting Company; E. K. Jett, Federal Communications Commission; Dr. C. B. Jolliffe, Radio Corporation of America; William N. Krebs, Federal Communications Commission; J. J. Lamb, American Radio Relay League; W. B. Lodge, Columbia Broadcasting System; J. C. McNary, National Press Building; Paul D. Miles, Mackay Radio and Telegraph Company; C. E. Pfautz, Radio Corporation of America; A. D. Ring, Federal Communications Commission; Oswald F. Schuette, Shortwave Institute of America; B. J. Shimeall, Federal Communications Commission; Judge Eugene O. Sykes, Federal Communications Commission; K. B. Warner, American Radio Relay League; E. M. Webster, Federal Communications Commission; L. E. Whittemore, American Telephone and Telegraph Company; W. V. Whittington, Federal Communications Commission.

### DENIAL RECOMMENDED FOR GEORGIA STATION

The L & S Broadcasting Company filed an application with the Federal Communications Commission for the erection of a new station at Atlanta, Ga., to use 1210 kilocycles, 100 watts power and daytime hours of operation.

Examiner R. H. Hyde in Report No. I-196 recommended that the application be denied. He states that the evidence presented in support of the application does not show that there is a public need for the construction and operation of the proposed

new station. He says also that "there is no convincing proof that the interests of listeners, the requirements of religious, educational, civic, and charitable organizations or the demands of local talent, desiring means for expression, justify the construction of another station."

### SECURITIES ACT REGISTRATIONS

The following companies have filed registration statements with the Securities & Exchange Commission under the Securities Act:

Sunstrand Machine Tool Company, Rockford, Ill. (2-1899, Form A-2).

Iniskin Drilling Company, Los Angeles, Cal. (2-1900, Form A-1).  
American Electric Securities Corporation, New York City (2-1902, Form A-2).

Administered Fund Second, Inc., Jersey City, N. J. (2-1903, Form A-1).

Varnishes & Paints, Inc., Hamtrack, Mich. (2-1904, Form A-1).  
Northern Oklahoma Gas Company, Ponca City, Okla. (2-1905, Form A-1).

Iron Foreman Mfg. Company, Portland, Ore. (2-1907, Form A-2).

T. H. Banfield et al., Portland, Ore. (2-1908, Form F-1).

Independence Fund of North America, Inc., New York City (2-1909, Form C-1).

### RENEWAL OF WRBL RECOMMENDED

The facilities of Station WRBL, Columbus, Ga., were requested of the Federal Communications Commission and at the same time the station asked for license renewal.

Examiner George H. Hill in Report No. I-197 recommended that the license renewal be granted. The Examiner found that some of the programs of the station were objectionable but the applicant station "has assured the Commission that programs involving lottery or gift enterprise will not in the future be broadcast over the station and that the station will in all respects be operated in accordance with the rules and regulations of the Commission." The entire record considered, says the Examiner, it is his "opinion that the granting of the application of WRBL for renewal of license would serve the public interest."

### KABC LABOR CASE

The National Labor Relations Board has announced that a complaint has been filed against Broadcasting Station KABC, San Antonio, Texas, by the Radio Division of Local No. 60, International Brotherhood of Electrical Workers et al.

The complaint alleges that the company discriminatorily discharged five employees, and has at all times refused to bargain collectively with the union. Hearing will be held at San Antonio on March 3.

### RECOMMENDS DISMISSAL WITH PREJUDICE

Broadcasting Station WCMI, Ashland, Ky., applied to the Federal Communications Commission to change its frequency from 1310 to 1350 kilocycles, its power from 100 to 1,000 watts and to operate unlimited time as at present.

Examiner P. W. Seward in Report No. I-198 "recommends that the motion offered by the applicant for continuance of this case be denied" and "that the motion offered by respondents to dismiss with prejudice be granted and this case is dismissed with prejudice." Counsel for the applicant at the hearing stated that an amendment to the original application had been filed the day before the hearing with the Commission and that therefore the case was removed from the hearing docket.

### RECOMMENDS OHIO STATION DENIAL

Carter & Wolfe applied to the Federal Communications Commission for a construction permit for the erection of a new broadcasting station at Mansfield, Ohio, to use 1370 kilocycles, 100 watts LS and 50 watts night unlimited time operation.

Examiner Ralph L. Walker in Report No. I-194 recommended that the application be denied. The Examiner found that operation as proposed would "probably result in some slight curtailment of the already limited satisfactory service area of two existing stations. At the same time the proposed station, by reason of low power and interference from existing stations, would serve only a very limited area—considerably less than that expected from a local assignment."

## FCC REPORT ON ALLEGED BRIBERY CHARGES

On February 14 the Federal Communications Commission made public the following report:

### REPORT OF THE COMMITTEE APPOINTED BY THE COMMISSION JANUARY 9, 1936, TO INVESTIGATE THE FACTS AS TO THE CONVERSATION ALLEGED TO HAVE TAKEN PLACE IN THE WILLARD HOTEL ON SEPTEMBER 5, 1935.

On January 9, 1936, the Commission appointed the undersigned as a committee to investigate what was known as the Willard Hotel incident. The committee immediately began its work, and on January 10, 1936, it requested the Department of Justice to make a full and complete investigation of the matter. Pursuant to that request, a report was submitted to the committee on January 25, 1936. The committee then requested the Department of Justice to procure certain additional information, pursuant to which request a supplementary report was made by the Department on February 1, 1936. With this report the Department of Justice informed the committee that "this closes the investigation". The committee itself examined, among others, all persons now on the Commission's staff who participated in the hearings on the applications of the Howitt-Wood Radio Company, Inc., owners of Station WNBC, Binghamton, N. Y., and the Knox Broadcasting Company, Schenectady, N. Y., for facilities on 1240 kc.

The committee has obtained sworn statements from all persons interrogated either by the Department of Justice or by it. Upon the basis of those statements and of other information obtained by it, the committee submits the following report:

On September 5, 1935, after the recess of the afternoon session of the hearing on the application of the Knox Broadcasting Company, Mr. Cecil D. Mastin, of Binghamton, N. Y., Mr. Harold E. Smith, of Albany, N. Y., Mr. C. M. Jansky, Jr., and Mr. Alfons B. Landa, of Washington, and Mr. Maurice Jansky, of Madison, Wisconsin, met in Mr. Mastin's room (803) at the Willard Hotel. There they discussed and criticized the hearing which they had just left. Highballs were served, but some of those present state that they did not participate.

Mr. A. Mortimer Prall was registered in Room 804, which adjoined Mr. Mastin's room. With him that afternoon was Major Malcolm M. Kilduff.

Mr. Prall and Major Kilduff joined Mr. Anning S. Prall, Chairman of the Federal Communications Commission, and Mr. Herbert L. Pettey, Secretary of the Commission, at Chairman Prall's apartment for dinner that evening. There they told the substance of a conversation which they said they had overheard late that afternoon in Room 803. The essential feature of the overheard conversation, as Mr. Mortimer Prall and Major Kilduff state it was told to Chairman Prall and Mr. Pettey, was that Mr. Harry Butcher could straighten out Station WNBC's difficulties with the Commission for \$25,000, and that one of the speakers was prepared to pay \$25,000 or \$50,000. This story was told to an agent of the Department of Justice who came to the apartment that evening to begin an investigation in response to a request from Chairman Prall.

Mr. Pettey has informed the committee that the alleged conversation as it was reported to Chairman Prall and himself that evening also included (1) a description of a person connected with the Commission who could be "gotten to", which description was discussed by those present, although the person was not identified; and (2) an intimation that the described person had been in the pay of some company for a number of years. Mr. Pettey's recollection was that the description was given to the agent of the Department of Justice; this does not accord with the agent's report. The intimation that the described person had been in the pay of some company was not passed on to the agent.

Mr. Mortimer Prall states that on September 6 he told Chairman Prall and Mr. Pettey that upon his return to his room about 12:40 a.m. he had heard one man in Room 803 tell another that a described, but not named, Commissioner had instructed the examiner what to recommend. That same day Mr. Mortimer Prall told the Department of Justice agent that he had given the agent all the information in his possession, but he did not mention the description or the purported instructions to the examiner. A short time thereafter Chairman Prall and Mr. Pettey informed the agent that they had no information in addition to that which had already been furnished to him.

The investigation by the Department of Justice was suspended

early in September, after Chairman Prall had told the agent that the psychological moment for pursuing it had passed and that the investigation could be more advantageously pursued later.

Upon receiving a report on the matter from Chairman Prall on December 18, 1935, the Commission directed the Chairman to request the Department of Justice to continue the investigation. Except for a letter of December 30, 1935, reciting developments as they stood early in September, the committee has seen no report from the Department of Justice prior to that of January 25, 1936.

Each of the occupants of Room 803 has sworn that he made no such statements as those reported by Mr. Mortimer Prall and Major Kilduff; likewise each has reported that he did not hear any such statements made by anyone in the room. Mr. Butcher has sworn that never upon any occasion did he make any statement that anyone on the Commission "could be bought or controlled". All of the persons involved have declared that they have never made any statements reflecting upon the character and integrity of any member of the Commission.

The examiner who heard the Knox Broadcasting Company application has testified that no member of the Commission, or any other person, spoke to him about his recommendation or about any phase of the hearing. The committee's investigation within the Commission reveals no irregularities in the handling of either the Binghamton or the Schenectady application.

The committee is unable to state whether the alleged conversation ever took place. If the purported statements were made, they have been completely repudiated. Grave responsibility for unsupported statements attacking the integrity of a Government official lies at the door of some person involved in this matter. If the individuals responsible could be identified, they should be prosecuted as relentlessly as the maligned person should have been had the charges been substantiated. While we conclude that there is no basis for the charges made, we keenly regret that we can not fix the responsibility for them.

Respectfully submitted, Irvin Stewart, Chairman. Thad H. Brown. Paul A. Walker. Norman S. Case. George Henry Payne.

List of documentary evidence considered by the committee:

- (1) Letter of December 19, 1935 to the Federal Bureau of Investigation;
- (2) Letter of December 30, 1935 from Federal Bureau of Investigation;
- (3) Letter of December 31, 1935 from Mr. Harold E. Smith to Mr. Harry Butcher;
- (4) Letter of January 2, 1936 from Mr. Cecil D. Mastin to Mr. Harry Butcher;
- (5) Transcript of telephone conversation between Mr. Harry Butcher and Mr. Alfons B. Landa;
- (6) Transcript of telephone conversation between Mr. Harry Butcher and Mr. Cecil D. Mastin;
- (7) Transcript of telephone conversation between Mr. Harry Butcher and Mr. Harold Smith;
- (8) Memorandum of telephone conversation with Mr. E. A. Tamm, January 10, 1936;
- (9) Letter of January 10, 1936 from Chairman Prall to Federal Bureau of Investigation;
- (10) Letter of January 14, 1936 to Federal Bureau of Investigation;
- (11) Letter of January 21, 1936 from Federal Bureau of Investigation;
- (12) Letter of January 25, 1936 from Federal Bureau of Investigation containing copy of report and copies of sworn statements by:
  - (a) Harry C. Butcher.
  - (b) C. M. Jansky, Jr.
  - (c) Aaron Kellert.
  - (d) Malcolm M. Kilduff.
  - (e) Alfons B. Landa.
  - (f) Horace L. Lohnes.
  - (g) Cecil D. Mastin.
  - (h) A. Mortimer Prall.
  - (i) Harold E. Smith.
- (13) Letter of January 27, 1936 to Federal Bureau of Investigation;
- (14) Letter of February 1, 1936 from Federal Bureau of Investigation inclosing copy of report and sworn statement of Mr. Maurice Jansky;
- (15) Letter of February 3, 1936 to Federal Bureau of Investigation;
- (16) Transcript of statement by Miss Mary Belle Anthony;
- (17) Transcript of statement by Mr. Tyler Berry;

- (18) Transcript of statement by Mr. John P. Bramhall;
- (19) Transcript of statement by Mr. Herbert L. Pettey, Jan. 10, 1936;
- (20) Transcript of statement by Mr. Herbert L. Pettey, Feb. 6, 1936;
- (21) Transcript of statement by Mr. P. W. Seward;
- (22) Transcript of statement by Judge E. O. Sykes;
- (23) Transcript of statement by Mr. John Wesley Weekes;
- (24) Letter of February 10, 1936 to Judge E. O. Sykes;
- (25) Letter of February 10, 1936 to Chairman Anning S. Prall;
- (26) Memorandum of conversation with Chairman Anning S. Prall, Feb. 10, 1936;
- (27) Summary of information relating to application of Knox Broadcasting Company, Inc.
- (28) Summary of information relating to application of Howitt-Wood Radio Company, Inc.
- (29) List of participants in hearing on application of Knox Broadcasting Company, Inc.
- (30) List of participants in hearing on application of Howitt-Wood Radio Company, Inc.

### STATIONS USING WARNER BROS. MUSIC

In response to many inquiries there is furnished below a list of stations that have signed the Warner Brothers contract as of February 4, 1936:

KALE—Portland, Oregon; KAST—Astoria, Oregon; KBTM—Jonesboro, Arkansas; KDLR—Devils Lake, North Dakota; KDON—Del Monte, California; KDYL—Salt Lake City, Utah; KFAC—Los Angeles, California; KFBB—Great Falls, Montana; KFEL, KVOD—Denver, Colorado; KFH—Wichita, Kansas; KFIZ—Fond du Lac, Wisconsin; KFJB—Marshalltown, Iowa; KFJI—Klamath Falls, Oregon; KFJR—Portland, Oregon; KFJZ—Fort Worth, Texas; KFNF—Shenandoah, Iowa; KFOR—Lincoln, Nebraska; KFOX—Long Beach, California; KFPL—Dublin, Texas; KFPW—Fort Smith, Arkansas; KFRO—Longview, Texas; KFSD—San Diego, California; KFVD—Los Angeles, California; KFVS—Cape Girardeau, Missouri; KFWB—Hollywood, California; KFXD—Nampa, Idaho; KFXM—San Bernardino, California; KFXR—Oklahoma City, Oklahoma; KGBX—Springfield, Missouri; KGCU—Mandan, North Dakota; KGDM—Stockton, California; KGEK—Sterling, Colorado; KGFI—Corpus Christi, Texas; KGFJ—Los Angeles, California; KGFK—Moorhead, Minnesota; KGFW—Kearney, Nebraska; KGGC—San Francisco, California; KGGM—Albuquerque, New Mexico; KGHL—Billings, Montana; KGNC—Amarillo, Texas; KGVO—Missoula, Montana; KHSL—Chico, California; KIDO—Boise, Idaho; KIEM—Eureka, California; KIEV—Glendale, California; KIUI—Santa Fe, New Mexico; KIUL—Garden City, Kansas; KJBS—San Francisco, California; KLPN—Minot, North Dakota; KLS—Oakland, California; KLZ—Denver, Colorado; KMAC—San Antonio, Texas; KMBC—Kansas City, Missouri; KMLB—Monroe, Louisiana; KMPC—Beverly Hills, California; KNOW—Austin, Texas; KNX—Los Angeles, California; KOIL—Council Bluffs, Iowa; KONO—San Antonio, Texas; KORE—Eugene, Oregon; KOY—Phoenix, Arizona; KPAC—Port Arthur, Texas; KPLC—Lake Charles, Louisiana; KQW—San Jose, California; KRE—Berkeley, California; KRGV—Weslaco, Texas; KRLL—Lewiston, Idaho; KRLD—Dallas, Texas; KRLH—Midland, Texas; KRMD—Shreveport, Louisiana; KRNR—Roseburg, Oregon; KSL—Salt Lake City, Utah; KSUN—Lowell, Arizona; KUMA—Yuma, Arizona; KVOA—Tucson, Arizona; KVOD—Denver, Colorado; KVOE—Santa Ana, California; KVOO—Tulsa, Oklahoma; KWBG—Hutchinson, Kansas; KWJJ—Portland, Oregon; KWTO—Springfield, Missouri; KWYO—Sheridan, Wyoming; KXL—Portland, Oregon; KXO—El Centro, California.

WAAB—Boston, Massachusetts; WAAF—Chicago, Illinois; WAAT—Jersey City, New Jersey; WAAF—Omaha, Nebraska; WAGF—Dothan, Alabama; WAIM—Anderson, South Carolina; WAIU—Columbus, Ohio; WALR—Zanesville, Ohio; WATR—Waterbury, Connecticut; WBNX—New York, N. Y.; WBOW—Terre Haute, Indiana; WCAX—Burlington, Vermont; WCAZ—Carthage, Illinois; WCBF—Waukegan, Illinois; WCBW—Springfield, Illinois; WCLO—Janesville, Wisconsin; WCLS—Joliet, Illinois; WCMJ—Ashland, Kentucky; WCOC—Meridian, Mississippi; WCOP—Boston, Massachusetts; WCPO—Cincinnati, Ohio; WDAF—Kansas City, Missouri; WDAS—Philadelphia, Pennsylvania; WDBJ—Roanoke, Virginia; WDEV—Waterbury, Vermont; WDZ—Tuscola, Illinois; WEAN—Providence, Rhode Island; WEBC—Superior, Wisconsin; WEBQ—Harrisburg, Illinois; WEED—Rocky Mount, North Carolina; WEEI—Boston, Massachusetts; WELI—New Haven, Connecticut; WELL—Battle Creek,

Michigan; WEMP—Milwaukee, Wisconsin; WEXL—Royal Oak, Michigan; WFAA—Dallas, Texas; WFAS—White Plains, New York; WFBM—Indianapolis, Indiana; WFDF—Flint, Michigan; WGBF—Evansville, Indiana; WGBI—Scranton, Pennsylvania; WGES—Chicago, Illinois; WGH—Newport News, Virginia; WGN—Chicago, Illinois; WHAT—Philadelphia, Pennsylvania; WHAZ—Troy, New York; WHB—Kansas City, Missouri; WHBC—Canton, Ohio; WHBL—Sheboygan, Wisconsin; WHBQ—Memphis, Tennessee; WHBU—Anderson, Indiana; WHDF—Calumet, Michigan; WHDH—Boston, Massachusetts; WHDL—Olean, New York; WHK—Cleveland, Ohio; WHO—Des Moines, Iowa; WIBG—Glenside, Pennsylvania; WIBM—Jackson, Michigan; WIBU—Poynette, Wisconsin; WIBW—Topeka, Kansas; WIBX—Utica, New York; WICC—Bridgeport, Connecticut; WIL—St. Louis, Missouri; WIND—Gary, Indiana; WJAC—Johnstown, Pennsylvania; WJAG—Norfolk, Nebraska; WJAY—Cleveland, Ohio; WJBC—Bloomington, Illinois; WJBK—Detroit, Michigan; WJIM—Lansing, Michigan; WJJD—Chicago, Illinois; WKBB—East Dubuque, Illinois; WKBH—La Crosse, Wisconsin; WKBZ—Muskegon, Michigan; WKEU—Griffin, Georgia; WKOK—Sunbury, Pennsylvania; WKZO—Kalamazoo, Michigan; WKY—Oklahoma City, Oklahoma; WLBC—Muncie, Indiana; WLBF—Kansas City, Kansas; WLLH—Lowell, Massachusetts; WLS—Chicago, Illinois; WLVA—Lynchburg, Virginia; WLW—Cincinnati, Ohio; WMAS—Springfield, Massachusetts; WMAZ—Macon, Georgia; WMBC—Detroit, Michigan; WMBD—Peoria, Illinois; WMBH—Joplin, Missouri; WMC—Memphis, Tennessee; WMFG—Hibbing, Minnesota; WMFR—High Point, North Carolina; WNAC—Boston, Massachusetts; WNBC—New Britain, Connecticut; WNBK—Binghamton, New York; WNBH—New Bedford, Massachusetts; WNR—Memphis, Tennessee; WNOX—Knoxville, Tennessee; WOAI—San Antonio, Texas; WOC—Davenport, Iowa; WOOD, WASH—Grand Rapids, Michigan; WOPI—Bristol, Tennessee; WORL—Needham, Massachusetts; WORC—Worcester, Massachusetts; WOW—Omaha, Nebraska; WPAD—Paducah, Kentucky; WPAY—Portsmouth, Ohio; WQBC—Vicksburg, Mississippi; WRGA—Rome, Georgia; WRJN—Racine, Wisconsin; WROK—Rockford, Illinois; WRR—Dallas, Texas; WSAI—Cincinnati, Ohio; WSBC—Chicago, Illinois; WSFA—Montgomery, Alabama; WSM—Nashville, Tennessee; WSWA—Harrisonburg, Virginia; WSYB—Rutland, Vermont; WTAG—Worcester, Massachusetts; WTBO—Cumberland, Maryland; WTEL—Philadelphia, Pennsylvania; WTIC—Hartford, Connecticut; WTMJ—Milwaukee, Wisconsin; WTMV—East St. Louis, Illinois; WTRC—Elkhart, Indiana; WWJ—Detroit, Michigan; WWRL—Woodside, New York; WXYZ—Detroit, Michigan; W6XAI—Bakersfield, California.

### DEEN TALKS ON COPYRIGHT BILL

Representative Braswell Deen of Georgia on Wednesday night talked over the red network of NBC in favor of the Duffey copyright bill as follows:

There is pending before the United States Senate for consent to ratification the International Copyright Convention, to which Convention approximately forty of the leading countries of the world are parties, including all of the English-speaking nations. The essential purpose of the Convention is to furnish protection to authors, composers and producers of literary, musical and artistic productions from infringement.

In 1931 the Convention was before the Senate for consideration. Hearings were held on the entire copyright situation by the Senate Committee on Patents in 1931 and by the Committee on Patents of the House of Representatives in 1931 and 1932.

In 1934 a sub-committee of the Senate Committee on Foreign Relations conducted hearings. At the request of the Senate Committee on Foreign Relations, the Inter-departmental Committee on Copyright, named by the Departments of State and Commerce and the Copyright Office in the Library of Congress, undertook the work of assisting and cooperating with members of Congress in the preparation of appropriate copyright legislation which was deemed necessary and essential, prior to further consideration of the International Copyright Convention by the Senate.

The Copyright Convention in revised form was again transmitted to the Senate on February 19, 1934, with the request from the President of the United States that the advice and consent of the Senate to adherence thereto on behalf of the United States should be accorded. After consideration by the Foreign Relations Committee of the Senate, the Committee reported to the Senate the Copyright Convention Treaty on April 18, 1935, and it was approved by the Senate on April 19, 1935, without

a dissenting vote, but a few days later it was placed back on the Senate Calendar to await legislation from the Senate Committee on Patents. After hearings which gave all persons who had any objections to the Bill as introduced an opportunity to be heard, and after careful consideration by the Committee, the Duffy Bill, S. 3047, was reported to the Senate by the Committee on Patents and the Bill was passed by the Senate without a roll call vote on August 7, 1935. The Senate now proposes to approve the Copyright Convention as soon as appropriate action is taken by the House of Representatives.

As a member of the Committee on Patents of the House of Representatives to which the Duffy Bill has been referred, I am advocating prompt and favorable consideration of this legislation. Doubtless the House of Representatives will wish to make a few amendments designed to improve the Bill, but in its essential features the Bill seems to fulfill the outstanding needs of copyright legislation.

Under the provisions of our existing Copyright Laws there is a minimum statutory penalty of \$250.00 for infringement, with a maximum penalty of \$5,000.00. I contend that the owner of the copyright should be justly compensated in case of infringement. This is a property right guaranteed under the Constitution, however, there is no more justification for minimum damages of \$250.00, irrespective of the loss or damage done, than there is for a minimum penalty of \$250.00 in case of a collision between two automobiles.

Because of the unfairness of this provision of existing law public sentiment has not been in sympathy with its enforcement. Federal Courts have therefore found it exceedingly difficult to enforce the provision of minimum damages. The Duffy Bill eliminates this provision and leaves it discretionary with the courts to determine the minimum amount of damage or liability in case of infringement.

The Bill provides that the Federal Courts shall award sufficient statutory damages to prevent infringement and such as may be just, proper and adequate, in view of the circumstances of the particular case.

The maximum penalty is changed from \$5,000.00 to \$20,000.00. This is deemed appropriate in view of the increased value of copyrighted works. It should be emphasized that under these provisions of the Duffy Bill larger benefits will accrue to producers, composers and authors.

One of the outstanding features of the Bill consists in what is generally referred to as the "Right of Divisibility"—that is, the copyright may be divided so that the sale of the right for one purpose does not include the right for any other purpose. Although it is possible under existing law to secure the right of divisibility by private contract, such procedure, as is required under existing law, is unsatisfactory. The proposed law specifically recognizes that an author can sell book rights to a publisher; serial rights to a magazine publisher; motion picture rights to a producer of motion pictures, dramatic rights to a dramatist, etc. This will result in larger remuneration to authors, producers and composers.

Sub-section (d) of section 1 of the Act of 1909 is amended by adding, "That the right to produce a motion picture shall include the right to exhibit it. This provision is added to prevent an author who has sold motion picture producing rights from contending that he is entitled to prevent the picture from being exhibited.

Under existing law the right of registration of unpublished manuscripts is permitted only in a very limited number of cases, for a period of 28 years, renewable for a like period of time. The Duffy Bill provides for a single term of 56 years and permits the registration of manuscripts of all kinds.

Under the present Copyright Law, a photographer may copyright a photograph which he has made of a person and the person cannot publish or permit his friends to publish his own photograph. The Duffy Bill corrects this ridiculous situation by inserting in sub-section (c) of section 62 of the Act, as amended by section 28 of the Bill, as follows: "Copyright in the photograph of a single individual shall not be had except with the written consent of the person photographed."

In order to protect their interests many producers of literary and artistic works years ago formed an organization which is appropriate and indispensable—just as are organizations among those who labor and among farmers. A large percentage of the song writers and composers of this country maintain an organization known as The American Society of Composers, Authors and Publishers to which have been confided the performing rights of their music. This organization has grown strong and powerful in its operation. The presence in the law of the inflexible pro-

vision requiring the courts to award not less than \$250.00 for each infringement, regardless of the damage done or loss sustained, is a sort of legalized subsidy to this organization in the form of a super-charge or extraordinary bargaining power, frequently resulting in high license fees and often in double license fees to those who desire, as consumers, to use copyrighted works.

Whenever a work in which it holds performing rights is broadcast, the broadcaster remunerates the copyright owners, usually by a fixed percentage of the advertising returns of the broadcast. After a broadcasting company has paid the organization for the right to broadcast copyrighted music, there should be no further charges, either to the affiliated radio stations or to the consuming public who have radios or receiving sets; however, under the provisions of our present Copyright Laws as enacted in 1909 and now stand on the statute books, every owner of a radio in the United States which is used for the least possible commercial purpose is liable for the minimum damages of \$250.00.

In other words, every drug store, dry goods store, furniture store, hardware store, grocery store, barber shop, bootblack stand, cafe, restaurant, hotel, boarding house, beer parlor, amusement and dance halls, newsstands, and any and all other commercial places of business where radios and receiving sets are maintained and through which copyrighted music is received are subject to damages of not less than \$250.00 for each infringement on a copyrighted piece of music, unless they have obtained a license from the copyright holder. The minimum penalty or damage of \$250.00 furnishes copyright owners a basis for bargaining with consumers, with the result that the charge to the consuming public is almost prohibitive.

Proprietors or managers of these places of commercial business have no way of knowing whether or not music is copyrighted. Under the provisions of existing law if they receive copyrighted music over their radios in their places of business they can be sued in the Federal Courts, and the judges of which have, under the law, no discretion in respect to the minimum damages which are fixed at \$250.00 for each infringement. If a radio in a drug store, or any other place of business, by way of illustration, receives 25 pieces of copyrighted music in one day then the minimum amount of damage would be \$6,250.00. This would be rather expensive music for one store in one day.

How can a proprietor or manager know when to cut off his radio in order not to infringe on a piece of copyrighted music? He has no way of knowing. The broadcasting companies cannot be blamed because they have already paid the copyright holder for the right to broadcast the music.

A recent and concrete illustration of what occurred in New York City on February 3rd will serve to show the seriousness of the present situation. Damages in the amount of \$670,000.00 were asked by the Remick Music Corporation in a suit filed in United States District Court against the Columbia Broadcasting Company. The Remick Music Corporation contends that the song "That Old Fashioned Mother of Mine" was broadcast over a network of 66 stations, and the song entitled "Some Sunny Day" was broadcast over a network of 68 stations. The Music Corporation is asking the maximum penalty of \$5,000 each for the 134 stations, or a total of \$670,000 for the two songs. Of course, the Remick Music Corporation has no definite way of knowing or proving what commercial places of business had their radios tuned in to receive these songs. It is therefore difficult and practically impossible for the company to single out and name individual places of commercial business and undertake to collect damages, hence the suit is filed against the Columbia Broadcasting Company, even though the broadcaster had paid or will pay for the right to broadcast the two songs.

Granting that there was infringement, the amount of damages asked for is absurd, but it impressively illustrates the essential and absolute importance of needed revision and amendment of our existing Copyright Laws. Since the broadcaster pays for the right to broadcast copyrighted music it is nothing less than pyramiding of fees to require affiliated stations and consumers by means of receiving sets in their places of business to pay for it again. This is wrong. It would be equally wrong for a manufacturer or owner of a patent on a manikin or model of the human body to undertake to collect additional fees or charges on his product from proprietors of dry goods stores, after these places of business had purchased the manikins or models on which to display their merchandise. This supercharge in the form of a license or penalty of \$250.00 will, if continued, destroy the source of consumption of musical and dramatic works.

Because of this condition, it seems clearly evident to me that the time has come when Congress should speedily and quickly enact legislation to correct this situation. I have read and studied

carefully Senate Report No. 896 from the Committee on Patents, also Senate Executive Report No. 4 from the Committee on Foreign Relations; also the Duffy Bill, Senate 3047, and after due consideration I am convinced that the Duffy Bill should be promptly and forthwith enacted into law. There is every reason why the International Copyright Convention, if agreed to by the Senate and made effective by participation on the part of the United States, will do justice to authors, composers and producers. Likewise provisions of the Duffy Copyright Bill, when enacted into law will be fair to authors, composers and producers and at the same time will be most beneficial to the consuming public.

Article 1, section 8 of the Constitution empowers Congress "To promote the progress of science and useful arts, by securing for limited times to authors and inventors and exclusive right to their respective writings and discoveries."

The Convention for the protection of industrial property comprising patents and trademarks was established and signed originally at Paris on March 20, 1883. The United States has been a party to this Convention for the protection of industrial property rights since 1887. The Convention, of course, has been revised from time to time and our patent laws have also been revised and amended accordingly. This protection provided for on behalf of the United States for the owners of patents and trademarks is highly essential and important. It is as equally important that the same protection be given producers in the literary and artistic fields.

The United States has become a great exporter of books, magazines, musical and artistic productions, and the rights of American authors, producers and composers should be safe-guarded by the Federal Government against infringement in foreign countries.

Two months of the present session of Congress will soon have passed and no action on the part of the Committee on Patents of the House of Representatives has been taken on the Duffy Copyright Bill or on any other copyright legislation. No hearings have been held by the Committee on Patents of the House of Representatives, either at this session or during the session of 1935. In my humble judgment and opinion prompt and immediate consideration should be given this matter by the committee. Meritorious legislation should never be pigeon-holed, but should be considered and enacted or defeated on its merit or lack of merit. I sincerely believe you will join me in the hope that the Duffy Bill should forthwith and promptly be considered and enacted into law. Thank you.

### CONNERY TALKS ON FCC

Representative Connery of Massachusetts made another speech in the House on Monday of this week asking the Rules Committee of the House to report out his resolution providing for a thorough investigation of "radio broadcasting from top to bottom."

Mr. Connery addressed the House in connection with the report of the Federal Communications Commission committee regarding certain alleged facts which were investigated. The Commission's report will be found in another part of this issue.

Mr. Connery said in part: "Last Friday the people of the United States celebrated Valentine's Day. The Federal Communications Commission took advantage of the day to present to the American people a valentine, the like of which I hesitate to believe has ever been presented by a governmental agency to the Congress or to the American people.

"With a Commission of five of the seven members having sat for the past 6 weeks investigating alleged corruption or misconduct on the part of some of those officially connected with this governmental agency, this hody, with the signatures of five of the seven members attached to the report, state that the Chairman and the secretary of the Commission were told by the son of the Chairman and an associate, one Major Kilduff, that they had overheard a conversation wherein the vice president of one of the national broadcasting companies was alleged to be able, on payment of \$25,000, to straighten out the difficulties of an applicant for favor at the hands of the Commission. Further, that the applicant was prepared to pay \$25,000 or \$50,000.

"The report further states that the secretary of the Federal Communications Commission told the committee of five of the seven members of the Federal Communications Commission that the alleged conversation which was heard, or supposed to have been heard by the son of the Chairman of the Commission and Major Kilduff, included a description of a person connected with the Commission who could be "gotten to", which description was discussed by those present, although the person was not identified, and, further, an intimation that the described person had been in the pay of some company for a number of years.

"The committee in its findings states:

The committee is unable to state whether the alleged conversation ever took place. If the purported statements were made, they have been completely repudiated. Grave responsibility for unsupported statements attacking the integrity of a Government official lies at the door of some person involved in this matter.

"Is it the belief of any Member of this House that those who made such statements or who were alleged to have discussed the possibility of bribing a public official are going to admit willingly that they entered into such a conspiracy?"

"In conclusion, many Members of the House feel that this investigation of radio is a very important matter and should be acted upon by this House. I have had letters from all over the United States protesting about conditions on the radio and conditions in the Federal Communications Commission. Many Members of this House are anxious to have these conditions cleaned up and believe that the Rules Committee ought to report to this House a resolution for a thorough investigation of radio broadcasting from top to bottom."

### FEDERAL TRADE COMMISSION ACTION

#### Complaints

The Federal Trade Commission has alleged unfair competition in complaints issued against the following companies. The respondents will be given an opportunity for hearing to show cause why cease and desist orders should not be issued against them.

**No. 2712. The Marion Vault Manufacturing Co., 274 North Main St., Marion, Ohio,** is named respondent in a complaint alleging unfair methods of competition in the sale of two types of metal burial vaults, one designated "The New Imperial Burial Vault," and the other, "Gold Seal Burial Vault."

In circulars distributed to undertakers, funeral directors and morticians for their use in selling the vaults, the respondent is alleged to have made representations to the effect that the New Imperial Burial Vault "will protect through the years" and is "inherently qualified to provide enduring protection," and that the Gold Seal Burial Vault is equipped with a patented double seal, represented to be "permanently secure" and "improving as time goes on."

**No. 2714.** Alleging unfair competition in the use of the word "distilling," a complaint has been issued against **Keystone Distilling Co., 1824 North Fourth St., Harrisburg, Pa.**

The respondent sells in interstate commerce whiskies, gins, and other spirituous beverages which it purchases, rectifies, blends and bottles, according to the complaint.

By use of the word "distilling" in its corporate name and on its labels and stationery, the respondent, the complaint charges, represents to its customers and furnishes them with the means of representing to their vendees, both retailers and ultimate consumers, that it is a distiller and manufactures its products by the process of distillation, when in fact it is not a distiller, and does not own a plant where the products it sells are distilled.

**No. 2715.** Unfair competition in the sale of powdered and liquid ink is charged in a complaint against **Milton Tock, trading as Universal Ink Co., 1847 68th St., Brooklyn, N. Y.**

It is alleged that the respondent, through letters, labels and circulars, represents he has been established in business since 1895, that he manufactures writing inks of the highest quality, and that his powdered ink is manufactured and distributed by Universal Ink Co., when in fact, according to the complaint, his business was established in 1934, he does not manufacture powdered ink products, and does not own or operate a factory in which powdered ink is made.

**No. 2716.** False and exaggerated representations in connection with the sale of "Neet," a depilatory, are alleged in a complaint issued against **Neet, Inc., 4316 North Kilpatrick Ave., Chicago.**

In its advertising, the respondent is alleged to have represented that "Neet" permanently eradicates hair, discourages its growth and delays its reappearance for a substantial length of time, when, according to the complaint, these claims are untrue. The respondent also advertises that "Neet" is not caustic, and gives results unlike other methods of hair removal, whereas, the complaint charges, the product is caustic, particularly when introduced into the eye, and the results it produces are similar to those of other depilatories, and it is an ordinary hair remover.

**No. 2717.** Charging violation of Section 3 of the Clayton Act, a complaint has been issued against **Soft-Lite Lens Co., Inc., 119 West 57th St., New York City,** engaged in the sale of a line of optical lenses distributed under the general trade name "Soft-Lite."

It is alleged that the respondent, in marketing its products, uses a sales service plan and enters into agreements, contracts and understandings with wholesalers, retailers and dealers, the effect of which practices may be to substantially lessen competition and tend to create a monopoly in favor of the respondent in the optical lens business in the United States.

According to the complaint, the respondent corporation is selling and making contracts for the sale of its products upon condition and with the agreement and understanding that the purchasers who are wholesalers, retailers and dealers shall not sell or deal in any lenses or goods of any competitor similar in tint, color, shade or type to "Soft-Lite" lenses.

**No. 2718.** In a complaint issued against **Economy Rubber Products Co.**, 600 Burkhardt Ave., **Dayton, Ohio**, the company is charged with making false representations in the sale and distribution of "Tiger-Grip Tire Patches."

The respondent is said to have represented in advertising matter and in radio broadcasts that, among other things, its product is "guaranteed 10,000 miles" and "saves motorists 50 per cent"; that it "insures permanent tire repairs" and "tire mileage," and that it "permanently repairs blow-outs, rim cuts, etc., by self-vulcanizing," when, according to the complaint, such assertions are untrue.

**No. 2719.** **Michael Whitehouse**, 800 Washington Boulevard, **Detroit**, trading as **International Tableware Co.**, and engaged in the sale of tableware and dishes, is named respondent in a complaint alleging false representations in the use of a sales promotion plan to advertise his products and increase his volume of business.

The complaint alleges that the respondent, through personal solicitation by his agents, sells to retail dealers for \$4.50 a thousand trade cards to be distributed to retailers' customers, which cards the respondent represents will be redeemed by him in tableware or dishes when returned to him by the customers. He also represents, according to the complaint, that he will refund to the retailers \$4.50 for each thousand cards returned.

Under this sales promotion plan, it is said, retailers contract to buy from the respondent, for 20 cents each, gift boxes to be distributed to their customers and purportedly containing four pieces of tableware, and a certificate entitling the customer to match the four pieces by making additional purchases of tableware from the respondent at specified special prices.

**No. 2720.** A complaint has been issued against **Granada Vineyards, Inc.**, 95 Harvey St., **Cambridge, Mass.**, alleging unfair competition in the sale of wines in interstate commerce.

The respondent has a plant at Cambridge where it bottles wines purchased in California, but, according to the complaint, by use of the word "Vineyards" in its corporate name, on stationery and on labels attached to bottles, it represents to customers and furnishes them with the means of representing to retailers and consumers that it owns vineyards and manufactures wine without intervention of a middleman's profit, when such are not the facts.

### Stipulations

The Commission has issued the following cease and desist orders:

**No. 1600.** **Diamond Silver Co.**, **Lambertville, N. J.**, engaged in manufacturing and selling flatware and hollow ware for table use, agrees to desist from use in printed matter of the coined words "Diamondgold" and "Goldcraft" as descriptive of products not composed of gold, in whole or in part. The respondent also agrees to discontinue use of the word "Gold," either alone or in connection with the prefix "Diamond," or with the suffix "craft," or with any words which tend to mislead purchasers into the belief that its products are composed partly or wholly of gold, when such is not the fact.

**No. 1601.** **John C. Koch**, trading as **St. Louis Wilbert Vault Co.**, 3239 Alfred St., **St. Louis**, manufacturing and selling the "Wilbert Asphalt Burial Vault," agrees to discontinue use in advertising matter of the word "eternal," alone or in connection with other words tending to mislead purchasers into the belief that these products are of infinite duration, or will give permanent protection to the bodies encased therein, when such are not the facts. Under the stipulation, the respondent will cease advertising his product as "The only dual vault in the world."

**No. 1602.** **London House, Ltd.**, 411 Fifth Ave., **New York City**, is engaged in the sale of a soap and brush kit designated "Devon Milk Pre-Facial, by Kent of London." The respondent agrees to discontinue use of the words "By Kent of London," either independently or in connection with the words "Devon Milk Pre-Facial" or with its trade name "London House, Ltd.," so as to imply or have a tendency to mislead purchasers into the belief that this product is of English origin and imported into the United States

when, according to the stipulation, the package is composed of parts which, with but one exception, are manufactured in the United States and not by Kent of London.

**No. 1603.** **Samuel Hansen and Thomas Kjorsvik**, 746 South **Figueroa St.**, **Los Angeles**, trading under the firm name "Nu-Jo-Wa Institute," agree to discontinue false and misleading advertising in the sale of a mineral water. According to the stipulation, the product is made from city tap water, and subjected to an alleged oxidation and aging process. The respondents will discontinue representing that this product provides a satisfactory relief from conditions such as hyperacidity, indigestion, and heartburn, that it is a positive neutralizer of stomach acids, that it tends to produce sleep, that it will relieve a rundown, nervous condition, or that it has practical value in the treatment of cuts, abrasions, or skin diseases, when such assertions are untrue. The respondents also stipulate that they will cease and desist from making any representations which may have a tendency to mislead purchasers into the belief that their product has a therapeutic value or properties in excess of those which it actually possesses.

**No. 1604.** **Anna E. McGrew**, 1837 W. **Gage Ave.**, **Los Angeles**, trading as **Nu-Jo-Wa Process Water Co.**, manufactures the mineral water sold by Samuel Hansen and Thomas Kjorsvik (Stipulation No. 1603). She entered into a stipulation, the terms of which are the same as those in the agreement signed by Hansen and Kjorsvik.

**No. 1605.** **Goldey Bros., Inc.**, trading as **Goldey Bros. Co.**, 652 **Main St.**, **Cincinnati**, engaged in the sale of barber and beauty shop supplies, has entered into a stipulation to cease and desist from use of the words "Hair Color Restorer" as a part of a trade name for its products which do not have the property of restoring gray hair to its natural color. The respondent will also cease representing that its "Goldey Lox Hair Color Restorer" is a food or tonic to the hair, or that the product is other than a dye or stain.

**No. 1606.** **Table Tennis Corporation of America**, 311 **Mountain Road**, **Union City, N. J.**, engaged in manufacturing and selling nets and other equipment used in the game of ping pong or table tennis, agrees to cease and desist from labeling or otherwise branding its nets with the word "Patented," when in fact it has not obtained a patent. The respondent company also is to discontinue use of any other word of equivalent meaning tending to mislead purchasers into the belief that it has a patent on its products, when such as not the fact.

**No. 1607.** **Pearson Co., Inc.**, 128 **North Pennsylvania St.**, **Indianapolis**, engaged in the sale of pianos, radios and other merchandise, has agreed to discontinue representing in its advertising matter or otherwise, that it has a piano or pianos of a given type, make or description in any designated community, when in fact it has no such pianos in such communities. The respondent is said to have advertised in certain newspapers that "We have in this community a small grand piano with bench being returned to us," and that the respondent would "transfer this account to responsible party, allowing all that has been paid," at a certain price.

**No. 1608.** **Newell Massey**, trading as **Reliable Monument Co.** and as **Burton Gray Co.**, with office and sales room at 1618 **Madison Ave.**, **Covington, Ky.**, and a plant at 530 **Hodge St.**, **Newport, Ky.**, is engaged in the sale and distribution of granite and marble monuments. He agrees to discontinue use of the words "Highest Quality Gray Granite" and "Highest Quality," as descriptive of his granite, when such representations are untrue. Under the agreement, he will also desist from using in advertising matter the phrase "Special for 30 Days Only," and "This Marker only \$27.50," implying that the price of \$27.50 is a special price for a 30-day period, when this is not true.

**No. 1609.** **A. Cohen & Sons Corporation**, 584 **Broadway**, **New York City**, wholesale dealer in watches, agrees to discontinue selling watches to which are affixed tags bearing what purport to be retail selling prices, but which prices are exaggerated, fictitious, and much in excess of the prices at which the watches are sold in the ordinary course of trade.

**No. 2164.** **Home Drug Co.**, 18 **North Fourth St.**, **Minneapolis, Minn.**, has been ordered to cease representing that its "Prescription No. 69," or any of its proprietary articles of substantially the same composition, is an effective remedy for gall stones or for diseases caused by the presence of gall stones.

Under the order, the respondent is directed to cease representing that "Prescription No. 69" will cause gall stones to be dissolved or evacuated from the body, or will relieve or cure diseases of the gall bladder or connected ducts.

**No. 2437.** **Vernon and Raymond G. Seitz**, trading as **Winoua Monument Co.**, 172 **West 3rd St.**, **Winona, Minn.**, have been

ordered to cease and desist from representing that the monuments and memorials they manufacture and sell are made of "Barre" granite, until and unless these products are made of granite quarried in the Barre district of Vermont. The respondents are directed to discontinue substituting any other type of granite where Barre granite is specified in an order or contract.

**No. 2504.** An order to discontinue false and misleading representations in the sale of flashlight and dry cell batteries has been issued against **United States Electric Manufacturing Corporation**, 222 West 14th St., New York City.

Under the order, the respondent is directed to cease and desist from representing in circulars, on labels, in catalogues, or in other advertising literature, that its flashlight and dry cell batteries have a "Special Patented Lok-Top," or are "Patented." Also, the respondent is prohibited from using other words of similar tenor to describe these products as being "patented" or as having a "Special Patented Lok-Top."

#### FTC CASE CLOSED

**No. 2290.** The Federal Trade Commission has issued an order closing its case against **Stefano Crisafulli**, trading as **Lucca Olive Oil Co.**, 20 Leonard St., New York City, who was charged with unfair competition in the sale of olive oil and blended vegetable and salad oils.

The Commission closed the case without prejudice to its right to reopen it at any time for further investigation and action. Closing of the case was ordered because the record failed to disclose interstate sales of the respondent's products alleged to be falsely labeled, advertised, or misbranded.

#### FEDERAL COMMUNICATIONS COMMISSION ACTION

The regular weekly meeting of the broadcast division of the Commission was not held early this week. It will be held later in the week.

#### HEARING CALENDAR

Thursday, February 27

#### ORAL ARGUMENT BEFORE THE BROADCAST DIVISION

##### Examiner's Report No. I-127:

NEW—Bellingham Publishing Co., Bellingham, Wash.—C. P., 1420 kc., 100 watts, unlimited time.

##### Examiner's Report No. I-139:

KDFN—Donald Lewis Hathaway, Casper, Wyo.—Modification of license, 789 kc., 500 watts, unlimited time. Present assignment: 1440 kc., 500 watts, unlimited time.

KGHL—Northwestern Auto Supply Co., Inc., Billings, Mont.—Modification of license, 780 kc., 1 KW, 2½ KW LS, unlimited time. Present assignment: 950 kc., 1 KW, 2½ KW LS, unlimited time.

KSOO—Sioux Falls Broadcast Assn., Inc., Sioux Falls, S. Dak.—Modification of license, 780 kc., 1 KW, 2½ KW LS, specified hours except used by KFDY. Present assignment: 1110 kc., 2½ KW, limited time.

KXL—KXL Broadcasters, Portland, Ore.—Modification of license, 780 kc., 250 watts, specified hours. Present assignment: 1420 kc., 100 watts, 250 watts LS, shares with KBPS.

KXL—KXL Broadcasters, Portland, Ore.—Modification of license, 780 kc., 250 watts, specified hours. Present assignment: 1420 kc., 100 watts, 250 watts LS, shares with KBPS.

KEHE—Evening Herald Publishing Co., Los Angeles, Calif.—C. P., 780 kc., 1 KW, 5 KW LS, unlimited time. Present assignment: 780 kc., 500 watts, 1 KW LS, shares with KELW.

#### APPLICATIONS RECEIVED

##### First Zone

NEW—North Jersey Broadcasting Co., Inc., Paterson, N. J.—620 Construction permit for a new station to be operated on 620 kc., 250 watts, daytime. Amended to make changes in equipment.

WHDI—Olean Broadcasting Co., Inc., Olean, N. Y.—Construction 1400 permit to install new equipment, change frequency from 1260 kc. to 1400 kc., move transmitter from Exchange

National Bank Bldg., corner Union and Laurens Sts., Olean, N. Y., to town of Allegany, N. Y. Amended to make changes in equipment and increase power from 250 watts to 500 watts.

W1XER—Shepard Broadcasting Service, Inc., Quincy, Mass.—License to cover construction permit for a new general experimental station.

W1XEH—The Travelers Broadcasting Service Corp., Avon, Conn.—Modification of construction permit for 63500 kc. to replace 63000 kc.

W2XIS—Standard Cahill Co., Inc., Bronx, N. Y.—Modification of construction permit to delete frequencies 1614, 2398, 3492.5, 4797.5, 6425, 12862.5 kc., and increase power to 100 watts and make changes in equipment.

##### Second Zone

NEW—WBNS, Inc., Portable.—Construction permit for a new broadcast pickup station to be operated on 1646, 2090, 2190, 2830 kc., 3 watts.

NEW—WBNS, Inc., Portable.—Construction permit for a new broadcast pickup station to be operated on 1646, 2190, 2090, 2830 kc., 20 watts.

##### Third Zone

WQAM—Miami Broadcasting Co., Miami, Fla.—Construction permit to install new equipment.

KWKH—International Broadcasting Corp., Shreveport, La.—Authority to install automatic frequency control.

WIOD-WMBF—Isle of Dreams Broadcasting Corp., Miami, Fla.—970 Construction permit to change frequency from 1300 kc. to 970 kc., install new equipment. Amended to change power from 1 KW, 5 KW day, to 5 KW, and transmitter site from 600 Biscayne Blvd., Miami, Fla., to site to be determined, Miami, Fla.

NEW—Voice of Corsicana, Corsicana, Tex.—Construction permit 1200 for a new station to be operated on 1200 kc., 100 watts, unlimited time. Amended to change hours of operation from unlimited to daytime.

NEW—Charles T. Copeland, Jr., and W. H. May, Troy, Ala.—1210 Construction permit for a new station to be operated on 1210 kc., 100 watts, daytime.

WFBC—Greenville News-Piedmont Co., Greenville, S. C.—Modification of construction permit (B3-P-220) to install new equipment, move transmitter, and increase power, requesting changes in equipment.

NEW—Jack E. Brantley, Savannah, Ga.—Construction permit for 1310 a new station to be operated on 1310 kc., 100 watts, unlimited time.

NEW—Isadore Goldwasser, Tuscaloosa, Ala.—Construction permit 1370 for a new station to be operated on 1370 kc., 100 watts, unlimited time. Amended to make antenna changes and to give transmitter site as First National Bank Bldg., 5th St. and 24th Ave., Tuscaloosa, Ala.

KBIX—Oklahoma Press Publishing Co., Muskogee, Okla.—Modification of construction permit (B3-P-353) for approval of transmitter and studio sites at Barnes Bldg., corner Third and Wall Sts., Muskogee, Okla., and make changes in antenna.

NEW—J. E. Churchwell, G. O. Russell, H. O. Freeman, Jr., d/b as 1500 Panama City Broadcasting Co., Panama City, Fla.—Construction permit for a new station to be operated on 1500 kc., 100 watts, daytime.

W3XEN—Havens & Martin, Inc., Portable-Mobile.—Modification of construction permit to increase power and change equipment, power increased to 40 watts.

W5XAQ—East Texas Broadcasting Co., Portable-Mobile.—License to cover construction permit for a new general experimental station.

WIEF—Miami Broadcasting Co., Portable, Miami, Fla.—License to cover construction permit to make changes in equipment and increase power.

NEW—Pape Broadcasting Corp., Portable-Mobile.—Construction permit for a new broadcast pickup station to be operated on 2830 kc., 20 watts. Amended to include frequencies 1646, 2090 and 2190 kc.

##### Fourth Zone

KSD—The Pulitzer Publishing Co., St. Louis, Mo.—Authority to 550 determine operating power by direct measurement of antenna.



WEW—The St. Louis University, St. Louis, Mo.—Construction 760 permit to make changes in equipment.

WCFL—Chicago Federation of Labor, Chicago, Ill.—License to 970 cover construction permit (B4-P-701) for auxiliary transmitter.

NEW—Winona Radio Service, a partnership, Harry Dahl, Otto M. 1200 Schlabac, Maxwell H. White, Herman R. Wiecking, Winona, Minn.—Construction permit for a new station to be operated on 1200 kc., 100 watts, unlimited time.

WHBL—Press Publishing Co., Sheboygan, Wis.—Construction permit to install a new transmitter, erect a new vertical antenna, and move transmitter from 636 Center Avenue, Sheboygan, Wis., to site to be determined, near Sheboygan, Wis. Amended to make changes in antenna and give exact transmitter site as near Sheboygan, Wis.

NEW—Midway Broadcast Co., by Emmons L. Abeles, Secy., Eau 1300 Claire, Wis.—Construction permit for a new station to be operated on 1310 kc., 100 watts, unlimited time. Amended to change frequency from 1310 kc. to 1210 kc. and hours of operation from unlimited time to daytime on 100 watts.

NEW—Saint Cloud Broadcasting Co., by Emmons L. Abeles, Secy., 1310 Saint Cloud, Minn.—Construction permit for a new station to be operated on 1200 kc., 100 watts, unlimited time. Amended to change frequency from 1200 kc. to 1310 kc., power from 100 watts to 50 watts night, 100 watts day.

WTRC—The Truth Publishing Co., Inc., Elkhart, Ind.—Modification 1310 of construction permit (B4-P-412) authorizing changes in equipment and increase in power, requesting further changes in equipment, move of transmitter from Elkhart Hotel, Main and East Marion Sts., Elkhart, Ind., to at junction of State Highway 19 and Mishawaka Road, Elkhart, Ind., and for approval of antenna.

NEW—Evans Broadcasting Co., Kansas City, Mo.—Construction 1370 permit for a new station to be operated on 1370 kc., 100 watts, unlimited time. Requests facilities of KWKC.

KABE—National Battery Broadcast Co., Portable-Mobile.— License to cover construction permit for a new broadcast pickup station.

W9XAA—Chicago Federation of Labor, Chicago, Ill.—License to cover construction permit to change location of station.

NEW—Mississippi Valley Broadcasting Co., Portable-Mobile.— Construction permit for a new general experimental station to be operated on 31100, 34600, 37600, 40600 kc., 5 watts.

#### Fifth Zone

KMJ—James McClatchy Co., Fresno, Calif.—Authority to determine 580 operating power by direct measurement of antenna.

KGHL—Northwestern Auto Supply Co., Inc., Billings, Mont.— 780 Construction permit to install new equipment, change frequency from 950 kc. to 780 kc., power from 1 KW, 2½ KW day, to 1 KW, 5 KW day, and move transmitter 70 feet from present site at same address.

NEW—Smith, Keller & Cole, a partnership composed of Ralph E. 1200 Smith, A. H. Keller and H. Wadsworth Cole, San Diego, Calif.—Construction permit for a new station to be operated on 1200 kc., 100 watts, daytime.

NEW—Wm. B. Smullin, Sacramento, Calif.—Construction permit 1310 for a new station to be operated on 1310 kc., 100 watts, 250 watts day, unlimited time. Amended to make changes in equipment.

NEW—George Harm, Fresno, Calif.—Construction permit for a 1310 new station to be operated on 1310 kc., 100 watts, unlimited time. Amended to change transmitter site from McKinley and First Sts., Fresno, Calif., to southwest corner Clinton and N. First St., Fresno, Calif.

KRKO—KRKO, Inc., Everett, Wash.—Construction permit to install 1370 new equipment, increase power from 50 watts to 100 watts, 250 watts day; change time from share-KVL to unlimited time; move transmitter from 2814 Rucker Avenue, Everett, Wash., to site to be determined, Everett, Wash. Requests time used by KVL, contingent upon KVL being granted permission to change frequency. (Filed under new name.)

KRKO—Lee E. Mudgett, Everett, Wash.—Voluntary assignment 1370 of license from Lee E. Mudgett to KRKO, Inc.

NEW—Harold H. Hanseth, Fresno, Calif.—Construction permit 1410 for a new station to be operated on 1410 kc., 1 KW, unlimited time. Amended to make changes in equipment.

NEW—The News Press Publishing Co., Santa Barbara, Calif.— 1450 Construction permit for a new station to be operated on 1450 kc., 500 watts, unlimited time.

NEW—Nichols & Warinner, Inc., Portable-Mobile.—Construction permit for a new general experimental station to be operated on 31100, 34600, 37600, 40600 kc., 2 watts.

NEW—Don Lee Broadcasting System, Portable, San Francisco, Calif.—Construction permit for a new general experimental station to be operated on 31600, 35600, 38600, 41000 kc., 100 watts.



# The National Association of Broadcasters

NATIONAL PRESS BUILDING \* \* \* \* \* WASHINGTON, D. C.  
JAMES W. BALDWIN, Managing Director

## NAB REPORTS

Vol. 4 - - No. 11  
FEBRUARY 27, 1936

Copyright, 1936. The National Association of Broadcasters

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### COPYRIGHT HEARINGS BEGUN

Copyright hearings were begun this week before the House Committee On Patents with Gene Buck, president of ASCAP as the first witness. The hearings were held on Tuesday and Wednesday and were scheduled to continue through Thursday.

Further hearings will be held on the same subject before the committee on March 3, 4, 5, 10, 11, 12, 17, 18 and 19. According to the present program broadcasters will present their testimony during the last few days of the hearings.

### GOVERNMENT RADIO STATION RUMORED

There was talk in Washington on Wednesday in connection with the Pan American conference which President Roosevelt is considering calling, that the government will use a short wave station of its own.

While no official confirmation could be obtained of this rumor the story was to the effect that a short wave station would be erected with WPA funds and that the President would allocate some short wave frequency, under executive order, which he is empowered to do under the Federal Communications Act.

No one at the Communications Commission apparently knows anything of the proposed station, but it was pointed out in well informed circles that, if the plan is worked out along the lines discussed, the Commission would have nothing to do with such a project, it all being done under executive order.

### COAXIAL CABLE DECISION

The Federal Communications Commission on Wednesday reached its second division in connection with the application of the American Telephone & Telegraph Company for authorization to construct a coaxial cable between New York and Philadelphia. The Commission in its decision granted the company permission to construct this cable for experimental purposes only and provided that before it could be used commercially the company would have to obtain further permission from the Commission. The telephone company had already told the Commission that it would allow other television experimenters to use the new cable and the Commission provides in this connection that there shall be no discrimination.

### ADDITIONAL STATIONS SIGN FOR WARNER BROS. MUSIC

The following stations have signed the Warner Brothers contract since February 4, 1936. (See NAB Reports—p. 1214):

KFAB—Lincoln, Nebraska; KG CX—Wolf Point, Montana; KGER—Long Beach, California; KMED—Medford, Oregon; KMMJ—Clay Center, Nebraska; KOB—Albuquerque, New Mexico; KOIN—Portland, Oregon; KRKD—Los Angeles, California; KSLM—Salem, Oregon; KVS O—Ardmore, Oklahoma; WAML—

Laurel, Mississippi; WBCM—Bay City, Michigan; WCHV—Charlottesville, Virginia; W GCM—Mississippi City, Mississippi; WHIS—Bluefield, West Virginia; WJAR—Providence, Rhode Island; WJEJ—Hagerstown, Maryland; WMBO—Auburn, New York; WPAX—Thomasville, Georgia; WTAX—Springfield, Illinois.

### NEW CALIFORNIA STATION RECOMMENDED

The Merced Star Publishing Company applied to the Federal Communications Commission for a construction permit for a new broadcasting station to be erected at Merced, Cal., to use 1040 kilocycles, 250 watts power and daytime operation.

Examiner John P. Bramhall in Report No. I-200 recommends that the application be granted "on condition that applicant install a suitable antenna and on a site which complies with the engineering standards of the Commission." The Examiner found that there is need for additional service in the area proposed to be served, and no interference would be caused by the erection of such a station.

### ASKS RESTRAINING ORDER AGAINST FCC

The Monocacy Broadcasting Company, Rockville, Md., has asked the Supreme Court of the District of Columbia to restrain the Federal Communications Commission from holding a hearing in its case and from extending the time for its construction permit.

The record shows that this company was granted a construction permit for a new station at Rockville, Md., without a hearing. It later developed that Station WCAU, Philadelphia, filed a protest against the grant on the ground of interference. WCAU later rescinded its protest but the Commission set the case down for hearing anyhow. The Commission will file a motion to dismiss the appeal in the Court.

### RECOMMENDS DENYING CHANGES FOR KFJM

Broadcasting station KFJM, Grand Forks, N. D., using 1370 kilocycles with 100 watts power unlimited time and special authorization to use 250 watts power until local sunset applied to the Federal Communications Commission to use 1410 kilocycles, with 1,000 watts power unlimited time.

Examiner Ralph L. Walker in Report No. I-199 recommends that the application be denied. He found that the use of 1,000 watts at night by the station would result in objectionable interference to Station KGNC, reducing the present service area of that station. It would also increase the overquota status of North Dakota and also of the zone.

### RECOMMENDS POWER INCREASE FOR WDAE

Broadcasting station WDAE, Tampa, Florida, applied to the Federal Communications Commission to increase its power from 1,000 watts, with special authorization for 2,500 watts LS to 5,000 watts LS. The station operates on 1220 kilocycles with unlimited time.

Examiner R. H. Hyde in Report No. I-201 recommends that the application be granted. He found that the service would be improved "and made more efficient by the use of the increased power." The Examiner found also that "no interference with other stations would result from the use of such increased power; the improvement that would be effected in the applicant's service would not result in any detriment to the interests of the public in the reception of any other station or stations."

### COMMITTEE REPORT ON RADIO AMENDMENT

Senator Wheeler, chairman of the Committee on Interstate Commerce has made a report on his own bill (S. 2243) providing

amendments to the radio act. The bill as reported was published in last week's Bulletin and the report in full is as follows:

The Committee on Interstate Commerce, to whom was referred the bill (S. 2243), to amend the Communications Act of 1934, relating to the allocation of radio facilities, having considered the same, report the bill back favorably to the Senate with the recommendation that it be passed as amended.

This bill seeks to restore to the Communications Act of 1934 similar language to that contained in the second paragraph of section 9 of the Radio Act of 1927. The language of the later act reads:

In considering applications for licenses and renewals of licenses, when and insofar as there is a demand for the same, the licensing authority shall make such a distribution of licenses, bands of frequency of wave lengths, periods of time for operation, and of power among the different States and communities as to give fair, efficient, and equitable radio service to each of the same.

Under the act of March 28, 1928, the above paragraph of section 9 of the Radio Act of 1927 was amended to read as follows:

It is hereby declared that the people of all the zones established by section 2 of this Act are entitled to equality of radio broadcasting service, both of transmission and of reception, and in order to provide said equality the licensing authority shall, as nearly as possible, make and maintain an equal allocation of broadcasting licenses, of bands of frequency or wave lengths, of periods of time for operation, and of station power, to each of said zones when and insofar as there are applications therefor; and shall make a fair and equitable allocation of licenses, wave lengths, time for operation, and station power to each of the States, the District of Columbia, the Territories and possessions of the United States within each zone, according to population. The licensing authority shall carry into effect the equality of broadcasting service hereinbefore directed, whenever necessary or proper, by granting or refusing licenses or renewals of licenses, by changing periods of time for operation, and by increasing or decreasing station power, when applications are made for licenses or renewals of licenses: *Provided*, That if and when there is a lack of applications from any zone for the proportionate share of licenses, wave lengths, time of operation, or station power to which such zone is entitled, the licensing authority may issue licenses for the balance of the proportion not applied for from any zone, to applicants from other zones for a temporary period of ninety days each, and shall specifically designate that said apportionment is only for said temporary period. Allocations shall be charged to the State, District, Territory, or possession wherein the studio of the station is located and not where the transmitter is located.

The above language, known as the "Davis amendment," was substantially carried over into the Communications Act of 1934. The bill repeals section 302 of the Communications Act, which reads as follows:

Sec. 302. (a) For the purposes of this title the United States is divided into five zones, as follows: The first zone shall embrace the States of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Delaware, Maryland, and the District of Columbia; the second zone shall embrace the States of Pennsylvania, Virginia, West Virginia, Ohio, Michigan, and Kentucky; the third zone shall embrace the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Tennessee, Mississippi, Arkansas, Louisiana, Texas, and Oklahoma; the fourth zone shall embrace the States of Indiana, Illinois, Wisconsin, Minnesota, North Dakota, South Dakota, Iowa, Nebraska, Kansas, and Missouri; and the fifth zone shall embrace the States of Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, and California.

(b) The Virgin Islands, Puerto Rico, Alaska, Guam, American Samoa, and the Territory of Hawaii are expressly excluded from the zones herein established.

Subsection (6) of section 307 of the Communications Act, which would be replaced by the language of this bill, reads as follows:

(b) It is hereby declared that the people of all the zones established by this title are entitled to equality of radio broadcasting service, both of transmission and of reception, and in order to provide said equality the Commission shall as nearly as possible make and maintain an equal allocation of broadcasting licenses, of bands of frequency, of periods of time for operation, and of station power to each of said zones when and insofar as there are applications therefor; and shall make a fair and equitable allocation of licenses, frequencies, time for operation, and station

power to each of the States and the District of Columbia, within each zone, according to population. The Commission shall carry into effect the equality of broadcasting service hereinbefore directed, whenever necessary or proper, by granting or refusing licenses or renewals of licenses, by changing periods of time for operation, and by increasing or decreasing station power, when applications are made for licenses or renewals of licenses: *Provided*, That if and when there is a lack of applications from any zone for the proportionate share of licenses, frequencies, time of operation, or station power to which such zone is entitled, the Commission may issue licenses for the balance of the proportion not applied for from any zone, to applicants from other zones for a temporary period of ninety days each, and shall specifically designate that said apportionment is only for said temporary period. Allocations shall be charged to the State or District wherein the studio of the station is located and not where the transmitter is located: *Provided further*, That the Commission may also grant applications for additional licenses for stations not exceeding one hundred watts of power if the Commission finds that such stations will serve the public convenience, interest, or necessity, and that their operation will not interfere with the fair and efficient radio service of stations licensed under the provisions of this section.

The legislation is recommended for practical reasons of administration by the Communications Commission, which has found that the drawing of artificial zone lines for guides in allocating radio facilities cannot satisfactorily be applied because of the physical laws governing radio transmission. As a consequence, the policy of Congress, to so distribute radio facilities that every section of the country will be adequately supplied, has been very difficult of effectuating.

On May 23, 1935, the Chairman of the Communications Commission wrote the chairman of your committee as follows:

With further reference to S. 2243, which was introduced by you March 13, 1935, I beg to advise that this Commission favors its adoption for the following reasons:

The existing law, which S. 2243 seeks to repeal, is contrary to natural laws and has resulted in the concentration of the use of frequencies in centers of population, and the restriction of facilities in sparsely populated States, even though interference consideration would permit the operation of one or more additional stations. Because of the size of the zones provided for by existing law, the distribution required by the Davis Amendment has resulted in providing ample broadcast service in small zones and lack of service in large zones. The experience of the Federal Radio Commission and this Commission has proved that the Davis Amendment is very difficult of administration and cannot result in an equality of radio broadcasting service.

This Commission is, therefore, in hearty accord with and favors the passage of S. 2243.

One amendment, the insertion of the words "a fair, efficient and" immediately before the word "equitable" in line 12 and the deletion of the word "an" in the same line, is recommended to make the language more nearly conform with the original wording in the Radio Act of 1927.

#### FCC RULES AMENDED

The Federal Communications Commission has announced the following amendments of its rules:

Rule 100.6 was amended to read as follows:

"100.6. Subject to the provisions of Sections 4(j), 412 and 606 of the Act, the files of the Commission shall be open to inspection as follows:

(a) Tariff schedules required to be filed under Section 203 of the Act, and annual and monthly reports required to be filed under Section 219 of the Act.

(b) All applications and amendments thereto filed under Title II or Title III of the Act; all documents filed with applications made when specific mention is made in the application referring to such document; authorizations issued upon such applications; all pleadings, depositions, transcripts of testimony, exhibits, examiners' reports, exceptions, and orders of the Commission.

(c) Other files in the discretion of the Commission upon written request describing in detail the documents to be inspected and the reasons therefor."

\* \* \* \* \*

The Commission amended Rule 105.34 to read as follows:  
"105.34 A. Each application or amendment thereto shall be personally subscribed and verified: (1) by the party filing said

application or amendment, or by one of the parties, if there be more than one; (2) by an officer of the party filing the application or amendment if the party be a corporation; *Provided, however,* That subscription and verification may be made by the attorney for the party (1) in case of physical disability of the party, or (2) his absence from the continental United States.

B. Each pleading initiating or supplementing a proceeding before the Commission shall be subscribed by the party or his attorney; *Provided, however,* That each pleading of fact verified by the affidavit of the attorney shall be made only when the facts are within the personal knowledge of the attorney, which said affidavit shall include a statement by affiant that said facts are within his personal knowledge."

The Commission directed that the following be substituted for the last paragraph of the present Rule 105.35:

"105.35. \* \* \*

All pleadings or documents (other than applications under Title II, formal complaints, supplemental complaints, cross complaints and amended complaints) filed in any proceeding shall be served by the party filing the same, proof of which service shall be by signature of the party served or by affidavit showing service by registered mail (postage prepaid) of a true copy thereof, to the last known address of said party, and such proof shall be submitted to the Commission, together with the original and 8 copies of such pleading or document."

\* \* \* \* \*

The Commission directed that the provision in Rule 105.36 calling for papers filed with the Commission to be 8 1-2 inches by 12 inches, be corrected to read "8 1-2 inches by 13 inches."

## FEDERAL TRADE COMMISSION ACTION

### Complaints

The Federal Trade Commission has alleged unfair competition in complaints issued against the following companies. The respondents will be given an opportunity for hearing to show cause why cease and desist orders should not be issued against them.

**No. 2721.** A complaint has been issued against **R. M. Barnett**, trading as **Home and School Education Society**, 1621 Real Estate Trust Building, **Philadelphia**, alleging unfair competition in the sale of a set of books designated "Source Book," together with a "Perpetual Pictured Semi-Annual Loose Leaf Extension Service," and memberships in a "Perpetual Bureau of Research."

Through verbal assertions made by his agents, and by means of advertising literature and prospecti he furnishes them, the respondent is alleged to represent and to encourage his salesmen to represent to the purchasing public that, as a special introductory offer, a limited number of persons in each place visited by the salesmen will be given a set of the "Source Book" free if they subscribe for the semi-annual extension service for 10 years, at a price varying from \$49.50 to \$79.50; that the stated price is the total cost of the extension service to the purchaser, and that the regular price of the Source Book with the extension service would be twice the price quoted to the prospective purchaser, or some other sum in excess of the quoted price.

**No. 2722.** A complaint has been issued against **Samuel Goldberg**, trading as **U. S. Specialty & Mfg. Co.**, 10222 Superior Avenue, **Cleveland**, with unfair competition in the sale of candy.

The respondent, selling and distributing candy to wholesale dealers, jobbers, retailers and schools, is alleged to have represented to the effect that he controls and operates factories and is the manufacturer of the candy he sells, when, according to the complaint, this is not true.

**No. 2723.** Unfair competition through misbranding of wine is alleged in a complaint issued against **Shewan-Jones, Inc.**, engaged in the manufacture and sale of wine to wholesalers and retailers, and having offices at 85 Second St., **San Francisco**, and a plant at **Lodi, San Joaquin County, Calif.**

The respondent corporation is charged with misuse of the name "Chateau Yquem" on labels of bottles, on invoices and in advertising matter, to designate one of the brands of wines it sells, and by such practices, according to the complaint, represents to customers and furnishes them with the means of representing to vendees, including ultimate consumers, that the wine so sold is the specific wine designated "Chateau Yquem" produced in France, when in fact it is made at the respondent's plant at Lodi from domestic grapes.

**No. 2724.** In a complaint issued against **Gustave Goldstein**, trading as **Humania Hair & Specialty Mfg. Co.**, 10-12 East 23rd St., **New York City**, he is charged with unfair methods of com-

petition in the sale and distribution of an extensive line of hair goods, cosmetics and toilet preparations.

In his advertising matter, the respondent is alleged to have represented that 17 or 18 different preparations he sells in interstate commerce are effective treatments for either the hair, the scalp, various skin diseases, or deafness, whereas, according to the complaint, use of the respondent's preparations does not produce the beneficial effects claimed for them.

**No. 2725.** Charging unfair representations of medicine in advertising and on the radio, a complaint has been issued against **John J. McCloskey**, 727 West Wisconsin Ave., **Milwaukee**, trading as **H. B. Kimball Co.**, **H. B. Kimball**, and **Kimball Laboratories**.

Selling a stomach remedy called "Kimball Tablets," the respondent is alleged to have advertised that more than 100,000 chronic cases have been successfully treated, and that regardless of how long a person has suffered, "we positively guarantee results, or the treatment costs you nothing." The complaint alleges that these assertions are untrue.

**No. 2726.** Charging unfair competition in the sale of potato chip machines, a complaint has been issued against **Food Display Machine Corp.**, 500 North Dearborn St., **Chicago**.

In its advertising matter, the respondent is said to have represented to prospective purchasers that they can make from \$23.50 a day to \$300 a week selling potato chips made by the respondent's machine; that "There is no way to tell whether you'll make \$5,000 or \$15,000 the first year," and that "It is possible for a live wire to make a net profit of \$1,000 to \$1,500 a month," when, the complaint alleges, the actual earnings or profits are, on the average, much less than the amounts set forth in the respondent's advertisements.

**No. 2727.** **Nuway Printing Co.**, 12 South Clinton St., **Chicago**, also trading as **Professional Record Card Co.**, is named respondent in a complaint alleging unfair competition in the sale of dental record cards which it prints.

Among the companies in competition with the respondent are the Kohlhaas Co., Chicago, and the McCaskey Register Co., Alliance, O., both engaged in the printing and sale of record forms for the use of dentists, the complaint sets forth, and who in the course of their business have built up and now enjoy valuable good will.

The respondent, the complaint charges, in selling its products advertises by means of circulars in which, it is alleged, these statements appear: Kohlhaas Type Dental Record Cards," "McCasky Type Dental Cards," and "A Limited Supply of McCasky Type Record Cards."

**No. 2728.** **American Character Doll Co., Inc.**, 200 Fifth Ave., **New York City**, is charged with unfair competition in the sale of "Sally Jane" dolls, in a complaint.

In the sale of its product, also described as "Paratex" dolls, the respondent is said to distribute among the retail doll trade circulars bearing pictures of two dolls, each immersed in a jar of water, one doll appearing to show no ill effects from such immersion and the other appearing to be in a state of disintegration.

### Stipulations

The Commission has issued the following cease and desist orders:

**No. 01102.** **C-T-C Corporation, successor to Haley M-O Co.**, 15 Exchange Place, **Jersey City, N. J.**, agrees, in the sale of "Haley's C-T-C" effervescent tablets offered as a treatment for colds and other ailments, not to represent that the product will keep the system alkaline and free from acidity, that it is a competent and complete remedy for colds, that it will prevent or correct certain ailments caused by excessive acid in the blood or by any condition other than gastric hyperacidity, or that reducing diets cause acidity and that C-T-C tablets will counteract such acid conditions.

According to the stipulation, the respondent asserts it has discontinued advertising and selling "Haley's M-O," and that the rights, title and interest in that product have been sold to the Charles H. Phillips Chemical Co.

**No. 01103.** **E. W. Craghill and W. E. Brunson, trading as the Zulvar Co.**, 6513 Hollywood Boulevard, **Hollywood, Calif.**, agree to cease advertising that "Zulvar," offered as a remedy for rheumatism, is, when used either externally or internally, a competent treatment for skin diseases, colds, and other ailments. Other assertions to be discontinued are that the product contains no drugs, is recommended by many physicians, and that the trial offer of "Zulvar" is accepted at no risk to the purchaser, unless, in returning the product, the purchaser receives from the re-

spondents the total amount expended for the product, plus cost of packing and postage.

**No. 01104. Percalx, Inc., Burley, Idaho,** selling "Percalx," recommended for treatment of hay fever, asthma, chronic colds, and sinus infections, stipulates that it will refrain from making assertions that persons deficient in calcium usually suffer from the ailments enumerated, and that use of "Percalx" makes it possible to multiply by four times the daily intake of calcium. Other representations to be discontinued are that "Percalx" has relieved thousands of sufferers from asthma, sinus infections, chronic colds and hay fever, or affords relief to nine out of ten who suffer from these ailments, and that it will bring relief in cases where other remedies have failed or where treatments by physicians have been unsuccessful.

**No. 01105. J. George and Walter U. Hauser and James J. Poole, doing business as Hauser Laboratory, 2924 Girard Ave., Minneapolis, Minn.,** have entered into a stipulation to desist from certain representations in the sale of "Liquid O2X," a remedy for athlete's foot, ringworm, eczema and other skin disorders. They agree to cease advertising that the product is a competent remedy for all forms of fungus skin disorders, that it clears up most skin diseases in a week, or that government reports show a rapid spread of skin infections caused by an almost invisible vegetable parasite. The respondents also stipulate that they will discontinue use of the word "Laboratory" in their firm name until they own and operate a laboratory.

**No. 01106. Nelson E. Woolman and Lyle G. Jackson, trading as Power Seal Co., 1601 South Broadway, Los Angeles,** and selling a cylinder and valve compound designated "Power Seal," stipulate that they will cease and desist from advertising that use of their product in engines will restore power and efficiency, seal up leaky rings and valves, fill up valve pits, or save oil and gas. Under the agreement, the respondents will refrain from representing they operate a laboratory, until such is a fact.

**No. 01107. James Brown, Marshall, Mich.,** in business under the trade name "Prostaid-National," selling "Prostaid," offered as a treatment for prostate gland ailments, agrees to discontinue representations that the product is a 100 per cent effective, efficient and harmless treatment in cases of weakened, inflamed, or enlarged prostate gland.

**No. 01122. Mark Laboratories, Inc., Homewood Station, Pittsburgh, Pa.,** selling "Mark-4" as a remedy for athlete's foot, has signed a stipulation to cease and desist from representing that its product is an effective remedy for athlete's foot, ringworm, poison ivy or other skin diseases, or that it will refresh tired, aching feet immediately, irrespective of the cause of the condition.

**No. 1610. Brown Shoe Co., 16th St. and Washington Ave., St. Louis,** agrees in its stipulation to cease using the word "Doctor" or abbreviation "Dr." as part of a trade name for shoes not made in accordance with the design of a doctor, and not containing special orthopedic features resulting from medical advice and services.

**No. 1611. Mrs. Evelyn Beveridge, 6724 Hollywood Boulevard, Hollywood, Calif., trading as La Belle Laboratories** in the manufacture of a depilatory, agrees to discontinue advertisements to the effect that use of her product will destroy the hair root so as to prevent regrowth of hair, or that it will permanently remove hair, or will never irritate or inflame the most delicate skin, when these are not the facts. The respondent also stipulates that she will cease advertising a "Special Offer; Send \$1.00 for \$1.50 Size," implying that the regular price of the article is \$1.50 and that the offer of sale for \$1.00 is a "Special" offer, when this is not true.

**No. 1612. Royal Distilling Co., 2801 Blake St., Denver,** will cease using as a part of its corporate name the word "Distilling" or derivatives thereof or other words of a similar meaning on labels or in advertising, or in any manner tending to deceive buyers into believing that the company is a distiller or actually owns and operates a distillery, when this is not true.

**No. 1613. Peter P. Stone, trading as Merit Manufacturing Co., 2800 Newton Ave., Indianapolis,** selling and distributing automobile stop-light and tail-light lenses, agrees to discontinue use in advertising of illustrations which do not accurately portray the lenses, and of illustrations which may have a tendency to deceive purchasers into believing that the lenses sold by the respondent are of the same design and reflecting properties as those illustrated in the advertisements, when this is not true.

Stone also agrees to stop employing the word "Manufacturers" as part of his trade name or in any way which may imply that he manufactures the products he sells, or operates a factory in which they are made.

**No. 1615. Virginia Sheridan, Inc., 6500 South Oak Park**

**Ave., Chicago,** manufacturer of cosmetics, including a preparation designed for concealing birth-marks or skin blemishes, agrees to stop using and assuming financial or other liability for certain advertising copy used by stores purchasing its products, such advertising matter containing allegations to the effect and implying that application of the respondent's product will remove skin blemishes or cause birth-marks, blemishes and scars to disappear, when this is not true. Provision is made, however, that when such assertions are used to describe the capability of the preparation to conceal disfigurements, these assertions shall be immediately accompanied by other statements indicating clearly that the effect of the application of the product is merely to conceal disfigurements and not to cause their removal.

Virginia Sheridan, Inc., also agrees to cease using or assuming liability for advertising matter employed by stores purchasing its product and containing representations to the effect that it is the only article on the market for concealing skin disfigurements.

**No. 1616. Frank Gue, trading as Star Seed Co., Crawford, Nebr.,** agrees, in soliciting the purchase of and in purchasing cream or dairy products in interstate commerce, to cease the use in connection with advertisements of the phrase "Cream Producers' Own Organization," or any words of equivalent meaning, alone or in connection with the name "Star Seed Cream Club," in a manner implying or tending to deceive patrons having cream or other dairy products for sale into the belief that Frank Gue is conducting a cooperative creamery or organization, when this is not true. The stipulation shows that Gue sent patrons a small "membership card," on which it was stated that the patron receiving such card has been made a member of the "Star Seed Cream Club" and would be entitled to all benefits of the club.

**No. 1617. Russell L. Post and Herman Ricker, of 134 South Market St., Galion, Ohio, trading as National Mailing Service, and as Reliable Products Co.,** selling advertising specialties, including blankets, by mail order, agree to stop using the words "Indian" or "Wyandotte 6" either independently or in connection with the use of Indian heads and Indian patterns in the weaving of blankets, and in advertising matter unless, in the latter case, such words are accompanied by appropriate phrases clearly indicating that the blankets are not made by American Indians. The respondents also agree to stop advertising "You pay no profit to the jobber and traveling salesman," implying that they are manufacturers.

**No. 1618. Harry Cohen, of Des Moines, Iowa, trading as British Woolen Mills,** agrees to stop using the word "British" as part of his trade name or in any other way having a tendency to deceive buyers into the belief that his products, men's suits and overcoats, are of British or English origin and imported into the United States, when this is not true, and from the use of the word "Mills," independently or in connection with the word "British," implying that he manufactures his products or owns and operates a mill in Great Britain or elsewhere, when this is not true.

**No. 1619. Isadore N. Levy, Eva Levy and Louis Davidson, of Philadelphia, trading as Perfection Products,** agree to desist from use in advertising or on labels of representations to the effect that their product "Vigair," will restore the original or natural color and vitality of youth to the hair, or effectively rid the scalp of dandruff and other similar troubles.

**No. 2353. An order has been issued directing Best & Co., Fifth Ave. at 35th St., New York City,** to discontinue unfair methods of competition in the sale of "Toyo" hats made from rice paper.

Respondent is ordered to cease representing in any manner that its "Toyo" hats are "Panama" hats, and to desist from using the word "Panama," alone or in connection with other words, so as to imply that such "Toyo" hats are Panamas.

**No. 2414. O. F. Schoeck, doing business as the O. F. Schoeck School, 1903 Park Ave., Alton, Ill.,** has been ordered to cease and desist from the use of false and misleading advertising in connection with the sale and distribution of correspondence courses of study and instruction.

The respondent is ordered to discontinue representing through advertisements in the classified advertising pages of newspapers and magazines, or in any other manner, under such headings as "Help Wanted," "Men Wanted," "Wanted—Male Help," and "Employment," that he has positions or jobs at his disposal or that employment is offered to persons answering the advertisements.

**No. 2635. Max Kipperman and Samuel Orenstein, 36 West 32nd St., New York City, trading as Samac Knitting Mills,** have been ordered to cease and desist from unfair representations of their business.

The respondents are directed to stop representing, through their trade name and printed matter, by use of words such as "Mills," "Knitting," or "Manufacturers," that they own or control mills in

which their products are knitted or manufactured. They are also directed to stop asserting, by use of the term "100 Per Cent Pure Spun," or phrases of similar import, that the product which such phrase is used to describe, is made of 100 per cent pure spun wool, unless and until the articles so labeled are composed entirely of wool.

**No. 2664. McCambridge & McCambridge Co., Inc.**, of 12 L Street, S. E., Washington, D. C., trading as Everfresh Products Co., has been ordered to stop misrepresentations in the sale of its "Everfresh Aspirin."

Advertisements by the respondent company in newspapers, sales circulars and by radio that its aspirin gives better or quicker relief than other forms of aspirin, are prohibited in the Commission's order to cease and desist.

## FEDERAL COMMUNICATIONS COMMISSION ACTION

### HEARING CALENDAR

Monday, March 2

#### FURTHER HEARING BEFORE AN EXAMINER (Broadcast)

**NEW**—Champaign News-Gazette, Inc., Champaign, Ill.—C. P., 1370 kc., 100 watts, unlimited time.

Thursday, March 5

#### ORAL ARGUMENT BEFORE THE BROADCAST DIVISION

##### Examiner's Report No. I-141:

**NEW**—Joplin Broadcasting Co., Pittsburg, Kans.—C. P., 1200 kc., 100 watts, daytime.

**NEW**—Pittsburg Publishing Co., Pittsburg, Kans.—C. P., 1500 kc., 100 watts, unlimited time.

**NEW**—Harold F. Foraker and Ray D. Luzadder, d/b as The Wichita Broadcasting Co., Wichita, Kans.—C. P., 1500 kc., 100 watts, unlimited time.

##### Examiner's Report No. I-142:

**NEW**—Black Hills Broadcast Co. (Robert Lee Dean), Rapid City, S. Dak.—C. P., 1370 kc., 100 watts, unlimited time.

##### Examiner's Report No. I-146:

**NEW**—William S. Thellman, New Castle, Pa.—C. P., 1420 kc., 100 watts, daytime.

##### Examiner's Report No. I-143:

**KID**—KID Broadcasting Co., Inc., Idaho Falls, Idaho.—C. P., 1320 kc., 500 watts, 1 KW LS, unlimited time. Present assignment: 1320 kc., 250 watts, 500 watts LS, unlimited time.

##### Examiner's Report No. I-147:

**NEW**—Arthur Westlund and Jules Cohn, Santa Rosa, Calif.—C. P., 1310 kc., 100 watts, unlimited time.

##### Examiner's Report No. I-96:

**NEW**—Charles C. Theis, Wichita, Kans.—C. P., 1210 kc., 100 watts, unlimited time.

Friday, March 6

#### HEARING BEFORE AN EXAMINER (Broadcast)

**NEW**—C. G. Hill, Geo. D. Walker, Susan H. Walker, Winston-Salem, N. C.—C. P., 1250 kc., 250 watts, daytime.

### APPLICATIONS GRANTED

**WFBR**—The Baltimore Radio Show, Inc., Baltimore, Md.—Granted license to cover C. P. (auxiliary transmitter) for auxiliary purposes only; 1270 kc., 500 watts. Also granted modification of license to use present licensed transmitter as an auxiliary and auxiliary transmitter as a main transmitter.

**NEW**—Dorrence D. Roderick, El Paso, Tex.—Granted C. P. for new station, 1500 kc., 100 watts, unlimited time.

**WHDH**—Matheson Radio Co., Inc., Boston, Mass.—Granted C. P. to make changes in equipment, on temporary basis only, because of pending application requesting facilities of this station.

**WKRC**—WKRC, Inc., Cincinnati, Ohio.—Granted extension of special experimental authority to operate with 1 KW day and night for period ending September 1, 1936.

**WREC**—WREC, Inc., Memphis, Tenn.—Granted extension of

special experimental authority to operate with 1 KW night, 2½ KW day, from March 1 to September 1, 1936.

**KMBC**—Midland Broadcasting Co., Kansas City, Mo.—Granted license for auxiliary transmitter to use old 2½-KW transmitter for emergency purposes only, to operate with 1 KW night, 2½ KW day.

**WMT**—Iowa Broadcasting Co., Cedar Rapids, Iowa.—Granted license to cover special authority to operate permanently with 1 KW night, 2½ KW day, using directional antenna at night, unlimited time, and approving transmitting equipment.

**KGVO**—Mosby's, Inc., Missoula, Mont.—Granted license to cover C. P. authorizing installation of new equipment, change in frequency to 1260 kc., increase in power to 1 KW, and change in transmitter site.

**WDBO**—Orlando Broadcasting Co., Inc., Orlando, Fla.—Granted extension of special experimental authority to operate with 1 KW daytime.

**KFBK**—James McClatchy Co., Sacramento, Calif.—Granted license to cover C. P., 1490 kc., 5 KW, unlimited time; also authority to determine operating power by direct measurement of antenna input in compliance with Rule 137.

**WOKO**—WOKO, Inc., Albany, N. Y.—Granted license to cover C. P., 1430 kc., 500 watts night, 1 KW day, unlimited time. Also granted authority to determine operating power by direct measurement of antenna input in compliance with Rule 137.

**KHBC**—Honolulu Broadcasting Co., Ltd., Hilo, Hawaii.—Granted modification of C. P. to install new equipment and antenna; change frequency from 1420 kc. to 1400 kc.; increase power from 100 watts to 250 watts; and extend commencement date to 60 days after grant and completion date to 6 months thereafter.

**WINS**—Hearst Radio, Inc., New York City.—Granted renewal of license, 1180 kc., 1 KW, limited time.

**WIBM**—WIBM, Inc., Jackson, Mich.—Granted C. P. to make changes in transmitting equipment and install vertical antenna.

**WCAO**—Monumental Radio Co., Baltimore, Md.—Granted modification of C. P. to move transmitter 60 feet from present site, and make changes in present antenna.

**WREC**—WREC, Inc., Memphis, Tenn.—Granted modification of C. P. to extend completion date to April 29, 1936.

**WGBI**—Scranton Broadcasters, Inc., Scranton, Pa.—Granted extension of special experimental authority to operate with power of 500 watts from March 1 to September 1, 1936.

**WIP**—Pennsylvania Broadcasting Co., Philadelphia, Pa.—Granted extension of special experimental authority to operate with power of 1 KW for period 3-1-36 to 9-1-36.

**NEW**—Pape Broadcasting Corp., Portable-Mobile (Mobile, Ala.).—Granted C. P. (temporary broadcasting pickup) service, 1646, 2090, 2190, 2830 kc., 20 watts.

**WIEK**—Atlantic Broadcasting Corp., Portable-Mobile (New York City).—Granted C. P. (temporary broadcast pickup) for replacement transmitter and increase in power from 50 to 100 watts.

**W8XWJ**—The Evening News Assn., Detroit, Mich. (Portable-Mobile).—Granted license to cover C. P. for new general experimental broadcast station, frequencies 31600, 35600, 38600 and 41000 kc., 100 watts.

**W1XAV**—Shepard Broadcasting Service, Inc., Quincy, Mass.—Granted license (exp. spec. exp.), frequencies 61500 kc., 100 watts.

**W1XER**—Shepard Broadcasting Service, Inc., Quincy, Mass.—Granted license to cover C. P. (exp. gen. exp.) for new fixed general experimental broadcast station, frequencies 13600, 35600, 38600, 41000 kc., 500 watts.

**KABE**—National Battery Broadcast Co., Portable-Mobile (St. Paul).—Granted license to cover C. P. (temporary broadcast pickup), frequencies 1622, 2060, 2150, 2790 kc., 25 watts.

**NEW**—Radio Air Service Corp., Portable-Mobile (Cleveland, Ohio).—Granted C. P., frequencies 31100, 34600, 37600, 40600 kc., 10 watts, to communicate as a broadcast pickup station only in the temporary service on an experimental basis.

**KILU**—Arkansas Radio & Equipment Co., Portable (Little Rock, Ark.).—Granted modification of license to add frequencies 2060, 2790 kc. Also granted renewal of license in accordance with modification.

**NEW**—Racine Broadcasting Corp., Portable-Mobile.—Granted C. P. for broadcast pickup station, frequencies 3100, 34600, 37600 and 40600 kc., 10 watts. Also granted license covering same.

NEW—National Broadcasting Co., Inc., New York City.—Granted C. P. for special experimental station for relay visual broadcasting service, frequency 177000 kc., 15 watts.

W2XF—National Broadcasting Co., Inc., New York City.—Granted C. P. covering change in transmitting equipment and increase in power from 5 to 12 KW.

W2XK—National Broadcasting Co., Inc., New York City.—Granted C. P. for increase in power from 2½ KW to 15 KW.

WGAR—The WGAR Broadcasting Co., Cleveland, Ohio.—Granted authority to determine operating power by direct measurement of antenna input in compliance with Rule 137.

WSYR—WSYU—Central New York Broadcasting Corp., Syracuse, N. Y.—Granted extension of present license for period of one month.

KFDM—Sabine Broadcasting Co., Inc., Beaumont, Tex.—Granted renewal of license; 560 kc., 500 watts, with additional 500 watts day. 7.7 amperes for 1 KW, antenna resistance 17 Ohms. Unlimited.

KFAB—KFAB Broadcasting Co., Lincoln, Nebr.—Granted renewal of license; 770 kc., 10 KW. Simultaneous daytime operation with station WBBM from 6 a. m. to 6:45 p. m.; Sept., Oct., 5:45 p. m.; Nov. 5:15 p. m.; Dec., 5:00 p. m.; Jan., 5:30 p. m.; CST. Shares time at night with Station WBBM as follows: WBBM 4-7 and KFAB 3-7 time.

WTAG—Worcester Telegraph Publishing Co., Inc., Worcester, Mass.—Granted renewal of license; 580 kc., 500 watts, unlimited time. Also granted renewal for auxiliary transmitter.

KGMB—Honolulu Broadcasting Co., Ltd., Honolulu, Hawaii.—Granted renewal of license, 1320 kc., 250 watts, unlimited time.

KARK—Arkansas Radio & Equipment Co., Little Rock, Ark.—Granted renewal of license; 890 kc., 250 watts, with additional 250 watts from local sunrise to local sunset only, unlimited time.

WIBW—Topeka Broadcasting Association, Inc., Topeka, Kans.—Granted renewal of license; 580 kc., 1 KW, with an additional 4 KW from local sunrise to local sunset only. Shares time with KSAC.

WJAR—The Outlet Co., Providence, R. I.—Granted extension of special experimental authority to operate with a power of 500 watts nighttime to Sept. 1, 1936.

W2XIS—Standard Cahill Co., Inc., New York City.—Granted modification of C. P. so as to delete the 10 general experimental frequencies leaving 4 allocated to miscellaneous experimental service: 31600, 35600, 38600 and 41000 kc., change equipment, increase power to 100 watts, and operate station in broadcast service experimentally under special authority contained in Rule 320.

### RENEWAL OF LICENSES

The following stations were granted renewal of licenses for the regular period:

KEHE, Los Angeles; KFNF, Shenandoah, Ia.; KGBU, Ketchikan, Alaska; KHQ, Spokane, Wash.; KSFO, San Francisco; KTSA, San Antonio, Tex.; WFLA-WSUN, Clearwater, Fla.; WJAY, Cleveland, Ohio; WMCA and auxiliary, New York City; WMT, Cedar Rapids, Ia.; WOW, Omaha, Neb.; KFQD, Anchorage, Alaska; KLX, Oakland, Cal.; WDEV, Waterbury, Vt.; WELI, New Haven, Conn.; WIND, Gary, Ind.; WJAX, Jacksonville, Fla.; WQAN, Scranton, Pa.; WWJ, Detroit, Mich.

WJR—WJR, The Goodwill Station, Detroit, Mich.—Granted renewal of license for the period ending Aug. 1, 1936, for auxiliary transmitter.

WIBG—Seaboard Radio Broadcasting Corp., Glenside, Pa.—Granted renewal of license for the period ending Aug. 1, 1936, for auxiliary transmitter.

W6XO—The Crosley Radio Corp., Mason, Ohio.—Granted renewal of special experimental station license for experimental service, effective Feb. 21, to expire May 21, 1936, in exact conformity with existing license.

The following stations were granted renewal of licenses on a temporary basis only subject to whatever action may be taken by the Commission upon the pending applications for renewal of licenses which were designated for hearing:

KELW, Burbank, Cal.; KFRC, San Francisco, Cal.; KFUD, Clayton, Mo.; KMTR, Los Angeles; KSEI, Pocatello, Idaho; KUSD, Vermillion, S. Dak.; WMMN, Fairmont, W. Va.; WOS, Jefferson City, Mo.; WPHR, Petersburg, Va.; WTMJ, Milwaukee, Wis.

KFYR—Meyer Broadcasting Co., Bismarck, N. Dak.—Granted renewal of license on a temporary basis only to conform to Commission's action of February 8th, with reference to this station's application for renewal of license.

KFKA—The Mid-Western Radio Corp., Greeley, Colo.—Granted renewal of broadcast station license for the regular period.

KHJ—Don Lee Broadcasting System, Los Angeles, Cal.—Granted renewal of broadcast station license for auxiliary transmitter for the regular period.

The following stations were granted renewal of licenses on a temporary basis only, from March 1 to April 1, 1936, pending receipt and/or action on applications for renewal:

KFPY, Spokane, Wash.; WFIL and auxiliary, Philadelphia, Pa.; WLBL, Stevens Point, Wis.

WSAJ—Grove City College, Grove City, Pa.—Granted renewal of license for the period ending June 1, 1936.

WWL—Loyola University, New Orleans, La.—Extended special temporary experimental authorization heretofore issued WWL, for the period March 1 to April 1, 1936, subject to the same conditions as contained in existing authority, pending consideration of pending petition of WLWL and petitions in opposition thereto.

WJBW—Chas. O. Carlson, New Orleans, La.—Extended present license on a temporary basis only, from March 1 to April 1, 1936, subject to whatever action may be taken on application for renewal of license pending before the Commission.

W8XAR—Westinghouse E and M Co., Saxonburg, Pa.—Granted renewal of special experimental license for the period March 23 to June 23, 1936, in exact conformity with existing license.

WLEZ—The Norfolk Daily News, Portable—Granted renewal of broadcast pickup station license for temporary service for period ending Nov. 1, 1936.

KWKH—International Broadcasting Corp., Shreveport, La.—Extended special temporary experimental authorization heretofore issued KWKH, for the period March 1 to April 1, 1936, subject to same conditions as in existing authority, pending consideration of pending petition of WLWL and petitions in opposition thereto.

### SET FOR HEARING

NEW—Ben S. McGlashan, San Diego, Cal.—Application for C. P., 1210 kc., 100 watts, daytime. Site to be determined.

NEW—The Tribune, Great Falls, Mont.—Application for C. P. for new station; 550 kc., 1 KW night, 5 KW day, unlimited time. Site to be determined.

NEW—Lookout Broadcasting Corp., Chattanooga, Tenn.—Application for C. P. for new station; 1420 kc., 100 watts. Daytime only. Site to be determined.

NEW—E. Anthony & Sons, Inc., Pawtucket, R. I.—Application for C. P. for new station; 1200 kc., 100 watts night, 250 watts day. Unlimited time. Facilities WNRI. Site to be determined.

NEW—Albert Lea Broadcasting Corp., Albert Lea, Minn.—Application for C. P. for new station; 1200 kc., 100 watts, unlimited time. Site to be determined.

NEW—R. C. Goshorn & Lester E. Cox, d/b as Capitol Broadcasting Co., Jefferson City, Mo.—Application for C. P. for new station; 920 kc., 500 watts daytime. Site to be determined.

NEW—Power City Broadcasting Corp., Niagara Falls, N. Y.—Application for C. P. for new station; 630 kc., 250 watts daytime. Site to be determined.

NEW—The Steffen Ice & Ice Cream Co., Wichita, Kans.—Application for C. P. for new station; 1210 kc., 100 watts, unlimited time.

NEW—J. T. Bilben & N. G. Barnard Walker, Minn.—Application for C. P. for new station; 1310 kc., 100 watts, unlimited.

NEW—Peninsula Newspapers, Inc., Palo Alto, Cal.—Application for C. P. for new station; 1160 kc., 250 watts, daytime.

WCB D—WCB D, Inc., Chicago, Ill.—Modification of license to change location of studio from Karcher Hotel, Waukegan, to 128 North Pulaski Road, Chicago.

NEW—W. E. Day, Creston, Ia.—Application for C. P. for new station; 1500 kc., 100 watts, unlimited time. Site to be determined.

NEW—Harold Johnson & Leland M. Perry, d/b as Johnson & Perry, Cedar City, Utah—Application for C. P. for new station; 1310 kc., 100 watts, unlimited time. Site to be determined.



- NEW—State Capitol Broadcasting Assn. (R. B. Anderson, Pres.), Austin, Tex.—Application for C. P. for new station; 1120 kc., 500 watts night, 1 KW day, S. H. (all hours not used by WTAW) using directional antenna.
- WGAR—The WGAR Broadcasting Co., Cleveland, Ohio—Transfer of control of the WGAR Broadcasting Co. (license of WGAR), from the present four stockholders to WJR, the Goodwill Station, a Michigan Corporation (1450 kc., 500 watts night, 1 KW day, unlimited).
- WHIO—Miami Valley Broadcasting Corp., Dayton, Ohio—Application for C. P. to make changes in equipment and increase day power to 5 KW, using conventional non-directional antenna for day operation.

### MISCELLANEOUS

- KFPM—Dave Ablowich, t/r as The New Furniture Co., Greenville, Tex.—Denied petition asking Commission to reconsider action in designating for hearing applications for renewal of license and assignment of license.
- KFOX—Nichols & Warinner, Inc., Long Beach, Cal.—Denied petition asking Commission to reconsider and grant application to assign license to Hal Nichols, Inc. Designated for hearing on Jan. 10, 1936.
- KFRU—KFRU, Inc., Columbia, Mo.—Granted permission to use nighttime hours when relinquished by WOS, which has been granted C. P. for a police frequency, subject to Rule 131.
- W. T. Knight, Jr., Savannah, Ga.—Denied petition asking Commission to reconsider action in designating for hearing application for new station to operate on 1310 kc., 100 watts, full time, and to grant same.
- WWJ—The Evening News Assn., Inc., Detroit, Mich.—Retired to closed files C. P. and modification of C. P., heretofore granted for authority to move transmitter, for want of prosecution.
- WGBF—Evansville On the Air, Inc., Evansville, Ind.—Denied special temporary authorization to operate simultaneously with KFRU, and with reduced power of 250 watts, from 7 to 8 p. m. March 5; from 7 to 8:30 p. m. March 6; and from 7 to 10 p. m. (CST) March 7, 14, 21 and 28, 1936, in order to broadcast special programs.
- WJEJ—Hagerstown Broadcasting Co., Hagerstown, Md.—License further extended on a temporary basis to April 1, 1936.
- NEW—ABC Broadcasting Co., Big Spring, Tex.—Dismissed with prejudice application for C. P. for new radio station to operate on 1500 kc., 100 watts, daytime.

### APPLICATIONS DISMISSED

The following applications, heretofore set for hearing, were dismissed at request of applicants:

- WGAR—The WGAR Broadcasting Co., Cleveland, Ohio.—Modification of license; 890 kc., 500 watts, 1 KW LS, unlimited time.
- WCOL—WCOL, Inc., Columbus, Ohio—C. P., 1210 kc., 100 watts, 250 watts, LS, unlimited time.
- NEW—M. M. Oppegard, Grand Forks, N. Dak.—C. P., 1310 kc., 100 watts, 250 watts, LS, unlimited time.
- NEW—Bismarck Tribune Co., Bismarck, N. Dak.—C. P., 500 kc., 1 KW, 5 KW, LS. Unlimited time.
- KGFG—Oklahoma Broadcasting Co., Inc., Oklahoma City, Okla.—C. P., 1370 kc., 100 watts, 250 watts, LS, shares with KCRC.
- NEW—American Broadcasting Corp. of Ohio, Cleveland, Ohio—C. P., 880 kc., 1 KW, unlimited time.

The following application, heretofore set for hearing, was dismissed for failure of applicant to answer form letter, adopted by Broadcast Division requiring applicants to signify their desire to be heard within 10 days after receipt of said form letter:

- NEW—A. E. Hughes, d/b as Valdosta Broadcasting Co., Valdosta, Ga.—C. P., 1500 kc., 100 watts, unlimited.

The following application heretofore set for hearing, was dismissed inasmuch as it has been superseded by an application under the name of Smith, Keller & Cole:

- NEW—Ralph E. Smith, San Diego, Cal.—C. P., 1200 kc., 100 watts, daytime.

### APPLICATIONS DENIED

- NEW—Eugene DeBogory, tr/as Dallas Radio Research Engrs., Dallas, Tex.—Application for C. P., 1570 kc., 1 KW, unlimited (exp. broadcast), heretofore set for hearing, was denied as in cases of default for failure to file an appearance.

### ORAL ARGUMENTS

- NEW—Ex. Rept. 1-163: Paul R. Heitmeyer, Salt Lake City, Utah.—Oral argument granted for April 23, 1936.
- NEW—Ex. Rept. 1-173: Paul R. Heitmeyer, Cheyenne, Wyo.—Oral argument granted for April 23, 1936.
- NEW—Wyoming Radio Educational Assn., Cheyenne, Wyo.—Oral argument granted for April 23, 1936.
- WFEA—Ex. Rept. 1-180: New Hampshire Broadcasting Co., Manchester, N. H.—Oral argument granted for April 23, 1936.
- NEW—Ex. Rept. 1-184: W. H. Kindig, Hollywood, Calif.—Oral argument granted for April 23, 1936.
- KFAC—Los Angeles Broadcasting Co., Inc., Los Angeles, Calif.—Oral argument granted for April 23, 1936.
- WCAO—Ex. Rept. 1-187: The Monumental Radio Co., Baltimore, Md.—Oral argument granted for April 30, 1936.
- WICC—Ex. Rept. 1-187: Southern Connecticut Broadcasting Corp., Bridgeport, Conn.—Oral argument granted for April 30, 1936.
- WIP—Pennsylvania Broadcasting Co., Philadelphia, Pa.—Oral argument granted for April 30, 1936.

### APPLICATIONS RECEIVED

#### First Zone

- WTAG—Worcester Telegram Publishing Co., Inc., Worcester, 580 Mass.—Construction permit to make changes in equipment.
- WMAL—National Broadcasting Co., Inc., Washington, D. C.—630 Modification of license to increase power from 250 watts, 500 watts day, to 500 watts day and night.
- NEW—Elmira-Star-Gazette, Inc., Elmira, N. Y.—Construction permit for a new station to be operated on 1200 kc., 250 watts, daytime.
- NEW—The Ogdensburg Advance Co., Watertown, N. Y.—Construction permit for a new station to be operated on 1270 kc., 250 watts, unlimited time. Amended to make antenna changes, give studio site as Public Square, Watertown, N. Y., and transmitter site to be determined, Watertown, N. Y.
- WEVD—Debs Memorial Radio Fund, Inc., New York, N. Y.—1400 Modification of license to change hours of operation from share-WBBR, WFAB and WHAZ to unlimited time. Requests facilities of WBBC, WLTH, WARD and WVFV. Amended to change frequency from 1300 kc. to 1400 kc.

#### Second Zone

- WDBJ—Times-World Corp., Roanoke, Va.—Construction permit 930 to install new equipment; increase power from 1 KW to 1 KW night, 5 KW day; move transmitter from First and Kirk Ave., S. W., Roanoke, Va., to Colonial Ave., Colonial Heights, Roanoke, Va., and studio from American Theater Bldg. (corner Kirk Ave. and Jefferson St.), Roanoke, Va., to corner 2nd and Campbell Ave., S. W., Roanoke, Va.
- NEW—Nolan S. Walker, Canton, Ohio.—Construction permit for 1200 a new station to be operated on 1200 kc., 100 watts, 250 watts day, unlimited time. Requests facilities of WHBC.
- NEW—Radio Air Service Corp., Cleveland, Ohio.—Construction permit for a new general experimental station to be operated on 31600, 35600, 38600, 41000 kc., 50 watts.
- NEW—Pittsburgh Radio Supply House, Portable-Mobile.—Construction permit for a new general experimental station to be operated on 31100, 34600, 37600, 40600 kc., 5 watts.

#### Third Zone

- NEW—The Birmingham News Co., Birmingham, Ala.—Construction permit for a new station to be operated on 590 kc., 500 watts, 1 KW, unlimited time.
- NEW—Grover C. Maxwell, George A. Sancken and Herbert C. 610 Lorick, Augusta, Ga.—Construction permit for a new station to be operated on 610 kc., 250 watts, 500 watts day, unlimited time.
- NEW—Ben L. Taylor, Phil B. Whitaker and Mrs. Phil B. Whitaker, 1200 Chattanooga, Tenn.—Construction permit for a new station to be operated on 1200 kc., 100 watts, daytime.
- WDAE—Tampa Times Co., Tampa, Fla.—Extension of special experimental authorization to operate with power of 2½ KW day, with equipment changes, from 4-1-36 to 10-1-36.
- WIOD-WMBF—Isle of Dreams Broadcasting Corp., Miami, Fla.—1300 Construction permit to make changes in equipment.
- NEW—Red River Valley Broadcasting Corp., Sherman, Tex.—

1310 Construction permit for a new station to be operated on 1310 kc., 100 watts, daytime. Consideration under Sec. 307 (b).  
WMBR—Florida Broadcasting Co., Jacksonville, Fla.—Construction permit to make changes in equipment.

#### Fourth Zone

WWAE—Hammond-Calumet Broadcasting Corp., Hammond, Ind. 1200 —Modification of license to change hours of operation from S-WFAM to unlimited day to local sunset, share-WFAM night.  
NEW—Pemberton Gordon, d/b as Mid-Missouri Broadcasting 1310 Service, Jefferson City, Mo.—Construction permit for a new station to be operated on 1310 kc., 100 watts, daytime.  
KSO—Iowa Broadcasting Co., Des Moines, Iowa.—Construction 1430 permit to make changes in equipment and increase power from 500 watts, 1 KW day, to 500 watts, 2½ KW day.  
NEW—R. J. Laubengayer, Salina, Kans.—Construction permit for 1500 a new station to be operated on 1500 kc., 100 watts, unlimited time.

#### Fifth Zone

KDON—Richard Field Lewis, Del Monte, Calif.—Voluntary assignment of license from Richard Field Lewis to Monterey Peninsula Broadcasting Co.

KICA—The Southwest Broadcasting Co., Clovis, N. Mex.—Voluntary assignment of license from The Southwest Broadcasting Co. to Western Broadcasters, Inc.  
KLO—Interstate Broadcasting Corp., Ogden, Utah.—Construction 1400 permit to make changes in equipment; increase power from 500 watts to 1 KW, 5 KW day; install directional antenna; move transmitter from R. 4, Riverdale Rd., approximately 4 miles southwest of Ogden, Utah., to site to be determined. Amended giving exact transmitter site as 3 miles southwest of center of Kaysville, on Lake Shore, near Kaysville, Utah, and make changes in antenna.  
KECA—Earle C. Anthony, Inc., Los Angeles, Calif.—Modification 1430 of construction permit (5-P-B-2837) as modified to move transmitter locally; increase power; install new equipment; move transmitter from 1000 S. Hope St. to 3100 S. Cloverdale Ave., Los Angeles, Calif.; and extend commencement and completion dates. Amended to change transmitter site from 3100 S. Cloverdale Ave. to 82nd St. and Compton Ave., Los Angeles County, California.  
NEW—Western Broadcast Co., Los Angeles, Calif.—Construction permit for a new general experimental station to be operated on 31600, 35600, 38600, 41000 kc., 100 watts.

#### Alaska

NEW—Edwin A. Kraft, Petersburg, Alaska.—Construction permit 1420 for a new station to be operated on 1420 kc., 100 watts, unlimited time.

# The National Association of Broadcasters

NATIONAL PRESS BUILDING \* \* \* \* \* WASHINGTON, D. C.  
JAMES W. BALDWIN, Managing Director

## NAB REPORTS

Vol. 4 - - No. 12  
MARCH 5, 1936

Copyright, 1936. The National Association of Broadcasters

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### DUFFY BILL HEARINGS COMMENCE

Broadcasters were characterized as "termites," "racketeers" and "pirates" by spokesmen for the American Society of Composers, Authors and Publishers during hearings on the Duffy copyright bill which commenced before the House Committee on Patents on Tuesday, February 25.

Appearing for the Society, Gene Buck, president, stated that his organization was opposed to removal of the \$250.00 minimum damages provision from the law and charged that the "power trust" was behind the provisions of the Duffy bill under which the two-cent royalty on phonograph records would be retained.

Mr. Buck, Nathan Burkan, attorney for the Society, and E. C. Mills, general manager, testified for the Society. Mr. Buck introduced to the committee during the hearings Charles Wakefield Cadman, Irving Berlin, George Gershwin, Mrs. Nevin, widow of the composer, Ethelbert Nevin, Billy Hill, and Rudy Vallee. Vallee was the only one of this group to testify.

Early in his testimony, Buck admitted that "copyright is a mystic maze" and argued that the composers of the nation were not receiving adequate revenue from the use of their works by broadcasters, hotels, taverns, motion picture exhibitors and other public places where music is used.

"There is not a composer or author in these United States getting 50 per cent of the income that he got before this tremendous mechanical invasion came upon us, Buck said.

Removal of the \$250.00 damages clause from the law would "legalize piracy."

"Congressmen have frequently said to me, 'If I buy that sheet of music, why can't I play it, why can't I do anything I want with it?'" said Buck. "It just so happens that that sheet of music is bought by you for private use, like a phonograph record; but the minute you take that piece of music, if there is an admission charged at the door for commercial purposes, or if you are going to sell that piece of music over again, either on a broadcasting station or in a theater or in a hotel, that is the so-called public performing right that is involved here, which these termites would like to eliminate."

Buck stated that "never in the history of the Society has a bootblack stand, a bot-dog stand, or a barber shop been approached."

In 22 years only \$8,800 was collected by the Society in court proceedings for infringement, Buck said.

During the time Buck was on the stand he gave some statistical information about the Society's licensing activities. He said his salary was \$35,000 a year. Broadcasters in 1935 paid more than \$2,500,000 to the Society; the hotels \$190,000 and the movie theaters nearly \$860,000. The total collections last year were about \$4,000,000.

He said he favored the Sirovich bill as against the Duffy bill and that the American Federation of Labor "stands with this Society because they are in the same boat."

### NOTES TO SALES STAFF

The continued gain of radio advertising presages increased time sales during the spring months, especially in the regional network and national non-network fields. (See Total Broadcast Advertising, page 1234).

The marked rise during the month in national transcription volume also should be of interest, as should be the continued strong showing of both national and local live talent volume. (See Non-network Advertising by Type of Rendition, page 1235).

The downward trend in announcement volume, combined with the marked upswing in both talent and transcriptions, shows what can be done in the way of selling full radio broadcast advertising facilities (See same, page 1235).

### ADVERTISING UNDER ATTACK

The American system of broadcasting came under attack while Buck was on the stand. He said that American authors and composers receive less money than they receive in England or any country in Europe where the nations do not permit advertising.

Discussing wired radio, which he said was controlled by the "power trust" and had a hand in writing the Duffy bill, Buck said:

"It is intensively interesting. It eliminates all static. It is clear reception. There is no advertising; you do not have to listen to some of this 'blah' to get some of the fine stuff that we get on the air.

"Do you believe that the members of your organization would be better off financially if the Government were to take over the broadcasting stations?" asked Congressman Dunn of Pennsylvania.

"That is a very difficult question for me to answer, Mr. Dunn," said Buck. "I do not know enough about government ownership. I could not answer that question. It takes an exhaustive study of its effects."

"I am going to persist and continue, provided that you people do not believe it is a detriment, to advocate that the Government take over broadcasting," Dunn said.

### BROADCASTERS ARE BLAMED

The broadcasters were held responsible for the "false propaganda" in Congress and were said to have advocated the institution of the suit against the Society by the Department of Justice, according to Society witnesses. The broadcasters, too, were blamed for the difficulties which are troubling the Society in the State of Washington.

Broadcasters likewise were blamed for the trouble the Society has found in Wisconsin. At one time during the questioning of Burkan by Congressman O'Malley of Wisconsin, Burkan said:

"We have been having a lot of trouble in your state."

"I know, and you are going to have some more," O'Malley retorted.

### WHY THE GOVERNMENT CASE SAGGED

The Government suit against the Society came in for discussion during the hearings.

"This is the reason that the Government's case sagged and broke down, because the Government discovered that instead of us being the 'racketeers' the 'racketeers' were the broadcasters," Burkan said.

Burkan then proceeded to tell of his cross-examination of Government witnesses at the adjourned trial and accused the National Broadcasting Company of "pirating" songs of non-members of the Society.

"You do not say that the Department of Justice is guilty of improper motives in bringing the suits?" O'Malley asked.

"I do not say that, but they (the broadcasters) stuck a gun up against our bellies and said, 'If you do not give us a renewal of the contract for five years, we are going to retain Newton D. Baker and Mr. Newton D. Baker is going to file a case with the Department of Justice.'"

"Is the Government to be called in for the purpose of seeing to it that we give them a better contract or a worse contract?" Burkan asked.

### DEEMS TAYLOR TESTIFIES

Deems Taylor, nationally known composer, testified on behalf of the Society. He opposed the compulsory license provisions in the bill and objected to the elimination of the \$250.00 statutory damages.

"That is the rock upon which ASCAP rests," he said.

Congressman O'Malley questioned Mr. Taylor, as he had previously questioned both Buck and Burkan, about the qualifications for membership in the Society. It was brought out that usually a composer must have five songs published to be eligible for membership; that the publisher must be a "recognized" publisher; and that "recognition" means, almost in every case, that the publisher be a member of ASCAP.

### DIFFERENCES IN COMMITTEE

During the tense days of the hearings, members of the House Patents Committee differed upon questions of procedure. Congressman Church of Illinois objected to the procedure under which opponents of the bill were heard first and frequently there were requests for rulings from the chair on the admissibility of documentary evidence. In each instance, however, documentary evidence offered was admitted.

### SIGMUND ROMBERG TAKES STAND

Sigmund Romberg, composer, member of ASCAP Board, and president of the Songwriters Protective Association, also testified against the Duffy bill. He spoke briefly, pointing out the possible dangers to entering the International Convention at this time when works of American authors were not receiving proper protection in European countries. Mr. Romberg said his works had been excluded from Germany.

### WARNER BROTHERS DISCUSSED

The split between the Society and Warner Brothers was injected into the hearings by Congressman Deen while questioning Buck.

Buck said that it was the contention of the Society that they had the right to license the works of their composer members and that they would defend NBC and CBS in the suits filed by Warner Brothers against the network companies.

"Why did Warner Brothers break away from the Society," Deen asked.

"Because they wanted more money; human greed. Yes, plain greed, g-r-e-e-d," Buck explained.

### LICENSING PRACTICES SCRUTINIZED

Congressman O'Malley of Wisconsin, and Congressman Deen of Georgia, took a leading part in interrogating representatives of the Society on its methods of fixing fees.

Buck explained the factors considered by the Society in fixing license fees in the following language:

"The custom that we have in the society is to set what we call a sustaining fee, which is based on first the hours granted to them by the Government on their wave lengths. Some great stations can operate twenty-four hours a day. Some stations will have only six hours a day, and some four hours. There is a limited number of wave lengths. So when we set a fee to give this man accessibility to all our works, we take into consideration first the number of hours he has allocated to him by the United States Government; second, the location of their broadcasting station—and I will show you how important that is.

"You can have a broadcasting station of 50,000 watts broadcast in New York City tonight and you will hit twenty-two million listeners because it is a densely populated section of country.

"On the other hand, let us take Mr. Lanham's country down in Texas, the same operation, 50,000 watts, can not hit that radius of listeners. They also possibly might have to have a lot of power in that station to overcome a static condition that they may have all the year around. So we take that into consideration.

"We take in the first place that the Government has given them a free wave length or a limited wave length, and next the location of the station, and then the very important thing, the power of the station. Those are the three factors."

### UNWILLING TO LET COURTS DECIDE

Spokesmen for the Society said that they needed the \$250.00 provision in the law for the purpose of protecting the composers against piracy of their works. Throughout the hearing, these spokesmen were careful to confine their remarks to the composer and only incidentally did reference to publisher members creep into their testimony.

Some members of the Committee were of the opinion that the rights of composers would be adequately protected by permitting courts to fix damages and believed courts would be fair about it. Witnesses for the Society dodged each question on this issue.

The question of using the \$250.00 damages as a bargaining basis for rights came up time and again.

"Now will you tell me what restrictions there are under the present law that would in any way curb this amount that you set as the license value? Assuming, for the sake of argument, that you were greedy, could you set any arbitrary figure without any control whatever?" asked Congressman Barry.

"If I understand your question, sir—that they must take what price we set?" said Buck.

"That is right," explained Barry, "Must they take what price you set?"

"True, true, true," replied Buck.

### RUDY VALLEE SERVES WARNING

Rudy Vallee had his day on the stand on March 3. He said he opposed the Duffy bill and favored the Sirovich bill although he admitted he had read neither but depended upon a memorandum prepared by Burkan.

"I ask for the privilege of warning, more or less, the organizations that are attacking this Society, among whom are many of my friends in the radio, night club and hotel field, that are attacking the American Society, the creators of music, so vital to their welfare and organizations, that it might be called digging their own graves, throwing a boomerang that will react to our own detriment and doing themselves irreparable damage," Vallee predicted.

"I feel especially that radio, more even than the motion picture or the hotel, is going to kill the goose that lays the golden eggs, if they persist in their refusal to pay the society the money that the Society feels is due to the creators of music which furnish such a tremendous part of each radio program," he went on.

According to Vallee, composers write primarily for money.

"I do not think any man can be a bricklayer during the day and come home and write great songs at night," he opined.

"I do not see how anyone would want to write for the glory of it," he said.

Vallee said the present rates paid to ASCAP are a "joke."

"I am putting myself in jeopardy with interests that I today serve and will probably serve in the future," said the bandsman. "As most of you know, I am engaged in radio work today; in fact, it is the greater part of my work. I hope some day to be an executive in radio," he said.

Vallee said he had written about 20 songs and was one of the lowest paid members of the Society. He said he was appearing for the "little fellow."

### HEARINGS ECHO IN HOUSE

On Wednesday, March 3, Chairman Sirovich addressed the House on the pending Duffy copyright bill.

He said he opposed entering the International Union because of restrictions imposed against American authors and motion picture producers by European countries.

He vigorously defended the American Society, urged defeat of the Duffy bill, and pleaded for retention of the \$250.00 minimum damage clause.

He was followed by Congressman Zioncheck of Washington, who spoke briefly in support of the Duffy bill and characterized the copyright hearings as "somewhat in the nature of a circus."

## PRALL REAPPOINTED CHAIRMAN

President Roosevelt has reappointed Commissioner Anning S. Prall chairman of the Federal Communications Commission until March 11, 1937. The Communications Act provides that the chairman of the Commission shall be appointed by the President.

## COUZENS ASKS REPORTS

Senator Couzens of Michigan introduced a resolution (S. Res. 240) this week calling upon the Federal Communications Commission to send full reports on its recent investigation to the Senate. The resolution which is awaiting action and was not sent to any committee is as follows:

"Whereas the Federal Communications Commission, on January 9, 1936, appointed a subcommittee from its membership to investigate what was known and described by the Commission as 'The Willard Hotel Incident'; and

"Whereas on February 14, 1936, the Commission issued a report of its findings on that investigation; and

"Whereas it would be helpful to the Committee on Interstate Commerce of the United States Senate to have all memoranda, statements, testimony, and reports made to or obtained by the Commission and by the Department of Justice for the Commission during the investigation herein referred to: Therefore be it

"Resolved, That the Federal Communications Commission shall forward to the United States Senate all of the memoranda, documents, statements, testimony, reports made to or obtained by the Commission and by the Department of Justice for the Commission in relation to and as part of that investigation."

## NEW CONNECTICUT STATION RECOMMENDED

The Thames Broadcasting Corporation filed an application with the Federal Communications Commission asking for a construction permit for the erection of a new broadcasting station at New London, Conn., to use 1500 kilocycles, 100 watts power, and daytime operation.

Examiner Ralph L. Walker, in Report No. I-202, recommends that the application be granted. He found that the applicant is in all ways qualified to construct and operate the proposed station, that there is need for daytime broadcast service in the area to be served, and that the operation of the proposed station will not adversely affect the interests of any existing station by reason of interference.

## TEL. & TEL. ACCEPTS DECISION

The American Telephone & Telegraph Company has notified the Federal Communications Commission that it has accepted its decision of February 26 in connection with the proposed construction of the coaxial cable between New York and Philadelphia for experimental television work.

In its decision the Commission found that it had jurisdiction over the construction of the cable and that it is in the public interest that it be constructed. A number of restrictions were put on its construction, including a clause that there shall be no discrimination between television experimenters who wish to make use of the cable as agreed to by the telephone company.

## NEWSPAPER STATISTICS AVAILABLE

Copies of Section D, Volume IV, of "Market and Newspaper Statistics," and of "Totals of Cities," are available at \$2.00 each for the former and \$1.00 each for the latter by the American Association of Advertising Agencies.

Cities included in Section D are:

Freeport-Lynbrook (New York)	New Orleans
Gary	Staten Island (New York)
Hartford	Paterson
Long Beach	Salt Lake City
Lowell	San Antonio
Lynn	Scranton
New Haven	Utica

## NEW FLORIDA STATION RECOMMENDED

The Fountain of Youth Properties, Inc., has filed an application with the Federal Communications Commission asking for a construction permit for the erection of a new broadcasting station at St. Augustine, Florida, to use 1210 kilocycles, 100 watts power, and unlimited time on the air.

Examiner R. H. Hyde, in Report No. I-203, has recommended that the application be granted. "It is concluded from the evidence," says the Examiner, "showing a lack of broadcast facilities in the applicant's area, either of transmission or dependable reception, and the showing of interest on the part of the public, that there is a need for the station the applicant proposes to construct."

## SECURITIES ACT REGISTRATIONS

The following companies have filed registration statements with the Securities & Exchange Commission under the Securities Act:

Campbell Transportation Company, Pittsburgh, Pa. (2-1910, Form A-2)  
Stuart Court Property Corp., New York City. (2-1911, Form E-1)  
Voting Trust for same, New York City. (2-1912, Form F-1)  
Citizens Independent Telephone Co., Terre Haute, Ind. (2-1913, Form A-2)  
Indiana Associated Telephone Corp., Lafayette, Ind. (2-1914, Form A-2)  
Properties & Construction Co., New York City. (2-1915, Form A-1)  
Silvercote Products, Inc., Chicago, Ill. (2-1917, Form A-1)  
Hepburn & McTavish, Inc., Los Angeles, Calif. (2-1918, Form A-1)  
H. R. Holtzman Corp., Detroit, Mich. (2-1919, Form A-1)  
Lincoln Service Corp., Washington, D. C. (2-1920, Form A-2)  
Bondholders Committee for Madison Ave. Offices, Inc., New York City. (2-1922, Form D-1)  
Arthur Fels Bond & Mortgage Co., Kansas City, Mo. (2-1923, Form D-1)  
I. F. Steinmeyer, St. Louis, Mo. (2-1924, Form E-1)  
National Fund, Inc., Jersey City, N. J. (2-1926, Form C-1)  
Comstock Cedar Hill Gold Mines, Inc., Reno, Nev. (2-1927, Form A-1)  
Bondholders Committee for First Baptist Church, New Orleans, La. (2-1928, Form D-1)  
Coastland Oil Corporation, Houston, Tex. (2-1931, Form A-1)  
Parker-Wolverine Company, Detroit, Mich. (2-1933, Form A-1)  
Prudential Investing Corporation, Detroit, Mich. (2-1934, Form A-1)  
General Houses, Inc., Chicago, Ill. (2-1935, Form A-1)  
Time Controlled Indicators, Inc., Wilmington, Del. (2-1936, Form A-1)  
Rochester Distilling Company, Inc., Rochester, N. Y. (2-1940, Form A-1)

## LOTTERIES DISCUSSED IN EXAMINER'S REPORT

Of considerable significance is the Report of FCC Examiner George H. Hill (Examiner's Report I-197) relating to the application for renewal of license of Station WRBL, Columbus, Georgia.

This report contains a discussion of lotteries and gift enterprises, and in it the Examiner reaches the conclusion that certain programs broadcast constitute violations of Section 316 of the Communications Act of 1934. While the report is not final and although the Examiner's findings are subject to review by the Commission, it is nevertheless significant of a trend in the regulation programs which no broadcaster can afford to overlook.

The report is printed here in full:

The application of WRBL Radio Station, Inc., for renewal of license was designated for hearing because of the filing of an application by David Parmer for a construction permit requesting the facilities of Station WRBL. These applications were heard before an Examiner on June 28, 1935.

During the hearing the applicant, David Parmer, entered a motion to withdraw his application for a construction permit and the Examiner, on August 24, 1935, made his report (No. I-95) recommending that the motion for withdrawal of the application for a construction permit be granted, and that the application of WRBL Radio Station, Inc., for renewal of license also be granted.

Thereafter complaints were filed with the Commission concerning certain programs broadcast over Station WRBL by Muscogee Chevrolet Company, Burrus Motor Company, Better Housing Exposition, Police Benefit Wrestling Matches, and Woodcrest Hardware Company. The Commission reopened the case and directed that a hearing be held at Columbus, Georgia, to determine the following issues:

(1) To determine the nature and character of the program service rendered by Station WRBL;

(2) To determine whether or not Station WRBL has operated in violation of Section 316 of the Communications Act of 1934;

(3) To determine whether the granting of this application would serve the public interest, convenience and necessity.

### The Facts

Station WRBL is licensed to operate at Columbus, Georgia, on the 1200 kilocycle frequency with power of 100 watts, unlimited time. The station is owned and operated by WRBL Radio Station, Inc., and prior to July 7, 1935, the stock of the licensee corporation was owned by J. W. Woodruff, Sr., and David Parmer, each owning fifty per cent of the stock. Mr. Woodruff was President and Mr. Parmer Vice-President of the corporation. Mr. Parmer was also Director and Program Manager of the station.

It was shown that serious dissension arose between Mr. Woodruff and Mr. Parmer prior to July 7, 1935, with the result that proper supervision of the programs broadcast over Station WRBL was not exercised. Mr. Roy Luttrell now owns the stock formerly owned by Mr. Parmer. Mr. Parmer has not been connected with the station in any capacity since July 7, 1935. WRBL is the only radio broadcast station located at Columbus, Georgia, and is the only station rendering consistent service of a local nature to the Columbus area.

A number of officials of local governmental, civic, religious, cultural and labor organizations testified that the station is rendering a meritorious service and filling a real need in the community. An improvement in the programs broadcast over Station WRBL has been noted since the first hearing. More live talent has been employed than formerly, more time is devoted to religious, educational and civic programs, and recordings have been curtailed. The facilities of the station are made available to all worth-while civic and patriotic activities without cost.

A considerable portion of the evidence relates to broadcasts made over Station WRBL by the Muscogee Chevrolet Company, Burrus Motor Company, Better Housing Exposition and Police Benefit Wrestling Matches. The following are excerpts from these broadcasts:

#### MUSCOGEE CHEVROLET COMPANY

May 16, 1935.

"Would you like to win an automobile free without having to buy anything or be obligated in any way?"

"The Muscogee Chevrolet Company, 1501 First Avenue will give away free one nice 1929 automobile to the one guessing the nearest correct speedometer reading on this car that is on display in their used car lot adjoining the Chevrolet Building.

"This car will be given to the lucky person Saturday noon, June 8, 1935. Go down and join this guessing contest.

"Guessing will stop Friday, 6 p. m., June 7, 1935."

#### BURRUS MOTOR COMPANY

May, 1935.

"A used car absolutely free! That is exactly right! On the first day of June, 1935, at exactly 3:30 p. m., the Burrus Motor Company, 1238 First Avenue, is going to give away a splendid used car absolutely free. It may be a \$200 used car or truck or it may be a \$500 used car or truck, it all depends on how lucky you are.

"Now here's the proposition, every purchaser of a used car from Burrus during the month of May will be given a chance to draw this used car. If you are the lucky one, you will win the used car you have bought from the Burrus Motor Company.

"Say for instance, you have bought a \$400 or \$500 used car from Burrus, or whatever price you have bought, and the number of your ticket is drawn, you will be refunded every penny you have paid for the car you purchased. If you have paid cash for the car, you will be refunded the cash, or if you have traded in a used car as down payment, and made notes for the difference, you will be given cash for the amount your used car was traded in for, and your notes given back to you. In short, you will keep the car you purchased and will be returned everything you have paid for it.

"This is the most gigantic offer ever made on the part of the Burrus Motor Company. You will have a chance out of about 75 or 100 to win your car free, or one chance out of the number of used cars sold by Burrus during the month of May, as there will be only one chance given to each purchaser of a used car during this month.

"The radio special under the canopy at the Burrus used car department for today is —. Take a look at the stock of used cars at Burrus—1238 First Avenue. Reconditioned and guaranteed!"

#### THE CHANCELLOR COMPANY

June 16, 1935.

"The Chancellor Company offers a sensational gift absolutely free! Here is your big opportunity to win a \$225 miniature racing car. Contest starts tomorrow, June 17, 1935, and ends Saturday night, August 31, 1935. This contest is open to boys and girls in Columbus, Fort Benning and nearby towns, between the ages of nine and ninety-nine.

"Contest starts tomorrow, June 17th, and ends Saturday night, August 31st.

"Everyone entering has an equal chance. Here's how it works.

"For every dollar spent for cash or every dollar paid on account during the months of June, July and August you will be given a free ticket which will entitle you to the drawing Saturday night, August 31st, 7:30 p. m.

"One ticket will win the car, but the more tickets you have the better opportunity you have to win the car.

"Save every ticket on all cash purchases made or any money paid on accounts between now and August 31st, and ride in a fine Automobile FREE.

"Be sure and call by and see this wonderful racing car on display in front of Chancellor Company. It has a real motor; is air cooled; gives sixty miles per gallon; has air balloon tires; and runs eighteen miles per hour.

"Try your luck and win a very valuable prize or gift."

#### BETTER HOUSING EXPOSITION

March 25, 1935.

"Ladies and Gentlemen—We now offer one of the most sensational, interesting and important features to be broadcast from the Federal Better Housing Exposition. We are going to interrupt the musical program for a few minutes in order to present several gifts of baskets of groceries. These baskets are furnished by King Grocery Company, with twelve stores in Columbus, together with the cooperation of many firms whose products are in the baskets.

"King Grocery Company is a consistent user of WRBL Radio service and has a most attractive and informative booth here at the Exposition, which is well worth your seeing.

"Before shaking the box and drawing the first lucky number, let me explain how you win these baskets of groceries: Every one holding a paid admission ticket is entitled to one free number after entering the building. You drop the stub bearing a duplicate number in the box and hold the duplicate until the numbers are drawn. There will be many baskets given each night and several numbers will be drawn and baskets given during this broadcast period each night.

"I now have the big thrill! LISTEN! We shake the box and draw the number, yes, sir and yes, ma'am! It is the lucky number —. Will the winner please step forward and receive his gift of a large basket of groceries."

#### POLICE BENEFIT WRESTLING MATCHES

August 23, 1935.

(By Ralph Rogers): "And here is the drawing for the sixty hucks, and here is Jess, and he will tell you about it."

(By Jess Swicegood): "Here is the drawing, ladies and gentlemen. They are bringing the head hox up in the ring with Jimmy Calloway and the second gentleman, I don't know who he is. This gentleman is Mr. Glenn of the Nehi Bottling Plant. Mr. Glenn has one of the books, and his colleague has the other. You know each number carries a name in the hooks. They are drawing out a number now. I registered myself tonight. My number is 78. I believe Ralph's is 127. And they have drawn a number. What is that name? C. B. Bray, 833 First Avenue. He has got something to bray about all right. I could bray if I was him. And he isn't here. He doesn't answer and he doesn't win. Be sure to be down here Tuesday night. There will be seventy dollars in the jackpot. You don't have to buy a ticket in order to register and get your name in the pot. You can register around town any place almost. All that is necessary for you to do is to have your name in the hook and be in hearing distance. You don't have to be a paid admission in order to win, but if

you are on the outside of the gate and hear your name called you can come in and take the money away. And here is the announcement concerning the opponents for the next match."

## WOODCREST HARDWARE COMPANY

June 20 and 22, 1935.

"Woodcrest is on the air . . . As the music begins we hear Ted Weems and his music in the recording —. How good a guesser are you? If you want to try your luck at guessing and also have a chance at winning a real prize that would cost you thirty-five dollars if you tried to buy it, listen for the big announcement at the end of this program.

"But now let's listen to the recording by Ted Weems and his orchestra as they play —.

"How is that lawn or garden of yours coming along? Are you giving it the care you should? Are the weeds or grass growing as well as the flowers, or is the garden clean and fresh? Couldn't you do a much better job if you had all the necessary tools? Well at the prices these tools and garden equipment is being sold at Woodcrest Hardware there is no reason why you shouldn't have everything that is necessary for the perfect garden. You owe it to yourself to go by Woodcrest Hardware at 1242 Broadway and see all these garden supplies and get their prices. Now for Ted Weems and his orchestra in the recording —.

"As the program of Woodcrest Hardware continues we want to remind you that regardless of your hardware needs they can be filled at Woodcrest Hardware at 1242 Broadway and you will be surprised at the very low prices on all their merchandise. Every article is of the highest grade and is made by the leading manufacturers.

"And now as we listen to Ted Weems in the recording — get ready for the big news which we will give you immediately after this number.

"And now for that announcement you have been waiting for— Woodcrest Hardware has just started the biggest guessing game in the history of Columbus—and here are the details: Go by Woodcrest Hardware at 1242 Broadway and look at the pile of pocket knives in the show window. Then go just inside the door and on a table you will see a box and guessing blanks. All you have to do is put your name and address on the card along with your guess as to how many knives are in the window and drop the card in the box. Isn't it simple? No obligation whatsoever! In the event your guess is the nearest to the correct number you will be given your choice as to the prize. You may have your choice of a seventeen-jewel Elgin, thirty-five dollar men's pocket watch or a twenty-six piece set of silverware with a value of thirty-five dollars. How is that for real prizes? Listen again! A thirty-five dollar Elgin pocket watch or a thirty-five dollar set of silverware! And remember there is no obligation whatsoever on your part. All you have to do is go by the Woodcrest Hardware at 1242 Broadway and guess the nearest number to the correct number of pocket knives in their window.

"The contest will close Saturday, July 20th, at 5 o'clock and the prizes will be awarded to the lucky person at 6 o'clock.

"Be sure and listen again Saturday evening at this same time for more news about the big guessing game. Until then Woodcrest Hardware leaves you with this thought—Make your hardware troubles Woodcrest problems."

June 22, 1935.

"Woodcrest is on the air. Ted Weems and his orchestra open the program with the recording —.

"Did you hear the sensational announcement made on this program last Thursday evening concerning the big guessing contest now being conducted by Woodcrest Hardware at 1242 Broadway? If you did, you want to be sure and go by and make your guess. If you did not hear the announcement, be sure and listen for it at the end of this program.

"We continue the musical part of the program now as Ted Weems and his orchestra are heard in the recording —.

"Are you in need of tools, hardware, jewelry or cooking utensils? If you are, there is no need for you to do without them any longer as you can get all these things at a very low cost at the Woodcrest Hardware at prices that are unbelievably low, and it is all the best merchandise that money can buy. Why not go by and see for yourself?

"Now the recording by Ted Weems' orchestra titled —.

"And now for the big announcement about the guessing game! Here are the details." (This was followed by same announcement used on June 20, 1935.)

All of the foregoing programs were broadcast while the former

management was in control of the station, with the exception of the Police Benefit Wrestling Matches and this program was accepted on the assurance of the Columbus Police authorities that the plan was legal and also on the opinion and with the approval of counsel. However, these broadcasts were promptly discontinued as soon as they were challenged and no program containing a suggestion of the award of prizes has since been accepted by the station. It is the policy of the present management to refuse to broadcast any programs of a doubtful nature. It is conceded by the applicant that the programs broadcast by the Burrus Motor Company, the Chancellor Company and the Better Housing Exposition involve a violation of the lottery laws, but it is contended that the programs of the Muscogee Chevrolet Company and the Police Benefit Wrestling Matches were legal.

By the weight of the authority of Federal and State Courts of last resort and text writers, three elements must be present to constitute a lottery, to wit, consideration, chance, and prize. From a careful consideration of the continuity of the Muscogee Chevrolet Company and the Police Benefit Wrestling Matches, it is doubtful whether such programs involved a violation of Section 316 of the Communications Act of 1934. Lotteries and gift enterprises are defined in the following citations which appear to be supported by the weight of authority:

"The three essential elements of a lottery are: First consideration; second, prize; and third, chance. To make a lottery, these three elements or ingredients must be present; chance alone will not do so, nor will chance even when coupled with consideration alone." 17 R. C. L. p. 1222.

"In conformity with the definitions already stated, it is obvious, as has been repeatedly stated, that the three necessary elements of a lottery are the offering of a prize, the awarding of the prize by chance, and the giving of a consideration for an opportunity to win a prize." 38 C. J. p. 289.

"A lottery is any scheme for the disposal or distribution of property by chance among persons who have paid, or promised or agreed to pay, any valuable consideration for the chance of obtaining such property, or a portion of it, or for any share of or interest in such property, upon any agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance, whether called a 'lottery,' a 'raffle,' or a 'gift enterprise,' or by whatever name the same may be known." Black's Law Dictionary, 3rd Ed., p. 1134.

"A lottery is a scheme by which, on one's paying money or some other thing of value, he obtains the contingent right to have something of greater value, if an appeal to chance, by lot or otherwise under the direction of the manager of the scheme, should decide in his favor." Bouvier's Law Dictionary, Vol. 2, p. 281.

"In order to constitute a lottery, there must be a consideration, chance and prize. That is to say, a person must pay something for the opportunity to try for a prize by chance or lottery." U. S. v. Purvis, 195 Fed. 618.

"To be like a lottery there must be something staked, a larger possible winning, and the winning or losing must depend on lot or chance and not on skill or judgment." Boasberg v. U. S., 60 Fed. (2d) 185.

"A 'gift enterprise,' in a broad sense, may be defined as a scheme under which presents are given to purchasers of goods as an inducement to buy, although in the sense in which the term is commonly applied it is a scheme under which goods are sold for their market value but by way of inducement each purchaser is given a chance to win a present or prize." 38 C. J. 296.

"A gift enterprise, moreover, has been defined as 'a scheme for the division or distribution of certain articles of property, to be determined by chance, among those who have taken share in the scheme; and as a sporting artifice by which, for example, a merchant or tradesman sells his wares for their market value, but by way of inducement gives to each purchaser a ticket which entitles him to a chance to win certain prizes, to be determined after the manner of a lottery.'" 17 R. C. L. 1211; citing Matter of Gregory, 219 U. S. 210 and Russell v. Equitable Loan, etc., 129 Ga. 154.

"A gift enterprise is usually considered in the books as a species of lottery, and a lottery, according to a recognized authority, has these three essential elements: consideration, prize, and chance." Corporate Organization & Audit Co. v. Hodges, 47 A. pp. D. C. 460; L. R. A. 1918 E, 491.

"Scheme by the Chamber of Commerce and certain merchants, whereby merchants purchased tickets from the Chamber of Commerce, which they gave to their customers entitling them to a chance or prize offered by the Chamber of Commerce, held not to constitute a lottery or gambling device \* \* \* in that it lacked one essential element, in that customers paid nothing for

tickets and stood no chance to lose, since, in order to constitute gambling, winner must either pay consideration for a chance to win, or without paying anything in advance, stand chance to lose or win." R. J. Williams Furniture Company v. McComb Chamber of Commerce, 147 Miss. 649; 57 A. L. R. 421.

### Conclusions

1. The programs broadcast over Station WRBL by Burrus Motor Company, the Chancellor Company and other programs of a like nature did not serve public interest, convenience or necessity and involved a violation of Section 316 of the Communications Act of 1934. However, other programs broadcast over the station were generally meritorious and served public interest, convenience and necessity.

2. The applicant has assured the Commission that programs involving lottery or gift enterprises will not in the future be broadcast over the station and that the station will in all respects be operated in accordance with the Rules and Regulations of the Commission.

3. The entire record considered, the Examiner is of the opinion that the granting of the application of WRBL Radio Station, Inc., for renewal of license would serve public interest, convenience and necessity.

### Recommendations

It is accordingly recommended that the application of WRBL Radio Station, Inc., for renewal of license be granted.

George H. Hill,  
*Examiner.*

## BROADCAST ADVERTISING IN JANUARY

### Developments of the Month

Total broadcast advertising volume in January amounted to \$8,035,160. The usual seasonal declines occurred during the month, gross time sales decreasing 7.5% as compared to December. National network volume declined slightly more than the usual seasonal amount as did local broadcast advertising. National non-network business, on the other hand, showed less than seasonal declines.

Broadcast advertising volume during the month exceeded that of January 1935 by 8.7%. The heaviest increases continued to be in the regional network and national non-network fields. National network volume was approximately the same as during the corresponding month of last year.

Local station advertising continued its growth of recent months. Volume over local stations was the only portion of the non-network field to increase as compared to December. January local station advertising was 23.1% greater than during the corresponding month of 1935. Declines in non-network advertising were general throughout all portions of the country. Non-network volume in the South and the North Central States experienced the greatest gain as against last year.

National non-network transcription volume was the only portion of the rendition field to gain as compared to December, and also showed the greatest increase over last January. Compared to January of the previous year, announcement volume was down in both the national non-network and local fields.

In the national network field, gasoline and accessory, beverage and miscellaneous advertising showed the greatest gains as compared to the corresponding month of 1935. Trends as a whole were spotty. Increases were prevalent throughout most of the regional network field, with drug, cosmetic, and confectionery advertising taking the lead. Gains also were general in national non-network advertising, the most important increases taking place in beverage, confectionery, soap and kitchen supply and tobacco advertising. The only declines of importance were with regard to gasoline and accessories, and financial sponsorship.

Gains were well distributed throughout the local broadcast advertising field, though most of them were minor ones. Automotive, gasoline and accessories, clothing and household equipment advertising showed the greatest increases as compared to January 1935. Retail broadcast advertising declined 29.4% as compared to December and showed a gain of 5.1% as against January of the preceding year.

## Total Broadcast Advertising

Total broadcast advertising over stations and networks during the month under review is set forth in Table I.

TABLE I  
TOTAL BROADCAST ADVERTISING

Class of Business	Gross Time Sales	
	Dec., 1935	Jan., 1936
National networks .....	\$4,944,445	\$4,740,560
Regional networks .....	127,174	95,340
National non-network .....	1,707,140	1,626,500
Local .....	1,907,600	1,572,760
Total .....	\$8,686,359	\$8,035,160

Gross time sales of the medium declined 7.5% as compared to December. National network volume decreased 4.1%; national non-network advertising dropped 4.7% and regional network volume decreased 25.1%. Local broadcast advertising declined 21.3% as compared to the December level.

National network volume and local broadcast advertising declined slightly more than the usual seasonal amount, while the drop in the national non-network field was slightly less than normal for January.

Compared to January of the preceding year, total broadcast advertising volume rose 8.7%. Gains throughout the medium were as follows: National networks, 0.6%; regional networks, 64.5%; national non-network advertising, 32.3%; local broadcast advertising, 13.1%. The gains in the regional network and national non-network fields were continuations of the trends which have been noticeable for the past year.

### Comparison with Other Media

Advertising volume placed in major media during January is found in Table II.

TABLE II  
ADVERTISING BY MAJOR MEDIA

Advertising Medium	Gross Time and Space Sales	
	Dec., 1935	Jan., 1936
Radio broadcasting .....	\$8,686,359	\$8,035,160
National magazines <sup>1</sup> .....	9,681,025	8,256,125
National farm papers.....	452,976	421,999
Newspapers <sup>2</sup> .....	49,170,000	39,280,000
Total .....	\$67,990,360	\$55,993,284

<sup>1</sup> Publishers' Information Bureau.

<sup>2</sup> Estimated.

National magazine volume declined 17.1% as compared to December and was 9.3% below the January 1935 level. National magazines have been making a comparatively poor showing as against preceding periods for some time.

National farm paper advertising decreased 7.3% as compared to the previous month but exceeded the January 1935 level by 37.4%. This was the greatest gain experienced by any medium during the month under review.

Newspaper advertising decreased 20.2% as against December but remained 7.6% above last January. Automotive advertising was 39.5% below January 1935. Total display advertising, on the other hand, gained 5.6%, while department store volume rose 5.1%. Newspaper retail advertising rose 6.9%, while general advertising increased 18.0%.

### Non-network Advertising

General non-network advertising declined 11.4% as compared to December and showed a gain of 22.2% as against the corresponding month of last year. Local stations continued to show the most pronounced relative growth of non-network volume. Local station volume in January alone exceeded that of the preceding month, rising 0.9% as against December. Volume for this class of transmitter was 39.1% greater than during the preceding January.

Clear channel and high-powered regional station volume declined 11.5% during the month, while regional station advertising dropped 15.5%. Clear channel and regional non-network business during January exceeded that of the corresponding month of the previous year by 23.8%, while regional station non-network volume rose 18.4%.

Greatest advertising by power of station is found in Table III.



**TABLE III**  
**NON-NETWORK ADVERTISING BY POWER OF STATION**

Power of Station	Gross Time Sales	
	Dec., 1935	Jan., 1936
Over 1,000 watts .....	\$1,683,850	\$1,489,900
250-1,000 watts .....	1,446,490	1,221,120
100 watts .....	484,400	488,240
<b>Total</b> .....	<b>\$3,614,740</b>	<b>\$3,199,260</b>

Declines in non-network volume as compared to December were general throughout the country with the exception of the Mountain and Pacific Coast region, where non-network advertising dropped 16.5%. The average decrease was approximately 10%.

Compared to the preceding January, non-network advertising experienced its principal gains in the North Central and in the South Atlantic-South Central States. Non-network volume rose 57.5% in the former area and 36.8% in the latter. There was a decline of 1.0% in the New England-Middle Atlantic area and an increase of 1.6% in the Pacific and Mountain States. Non-network advertising by geographical areas is set forth in Table IV.

**TABLE IV**  
**NON-NETWORK BROADCAST ADVERTISING BY GEOGRAPHICAL DISTRICTS**

Geographical District	Gross Time Sales	
	Dec., 1935	Jan., 1936
New England-Middle Atlantic Area..	\$765,000	\$686,350
South Atlantic-South Central Area...	715,530	631,410
North Central Area.....	1,420,650	1,286,400
Pacific and Mountain Area.....	713,560	595,100
<b>Total</b> .....	<b>\$3,614,740</b>	<b>\$3,199,260</b>

**TABLE V**  
**NON-NETWORK BROADCAST ADVERTISING BY TYPE OF RENDITION**

Type of Rendition	Gross Time Sales					
	National Non-network		Local		Total	
	Dec., 1935	Jan., 1936	Dec., 1935	Jan., 1936	Dec., 1935	Jan., 1936
Electrical transcriptions .....	\$574,550	\$649,280	\$206,080	\$140,180	\$780,630	\$789,460
Live talent programs .....	877,520	732,970	995,380	894,000	1,872,900	1,626,970
Records .....	10,130	4,720	75,640	52,470	85,770	57,190
Announcements .....	244,940	239,530	630,500	486,110	875,440	725,640
<b>Total</b> .....	<b>\$1,707,140</b>	<b>\$1,626,500</b>	<b>\$1,907,600</b>	<b>\$1,572,760</b>	<b>\$3,614,740</b>	<b>\$3,199,260</b>

**Sponsor Trends in January**

Declines were general throughout the national network field as compared to the preceding month. The heaviest declines occurred in clothing, which dropped 24.9%; financial advertising which decreased 23.0%; and radio set advertising which dropped 16.8%. Two gains were listed, confectionery advertising, which rose 3.6% and household equipment volume which increased 12.0%.

Declines were fairly general throughout the entire regional network field. Two gains of importance are to be noted, the first of these was a four-fold increase in drug and pharmaceutical advertising and a 28.8% rise in household equipment volume.

The principal gain of importance during the month in the national non-network field was a 38.4% increase in automotive volume. Household equipment advertising rose 15.0%, while minor increases occurred in the financial and kitchen supply fields. The heaviest decreases of the month occurred in the radio set, tobacco and beverage fields.

Declines were also general in local broadcast advertising, the most important ones occurring in the clothing, cosmetic, household equipment and miscellaneous fields. Marked gains occurred in local drug and pharmaceutical advertising and in confectionery volume.

**Comparison with January 1935**

Compared to January of the preceding year, national network

**Non-network Volume by Type of Rendition**

Electrical transcription volume was the only portion of the national non-network field to experience an increase as compared to the preceding month. National transcription volume rose 13.0%. National live talent business declined 17.4% as compared to December, while announcement volume decreased 2.2%.

National transcription advertising showed the greatest gains as against the previous January, rising 71.8%. National live talent volume increased 22.5% as against the corresponding month of last year, while announcement volume declined 4.8%. Trends in national non-network rendition continued to be the same as in recent months with the exception of the pronounced rise in electrical transcription volume, which is comparatively new.

Declines as compared to December were general in the local broadcast advertising field and were as follows: Electrical transcriptions, 31.3%; live talent, 10.1%; records, 17.2%; announcements, 22.3%. The marked decline in local transcription sponsorship seems to indicate that it has been the middle-sized retail establishment which for the most part has sponsored transcription library programs during recent months; since it is this type of retail organization which makes the most pronounced curtailment in its advertising following the Christmas period.

Local transcription and live talent advertising showed approximately the same increase over January of last year, the former rising 22.8% and the latter 23.4%. Record sponsorship increased 20.1%, while announcement volume declined 5.5%.

Transcription volume in the non-network field as a whole, national and local combined, rose 1.1% as against the preceding month and 61.0% as against the previous January. Live talent volume declined 13.1% during the month and gained 22.3% as compared to the corresponding period of 1935. Announcement volume decreased 20.5% as against December and was 4.4% below January of last year.

National non-network and local broadcast advertising volume by type of rendition employed is found in Table V.

advertising exhibited conflicting trends. Principal gains were as follows: Gasoline and accessories, 44.6%; beverages, 19.7%; household equipment, 148.7%; and miscellaneous, 107.0%. Drug advertising continued its decline of recent months and was 18.2% below the level of last January.

Principal gains in the regional network field were as follows: Drugs and pharmaceuticals, 120.6%; cosmetics, 300%; household equipment, 46.8%. Confectionery advertising over regional networks rose from \$250 in January 1935 to \$6,778 during the corresponding month of the current year.

The principal gain in the national non-network field was a 200.0% rise in automotive advertising. A similar gain was recorded in the radio set field. Other important gains in national non-network volume were as follows: Drugs and pharmaceuticals, 29.0%; food stuffs, 59.2%; beverages, 28.1%; confectionery, 33.5%; soaps and kitchen supplies, 39.6% and tobacco, 44.9%. The principal decline of importance was a 16.6% drop in gasoline and accessories volume.

Principal increases in the local broadcast advertising field were as follows: Clothing, 28.0%; food stuffs, 22.2%; beverages, 42.0%; confectionery, 158.2%. There were no declines of major importance.

Broadcast advertising during January by major product and service groups is found in Table VI.

**TABLE VI**  
**RADIO BROADCAST ADVERTISING BY TYPE OF SPONSORING BUSINESS**  
(January 1936)

Type of Sponsoring Business	Gross Time Sales				Total
	National Networks	Regional Networks	National Non-network	Local	
1a. Amusements .....	—	—	\$8,570	\$30,130	\$38,700
1-2. Automobiles and accessories:					
(1) Automobiles .....	\$338,406	—	216,040	72,880	627,326
(2) Accessories, gas and oil .....	415,364	\$11,886	87,740	70,920	585,910
3. Clothing and apparel .....	28,781	884	33,810	224,160	287,635
4-5. Drugs and toilet goods:					
(4) Drugs and pharmaceuticals .....	507,927	13,876	443,700	89,600	1,055,103
(5) Toilet goods .....	938,413	4,060	70,430	23,020	1,035,923
6-8. Food products:					
(6) Foodstuffs .....	909,743	28,847	333,160	214,250	1,486,000
(7) Beverages .....	357,873	4,906	43,320	89,380	495,479
(8) Confections .....	126,085	6,778	36,200	17,500	186,563
9-10. Household goods:					
(9) Household equipment and furnishings .....	38,460	7,195	48,940	130,250	224,845
(10) Soap and kitchen supplies .....	243,996	894	44,040	7,240	296,170
11. Insurance and financial .....	35,390	1,258	10,810	70,500	117,958
12. Radios .....	92,823	—	14,450	11,150	118,423
13. Retail establishments .....	—	—	10,880	123,440	134,320
14. Tobacco products .....	358,948	6,510	22,980	4,780	393,218
15. Miscellaneous .....	348,351	8,246	201,430	393,560	951,587
<b>Total .....</b>	<b>\$4,740,560</b>	<b>\$95,340</b>	<b>\$1,626,500</b>	<b>\$1,572,760</b>	<b>\$8,035,160</b>

**Details as to Sponsor Trends**

Details as to trends in broadcast advertising volume in various sponsoring groups are as follows:

1a. **Amusements.** National non-network volume up 289.9% compared to December. Local up 4.8%. Total rise 25.2%. National non-network down 11.7% as against same month of preceding year. Local down 24.2%. Total down 23.8%.

1. **Automotive.** Compared to December, national network volume down 11.0% and local 2.8%. National non-network volume up 38.4%. National non-network up 200.0% compared to January 1935, and local up 1.4%. National network down 8.9%.

2. **Accessories and gasoline.** Declines during month as follows: National networks 1.4%, regional networks 9.3%, national non-network 17.2%, and local 3.9%. Compared to January of previous year, gains as follows: National networks 44.6%, regional networks 26.6%, local 2.9%. National non-network down 16.6%.

3. **Clothing.** Declines compared to December as follows: National networks 24.9%, regional networks 59.3%, national non-network 19.3%, and local 31.0%. National network volume unchanged from last January. Regional network business down 74.6%. National non-network advertising up 39.0% and local up 28.0%.

4. **Drugs and pharmaceuticals.** National networks down 4.0% and national non-network 1.6% as compared to December. Regional networks up 432.0% and local 62.8%. Compared to corresponding month of 1935, national networks down 18.2% and local unchanged. Regional networks up 120.6% and national non-network 29.0%.

5. **Toilet goods.** Declines from preceding month as follows: National networks 3.4%, regional networks 63.4%, national non-network 18.5%, and local 33.8%. National network volume 2.8% above last January and regional network triple that month's level. National non-network down 11.8% and local up 16.8%.

6. **Foodstuffs.** National network volume 10.5% below last January. Regional network business up 24.1%, national non-network 59.2%, and local 20.2%. Compared to preceding month, declines as follows: National networks 5.2%, regional networks 14.9%, national non-network 9.5%, and local 2.2%.

7. **Beverages.** Declines as compared to December as follows: National networks 11.2%, regional networks 18.5%, national non-network 23.8%, and local 15.4%. Gains compared to January 1935 as follows: National networks 19.7%, national non-network 28.1%, and local 42.0%.

8. **Confectionery.** National network volume 3.6% above December and local advertising up 19.6%. Regional network volume down 68.4% and national non-network 17.5%. Regional network volume up materially as against last January. National non-network up 33.5% and local 158.2%. National network down 35.3%.

9. **Household equipment.** National network volume 12.0%

ahead of December. Regional networks up 28.8% and national non-network up 15.0%. Local down 29.3%. Compared to corresponding month of 1935 gains were as follows: National networks 148.7%, regional networks 46.8%, national non-network 6.8%, and local 10.0%.

10. **Soaps and kitchen supplies.** National network volume 1.3% below previous month. Regional networks down 80.3% and local down 38.6%. National non-network up 8.7%. National non-network up 39.6% as against previous January and local up 173.0%. National network down 4.5%.

11. **Financial and insurance.** National network volume down 23.0% as against preceding month and local 8.0%. National non-network up 3.9%. National network business 17.2% under January 1935 level. National non-network down 53.7% and local up 24.7%.

12. **Radios.** Declines from previous month as follows: National networks 16.8%, national non-network 45.0%, and local 60.4%. National non-network volume double that of January of preceding year. National network volume down 4.0% and local 32.8%.

13. **Department and general stores.** National non-network volume declined 38.8% as against December, and local 20.2%. National non-network business 50.5% above corresponding month of preceding year. Local business down 12.7%.

14. **Tobacco products.** Declines as compared to preceding month as follows: National networks 4.8%, regional networks 38.0%, national non-network 41.7%, and local 45.7%. Gains as against January 1935 as follows: National networks 9.8%, national non-network 44.9%, and local 236.9%.

15. **Miscellaneous.** Declines from December as follows: National networks 5.2%, regional networks 42.0%, national non-network 7.9%, and local 23.3%. Gains as compared to the corresponding month of last year as follows: National networks 107.0%, regional networks 64.1%, national non-network 32.1%, and local 13.1%.

**Retail Broadcast Advertising**

Broadcast advertising sponsored by retail establishments of various kinds decreased 29.4% as compared to the preceding month. This seems to be more than the usual seasonal downward swing. Retail broadcast advertising, however, showed a gain of 5.1% as compared to January of last year. This is the smallest gain to have been recorded in recent months. Declines were fairly general as compared to December throughout the various retail groups. Principal gains as against January 1935 were as follows: gasoline and accessories, 53.5%; clothing, 33.0%; groceries and delicatessens, 82.0%; beverage retailers, 27.8%, and hardware stores, 45.8%. There were no declines of major importance with the exception of a 9.6% decrease in department store volume.

Retail broadcast advertising during the month is found in Table VII.

**TABLE VII**  
**RETAIL BROADCAST ADVERTISING OVER**  
**INDIVIDUAL STATIONS**

Type of Sponsoring Business	Gross Time Sales	
	Dec. 1935	Jan. 1936
Automobiles and accessories:		
Automobile agencies and used car dealers	\$78,510	\$75,930
Gasoline stations, garages, etc.....	37,450	27,785
Clothing and apparel shops.....	340,000	236,550
Drugs and toilet goods:		
Drug stores.....	28,050	21,375
Beauty parlors.....	12,200	8,880
Food products:		
Grocery stores, meat markets, etc.....	77,530	60,590
Restaurants and eating places.....	22,800	18,390
Beverage retailers.....	5,840	12,800
Confectionery stores.....	7,140	8,930
Household goods:		
Household equipment dealers.....	46,745	32,000
Furniture stores.....	107,668	74,080
Hardware stores.....	11,330	6,390
Radio retailers.....	22,885	11,380
Department and general stores.....	172,125	134,320
Tobacco shops.....	1,370	2,340
Miscellaneous.....	171,430	75,320
<b>Total</b>	<b>\$1,143,073</b>	<b>\$807,060</b>

**FEDERAL TRADE COMMISSION ACTION**

**Complaints**

The Federal Trade Commission has alleged unfair competition in complaints issued against the following companies. The respondents will be given an opportunity for hearing to show cause why cease and desist orders should not be issued against them.

**No. 2729.** A complaint has been issued against **E. F. Agee, Hillcrest Building, Omaha, Nebr.**, alleging unfair methods of competition in selling correspondence school courses in secretarial work and business administration.

Operating as "Commercial Extension University," "Commercial Extension of Omaha," and "Commercial Extension College," the respondent, through sales agents designated as "registrars," is alleged to inform prospective students that they have been specially selected for an offer of enrollment in his courses because of their high scholastic standing; that his "registrars" are empowered to offer an exceptionally low price, which represents the cost of materials only, that tuition is given free to those who become students; and that the regular price for the identical courses offered is much higher than the alleged exceptional price.

The complaint charges that students are not selected on the basis of scholastic ability; that the purported exceptional price is the only price quoted any prospect, and is, in fact, the regular price, and that the representation that any regular price is much higher than the quoted price is untrue.

**No. 2730.** Trading as **Marajah & Co.** and as **Kala Products Co., W. H. Charleston, 5930 South Parkway, Chicago**, engaged in the sale of cosmetics and medicinal preparations, is named respondent in a complaint alleging unfair methods of competition.

In newspapers, magazines and advertising literature, the respondent represents, the complaint alleges, that "Five Finger Grass" is a rare herb possessing magical qualities; that "Kala's Specific Hair Grower" is an absolute remedy for falling hair, itching scalp and dandruff, and that it promotes a fabulous growth of hair; that "Kala's Specific Bleaching Creme and Skin Whitener" bleaches and whitens the skin and relieves sunburn and skin eruptions, and that "Kala's Facial Creme" penetrates and is absorbed by the skin.

**No. 2731.** In a complaint issued against **T. G. Cooke, 1920 Sunnyside Ave., Chicago**, trading as **Institute of Applied Science**, he is charged with unfair competition in the sale of a correspondence school course in finger printing, which is represented as including instruction in the science of ballistics.

In the conduct of his business the respondent is alleged to have advertised the use of a textbook entitled "Forensic Ballistics, The Science of Examining Guns and Ammunition in Crimes," and, in connection with the sale of this course, represented and advertised that "Low Tuition Rates Still in Effect, Include Secret Service, Bertillon, Photography and Ballistics Courses."

**No. 2732.** **Garten Table Pad Co., Inc., 131 Market St., Phila-**

**delphia**, is charged in a complaint with unfair competition through misrepresenting the nature of the materials in certain table pads it manufactures and sells in interstate commerce.

By means of circulars distributed among the retail trade, the respondent represents, according to the complaint, that the table pads it offers for sale and sells have "a soft back covering that will not harm the polished surface of a table," and that they "can be had in a felted or genuine felt back, depending on the quality of the pad."

**Stipulations**

The Commission has issued the following cease and desist orders:

**No. 1620.** **F. H. Lawson Co., Evans and Whateley Sts., Cincinnati**, is engaged in selling bathroom and medicine cabinets equipped with mirrors manufactured and sold to it by the **Mid-West Glass Co., 2235 Buck Street, Cincinnati**. The Lawson company agrees to discontinue use in advertising matter of the words "copper-backed," or words of similar meaning, to describe the mirrors attached to its cabinets, so as to imply that such mirrors are made by electrolytically applying a protective coating or a continuous layer of solid copper to the silver nitrate reflecting surfaces of the mirrors, when such is not the fact.

**No. 1621.** **Mid-West Glass Co.**, referred to in the stipulation signed by **F. H. Lawson Co. (1620)**, entered into a similar stipulation, agreeing not to use the words "copper-back," or similar words, in branding or labeling its mirrors, so as to imply that the mirrors are made by an electrolytic coating process. According to the stipulation, the respondent manufactures its mirrors under license of and by a process developed by **Peacock Laboratories, Inc., Philadelphia**.

**No. 1622.** **Hayes Reding, 2 N. W. 9th St., Oklahoma City, Okla.**, doing business as **Hayes Candy Manufacturer**, formerly known as **H. & H. Candy Co.**, agrees to discontinue, in selling or promoting the sale of his candy products, use of any method of sale involving a lottery or scheme of chance, whereby an article is given as a prize in consideration of the purchase of any other article.

**No. 1623.** **Newbarre Granite Co., Inc., South Ryegate, Vt.**, stipulates it will desist from use of the word "Newbarre" as part of its corporate name in selling the granite it quarries, and also agrees to discontinue use of the word "Barre" in connection with the prefix "New," or in any way which may tend to mislead purchasers into the belief that the respondent's product is produced from a quarry in the Barre district of Vermont, when such is not the fact.

**No. 1624.** **Rhode Island Textile Co., 211 Prairie Ave., Pawtucket, R. I.**, is engaged in manufacturing and selling narrow fabrics, including corset laces. It agrees to discontinue use of the words "silk finish" or "silk" on labels affixed to its products, so as to imply or tend to lead purchasers into the belief that its products are silk-finished or are composed of or contain silk, when such representation is untrue; unless, when the words "silk finish" are used merely to describe the sheen of the product, such words shall be accompanied by other words printed in equally conspicuous type, to indicate clearly that the laces are not composed of and do not contain silk, but are made of some other product.

**No. 1625.** **Better Hearing, Inc., 1 West 34th St., New York City**, dealer in hearing aid devices called "Aurophone" and in accessories. Agrees to stop using in its circulars in connection with its corporate name, the phrase "America's Oldest Organization Specializing Exclusively in Scientific Hearing Aids," or similar assertions which may have a tendency to mislead buyers into believing that **Better Hearing, Inc.**, has been in existence longer than any of its competitors or is the oldest organization of its particular kind, when this is not true. The respondent also agrees to stop using in its circulars in this connection the representation "Founded in 1904."

**No. 1626.** **Burton Bros. Co., Inc., 7 South 15th St., Richmond, Va.**, deals in flavoring extracts, hair dressing, pharmaceuticals, aspirin and other products, some of which, according to the stipulation, it makes or compounds, and others, including aspirin, it purchases in bulk from manufacturers. The respondent agrees to cease using the word "Manufacturing," either alone or in connection with "Chemists," or with other words affixed to its aspirin products, implying that the company manufactures such aspirin or tending to deceive buyers into believing that it owns and operates the plant or factory in which this aspirin is made.

**No. 1627.** **Gibbs & Co., 21 South Wabash Ave., Chicago**, manufacturer of barber shop and beauty parlor supplies, is said to have advertised in its "Hand Book of Beauty Shop Equipment

and Supplies, No. 35," the "Gibbs Chrome Checker Back Booth Mirror," described as a plate mirror 8 inches in diameter, when in fact, according to the stipulation, this article was not made of plate glass, but of a glass inferior thereto. The respondent, in its stipulation, agrees to stop using the word "plate" when describing for sale products not made from plate glass.

**No. 1628. Benrose Silk Manufacturing Corporation, 1450 Broadway, New York City,** converter of silk and rayon goods, will cease use of the word "manufacturing" in connection with its corporate name, and the word "mills" on letterheads or in advertising matter, or in connection with the city names "Allentown, Pa.," or "Easton, Pa.," or in any way which may tend to deceive buyers into believing that the company manufactures its products and operates mills in the cities indicated, when this is not true.

**No. 1629. Kelement, Inc., 11 West 42nd St., New York City,** selling dehydrated kelp in tablet form for medicinal use under the name "Kelement," agrees to stop advertising that "Kelement" will keep the human body well, or supply it with an adequate mineral reserve, or that kelp products are naturally rich in calcium, phosphorus, copper and iron, or otherwise exaggerating the mineral content of kelp. The respondent also agrees to cease representing that "Kelement" is not a drug; that it contains an adequate supply of food-iodine and all the organic mineral elements necessary to keep the body healthy and free from disease, or that the product is a complete substitute for other medicinal preparations.

## FEDERAL COMMUNICATIONS COMMISSION ACTION

### HEARING CALENDAR

Monday, March 9

#### HEARING BEFORE AN EXAMINER (Broadcast)

NEW—A. Stanart Graham, K. V. Baxter, Norman Baxter, d/b as Pittsburg Broadcasting Co., Pittsburg, Kans.—C. P., 790 kc., 1 KW daytime.

Wednesday, March 11

#### HEARING BEFORE AN EXAMINER (Broadcast)

KLO—Interstate Broadcasting Corp., Ogden, Utah.—C. P., 1400 kc., 1 KW, 5 KW LS, unlimited time. Present assignment: 1400 kc., 500 watts, unlimited time.

Thursday, March 12

#### ORAL ARGUMENT BEFORE THE BROADCAST DIVISION

Examiner's Report No. I-149:

NEW—Reporter Broadcasting Co., Abilene, Tex.—C. P., 1420 kc., 100 watts, 100 watts LS, unlimited time.

NEW—Wm. O. Ansley, Jr., d/b as Guilford Broadcasting Co., Abilene, Tex.—C. P., 1420 kc., 100 watts, 100 watts LS, unlimited time.

Examiner's Report No. I-153:

NEW—Roberts MacNab Co., Arthur L. Roberts, R. B. MacNab, A. J. Breitbach, Gen. Mgr., Jamestown, N. Dak.—C. P., 1310 kc., 100 watts, 100 watts LS, unlimited time.

Examiner's Report No. I-138:

NEW—Chicago Broadcasting Association, Limited Partnership, Kleofas Jurgelonis, general partner; Jos. F. Budrik, Laurent V. Radkins and Vladas G. Jurgelonis, limited partners, Chicago, Ill.—C. P., 1300 kc., 100 watts, 100 watts LS, unlimited time.

NEW—Big Spring Herald, Inc., Big Spring, Tex.—C. P., 1500 kc., 100 watts, unlimited time.

NEW—Plainview Broadcasting Co., Plainview, Tex.—C. P., 1500 kc., 100 watts, daytime.

NEW—The North Texas Broadcasting Co., Paris, Tex.—C. P., 1500 kc., 100 watts, daytime.

#### HEARING BEFORE AN EXAMINER (Broadcast)

WIRE—Indianapolis Broadcasting, Inc., Indianapolis, Ind.—C. P., 1400 kc., 1 KW, 5 KW LS, unlimited time. Present assignment: 1400 kc., 500 watts, 1 KW LS, unlimited time.

WGBF—Evansville on the Air, Inc., Evansville, Ind.—C. P., 630 kc., 500 watts, 1 KW LS, simultaneous day, sharing night with WOS and KFRU. Present assignment: 630 kc., 500 watts, simultaneous day, sharing night with WOS and KFRU.

### APPLICATIONS GRANTED

WMFJ—W. Wright Esch, Daytona Beach, Fla.—Granted C. P. to install new transmitter and vertical radiator at present location.

KPDN—Pampa Daily News, Inc., Pampa, Tex.—Granted modification of C. P. approving transmitter site east of city limits of Pampa (studio at 212 N. Ballard St., Pampa), and approving equipment.

KFSG—Echo Park Evangelistic Assn., Los Angeles, Calif.—Granted modification of license to increase day power from 1 KW to 2½ KW and use transmitter of station KRKD.

KSD—The Pulitzer Publishing Co., St. Louis, Mo.—Granted authority to determine operating power by direct measurement of antenna input in compliance with terms of Rule 137.

KMJ—James McClatchy Co., Fresno, Calif.—Granted authority to determine operating power by direct measurement of antenna input in compliance with terms of Rule 137.

KGBX—KGBX, Inc., Springfield, Mo.—Granted consent to voluntary assignment of license to Springfield Broadcasting Company.

KOOS—H. H. Hanseth, Inc., Marshfield, Ore.—Granted modification of license to change name from H. H. Hanseth, Inc., to Pacific Radio Corporation (1200 kc., 250 watts, daytime only).

WQAM—Miami Broadcasting Co., Miami, Fla.—Granted C. P. to install new equipment.

KWKH—International Broadcasting Corp., Shreveport, La.—Granted authority to install new automatic frequency control equipment.

KSCJ—Perkins Bros. Co. (The Sioux City Journal), Sioux City, Iowa.—Granted amended C. P. as follows: Move transmitter site, make changes in antenna and radiating system, and increase hours of operation from simultaneous day WTAQ, S.H.-night, to unlimited time. Application for special temporary authority to cover this grant was retired to the files.

WWSA—Shenandoah Valley Broadcasting Corp., Harrisonburg, Va.—Granted special temporary authority to operate with power of 250 watts from 8 p. m. to 9:30 p. m., EST, March 5, 1936, in order to broadcast the 15th anniversary banquet of Rion-Bowman Post No. 632, Veterans of Foreign Wars.

W3XEN—Havens & Martin, Inc., Portable-Mobile.—Granted modification of C. P. (temporary broadcast pickup) to make changes in equipment and increase power from 20 to 40 watts.

WIEF—Miami Broadcasting Co., Portable-Mobile.—Granted license to cover C. P. (temporary broadcast pickup), 1646, 2090, 2190, 2830 kc., 50 watts.

W9XAA—Chicago Federation of Labor, York Township, Ill.—Granted license to cover C. P. (experimental relay broadcasting) authorizing moving of transmitter to present site of broadcast station WCFL.

W5XAQ—East Texas Broadcasting Co., Portable-Mobile.—Granted license to cover C. P. (general experimental), frequencies 31100, 34600, 37600, 40600 kc., 30 watts.

NEW—WBNS, Inc., Portable (Columbus, Ohio)—Granted C. P. (temporary broadcast pickup), frequencies 1646, 2090, 2190, 2830 kc., 3 watts.

NEW—Onondaga Radio Broadcasting Corp., Portable-Mobile (Syracuse, N. Y.)—Granted C. P. (temporary broadcast pickup), frequencies 1646, 2090, 2190, 2830 kc., 45 watts.

### SET FOR HEARING

KRNT—Iowa Broadcasting Co., Des Moines, Iowa.—Application for C. P. to install new equipment, increase power from 500 watts night, 1 KW day, to 1 KW night, 5 KW day, and install directional antenna.

WAWZ—Pillar of Fire, Zarephath, N. J.—Application for modification of license to increase power from 500 watts night, 1 KW day, to 1 KW day and night.

WOL—American Broadcasting Co., Washington, D. C.—Application for C. P. to make changes in equipment; move transmitter from 1111 H St., N. W., to about ½ mile east Riggs and Iager Roads, Md., and studio site to be determined in Washington, D. C.; change frequency from 1310 kc. to 1230 kc. and power from 100 watts to 1 KW.

NEW—Auburn Publishing Co., Auburn, N. Y.—Application for

- C. P. for new station, 1420 kc., 100 watts, unlimited time, site to be determined.
- NEW—Jefferson Broadcasting Co., Ormond O. Black, Pres., Birmingham, Ala.—Application for C. P. for new station, 1200 kc., 100 watts night, 250 watts day, unlimited time.
- NEW—Amended to read: W. I. S. E. Broadcasting Co., St. Paul, Minn.—Application for C. P. for new station, 630 kc., 250 watts, unlimited time, facilities of KGDE; site to be determined.
- NEW—Saginaw Broadcasting Co., Saginaw, Mich.—C. P., already in hearing docket, amended to read: 1200 kc., 100 watts night, 250 watts day, specified hours; site to be determined.
- KUJ—KUJ, Inc., Walla Walla, Wash.—C. P., already in hearing docket, amended to read: Move station locally to site to be determined; install new equipment; change frequency from 1370 kc. to 1250 kc.; increase power from 100 watts to 250 watts.
- NEW—C. W. Snider, Wichita Falls, Tex.—C. P., already in hearing docket, amended to read: 1500 kc., 100 watts, unlimited time; site to be determined.

### MISCELLANEOUS

- KSL—Radio Service Corp., Salt Lake City, Utah.—Granted petition to intervene in re application of KLO for C. P. to operate on 1400 kc., 1 KW day, 5 KW night, at Ogden, Utah.
- KGU—Advertiser Pub. Co., Ltd., Honolulu, T. H.—Denied petition asking Commission to reconsider action of February 11, 1936, in granting application of KGMB for license to cover C. P. Chas. C. Theis, Wichita, Kans.—Oral argument set for March 5, 1936, on Examiner's Report No. 1-96, recommending grant of application for new station to operate on 1210 kc., 100 watts, unlimited time, continued until March 19, 1936.
- Springfield Newspapers, Inc., Springfield, Mo.—Permitted to file answer as respondent in re the application of A. Stanart Graham, d/b as Pittsburg Broadcasting Co., for new station at Pittsburg, Kans.
- Kidd Brothers, Taft, Calif.—Appearance and statement of facts accepted in re application for new radio broadcasting station.
- WEEL—Edison Electric Illuminating Co. (Respondent), Boston, Mass.—Denied motion to strike the notice of desire to be heard and statement of facts to be proved at hearing on March 17, 1936, filed by J. R. Maddox and Dr. W. B. Hair, d/b as Chattanooga Broadcasting Co., for a new station at Chattanooga. Respondent permitted to file answer any time prior to March 5, 1936.
- Tulare—Kings Counties Radio Associates, Visalia, Calif.—Denied request that Commission schedule its application for new station for hearing this week. Application is for 1190 kc., 250 watts, daytime.
- KGFG—Oklahoma Broadcasting Co., Inc., Oklahoma City, Okla.—Denied petition that Commission reconsider and grant application to modify license so as to change hours of operation from sharing with KCRC to full time. Designated for hearing January 30, 1936.
- WAAW—Omaha Grain Exchange, Omaha, Nebr.—Granted regular renewal of license.
- Charleston Broadcasting Corp., Charleston, W. Va.—Answer to appearance of WDBO accepted.
- KHSL—Golden Empire Broadcasting Co., Chico, Calif.—Denied petition asking Commission to reconsider and grant application for modification of license to change frequency from 950 kc. to 630 kc., and increase hours of operation from daytime only with 250 watts to unlimited with 250 watts.
- E. Anthony & Sons, Inc., Pawtucket, R. I.—Granted protest requesting Commission reconsider action of January 21, 1936, in granting extension of the completion date of station WNRI to June 4, 1936, and directed that the application be designated for hearing, upon the protest of E. Anthony & Sons, Inc., against such grant and that said authorization be suspended and heard upon the issues contained in said protest.

### REMANDED TO DOCKET

- Valley Broadcasting Co., Pomona, Calif.—Remanded to docket application for C. P. to erect new station at Pomona to operate on 1160 kc., 250 watts, LS.

### APPLICATIONS DISMISSED

The following applications, heretofore designated for hearing, were dismissed at request of applicants:

- WTMV—Miss. Valley Broadcasting Co., Inc., E. St. Louis, Ill.—Applied for C. P., 1500 kc., 100 watts, 250 watts LS, unlimited time.
- NEW—Alex F. Suss, Maryville, Calif.—Applied for C. P., 1210 kc., 100 watts, unlimited time.
- NEW—Alex F. Suss, Sacramento, Calif.—Applied for C. P., 1310 kc., 100 watts, unlimited time.

### ACTION ON EXAMINERS' REPORTS

- WILL—Ex. Rep. No. 1-111: University of Ill., Urbana, Ill.—granted modification of license to change frequency from 890 kc. to 580 kc.; change hours of operation from sharing with KUSD and KFNF to daytime, 1 KW. Examiner P. W. Seward sustained. Other effective May 5, 1936.
- NEW—Ex. Rep. No. 1-123: Hammond-Calumet Broadcasting Corp., Hammond, Ind.—Denied C. P. for new station to operate on 1480 kc., 5 KW, daytime. Examiner R. L. Walker sustained. Order effective May 12, 1936.
- KADA—Ex. Rep. No. 1-182: C. C. Morris, Ada, Okla.—Denied special experimental authorization to operate unlimited time; 1200 kc., 100 watts. Examiner P. W. Seward reversed. Order effective May 5, 1936.
- KG CX—Ex. Rep. No. 1-164: E. E. Krebsbach, Wolf Point, Mont.—Denied C. P. to move transmitter; make changes in equipment; change frequency from 1310 kc. to 1450 kc.; increase power from 100 watts night, 250 watts day, to 1 KW; change hours of operation from specified hours to unlimited time. Examiner J. P. Bramhall reversed. Order effective April 7, 1936.
- WEDC—Ex. Rep. No. 1-169: Emil Denmark, Inc., Chicago, Ill.—Granted renewal of license, 1210 kc., 100 watts, specified hours. Examiner R. H. Hyde sustained. Order effective April 14, 1936.
- NEW—Ex. Rep. No. 1-175: Golden Empire Broadcasting Co., Redding, Calif.—Granted C. P. for new broadcast station to operate on 1200 kc., 100 watts, unlimited time. Examiner M. H. Dalberg sustained. Order effective April 21, 1936.
- KFPY—Ex. Rep. No. 1-176: Symons Broadcasting Co., Spokane, Wash.—Granted C. P. to install new equipment; change transmitter site; increase power from 1 KW to 1 KW night, 5 KW day, 890 kc., unlimited time. Examiner Geo. H. Hill sustained. Order effective April 28, 1936.
- WSPD—Ex. Rep. No. 1-179: Toledo Broadcasting Co., Toledo, Ohio.—Granted C. P. to make changes in equipment and increase power from 1 KW, 2½ KW LS, to 1 KW, 5 KW LS; 1340 kc., unlimited time. Examiner P. W. Seward sustained. Order effective April 28, 1936.
- WJBC—Ex. Rep. No. 1-181: Wayne Hummer and Harry Dee, d/b as Kaskaskia Broadcasting Co., Bloomington, Ill.—Granted C. P. to make changes in equipment and increase power from 100 watts to 100 watts night, 250 watts day; 1200 kc., share time with WJBL. Examiner John P. Bramhall sustained. Order effective April 28, 1936.
- WHBU—Ex. Rep. No. 1-183: Anderson Broadcasting Corp., Anderson, Ind.—Granted C. P. to make changes in equipment and increase power from 100 watts to 100 watts night, 250 watts day; 1210 kc., unlimited time. Order effective May 5, 1936.
- WFBM—Indianapolis Power & Light Co., Indianapolis, Ind.—Granted C. P. to install new equipment; move transmitter and studio; increase power from 1 KW to 1 KW night, 5 KW day; 1250 kc., unlimited time. Examiner R. L. Walker sustained.

### APPLICATIONS RECEIVED

#### First Zone

- WORL—Broadcasting Service Organization, Inc., Needham, Mass. 920 —Modification of license to increase power from 500 watts to 1 KW.
- NEW—Rensselaer Polytechnic Institute, Troy, N. Y.—Construction permit for a new general experimental station to be operated on 31600, 35600, 38600, 41000 kc., no power specified. Amended giving power as 1 KW.
- NEW—Onondaga Radio Broadcasting Corp., Portable-Mobile.—Construction permit for a new broadcast pickup station to be operated on 2090, 2790, 2830 and 2760 kc., 45 watts. Amended to change frequencies to 1646, 2090, 2190 and 2830 kc.

### Second Zone

**NEW**—Harold F. Gross and Edmund C. Shields, Saginaw, Mich.—  
**950** Construction permit for a new station to be operated on 1210 kc., 100 watts, 250 watts day, unlimited time. Requests facilities of WJIM if WJIM's application for 1010 kc. is granted. Amended to make changes in equipment, change frequency from 1210 kc. to 950 kc., power from 100 watts, 250 watts day, to 500 watts, hours of operation from unlimited to daytime. Omit request for WJIM's facilities.

**WJBK**—James F. Hopkins, Inc., Detroit, Mich.—Modification of  
**1500** construction permit to make changes in equipment; move transmitter from 12897 Woodward Avenue, Highland Park, Mich., to site to be determined, Detroit, Mich.; install vertical antenna; extend commencement date from 9-30-35 to date of grant and completion date from 3-30-36 for six months.

### Third Zone

**NEW**—Jonas Weiland, Kinston, N. C.—Construction permit for a  
**1200** new station to be operated on 1210 kc., 100 watts, 250 watts day, unlimited time. Amended to change frequency from 1210 kc. to 1200 kc.

**WJNO**—Hazlewood, Inc., West Palm Beach, Fla.—Modification of  
**1200** construction permit (B3-P-159) for equipment changes (antenna) and change transmitter site from El Varano Hotel, West Palm Beach, Fla., to near West Palm Beach, Fla.

**KFPM**—Voice of Greenville, Greenville, Tex.—Construction permit  
**1310** to make changes in equipment; increase power from 15 watts to 100 watts; change hours of operation from specified hours to daytime. Amended to change transmitter site from 2109 Park Street (rear) to site to be determined, Greenville, Tex.

**WNBR**—Memphis Broadcasting Co., Memphis, Tenn.—Consent to  
**1430** transfer control of corporation from Francis S. Chamberlin, Mallory Chamberlin, Charles W. Brunner and Ceylon B. Frazer to Memphis Commercial Appeal, Inc., 224 shares of stock.

### Fourth Zone

**NEW**—I. T. U. Radio Station, Inc., Indianapolis, Ind.—Construction  
**560** permit for a new station to be operated on 560 kc., 1

KW, 5 KW day, unlimited time, facilities of WIND, Gary, Ind. Amended to change name from International Typographical Union of N. A. to I. T. U. Radio Station, Inc.; change studio site from 28th and Meridian Sts. to 2820 N. Meridian St., Indianapolis, Ind.; and make changes in antenna.

**NEW**—Glenn Van Auken, Indianapolis, Ind.—Construction permit  
**600** for a new station to be operated on 600 kc., 1 KW, daytime.  
**WEMP**—Milwaukee Broadcasting Co., Milwaukee, Wis.—Construction permit to install new equipment; change frequency  
**1010** from 1310 kc. to 1010 kc., 100 watts to 250 watts, 500 watts day, hours of operation from daytime to unlimited.

**NEW**—The Courier-Post Publishing Co., Hannibal, Mo.—Construction permit for a new station to be operated on  
**1310** 1310 kc., 100 watts, unlimited time.

**KFJM**—University of North Dakota, Grand Forks, N. Dak.—  
**1370** Special experimental authorization to operate on 250 watts day for period ending 1-1-36. Amended to change ending date to 7-1-36.

### Fifth Zone

**KVL**—KVL, Inc., Seattle, Wash.—Construction permit to make  
**1070** changes in equipment; change frequency from 1370 kc. to 1070 kc., power from 100 watts to 250 watts, and hours of operation from share-KRKO to daytime only. Amended to make changes in antenna system.

**KFJI**—KFJI Broadcasters, Inc., Klamath Falls, Ore.—Construction permit to make changes in equipment.

**NEW**—Luther E. Gibson, d/b as Times-Herald Publishing Co.,  
**1320** Vallejo, Calif.—Construction permit for a new station to be operated on 1320 kc., 250 watts, daytime. Amended giving exact transmitter site as in the vicinity of Mare Island Navy Yard, between Vallejo and South Vallejo, Calif.

**NEW**—The News Press Publishing Co., Santa Barbara, Calif.—  
**1410** Construction permit for a new station to be operated on 1450 kc., 500 watts, unlimited time. Amended to change frequency from 1450 kc. to 1410 kc.

# The National Association of Broadcasters

NATIONAL PRESS BUILDING \* \* \* \* \* WASHINGTON, D. C.  
 JAMES W. BALDWIN, Managing Director

## NAB REPORTS

Vol. 4 - - No. 13  
 MARCH 12, 1936

Copyright, 1936. The National Association of Broadcasters

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### DUFFY BILL HEARINGS

Hearings on the Duffy Copyright Bill S. 3047 which were commenced before the House Patents Committee on February 25 are continuing. Witnesses for the ASCAP were heard during the first six days. The hearings are confined to two hours per day and to three days per week. Senator Duffy, author of the Bill, and Dr. McClure of the Department of State who, as chairman of an Inter-Departmental Committee, assisted in drafting the bill were heard Tuesday (10) and Wednesday (11) and are scheduled to appear for further questioning Thursday (12). The NAB expects to appear before the Committee next Tuesday (17).

### PIONEER RADIO TAX CASE

Oral argument was held Monday before the United States Supreme Court on the question of the right of a state to levy a privilege tax on radio broadcasting.

This question came up for the first time in the Supreme Court in the case of Fisher's Blend, Inc., vs. The Tax Commission of the State of Washington. The case came direct from the Supreme Court of the State of Washington. Several cases in other states are awaiting a decision in this case.

### MORE STATIONS SIGN WITH WARNER BROS.

The following additional stations have signed the Warner Brothers contract: W2XR, New York City; KGEZ, Kalispell, Mont.; KADA, Ada, Okla.; KGW, Portland, Ore.; KEX, Portland, Ore.

### WATCH FOR THIS

A NAB member has informed headquarters of an experience he has had with "the man who brings you health through color rays."

According to this information the man, for the purpose of the broadcast program, sits on a 300-pound cake of ice and has ice water dashed over him and then eats ice cream. He protects himself from the effect of this exposure with his color ray.

"In all the talks," states the communication, "prior to the broadcast he swears by everything that is holy that all he is doing is going to make a broadcast and says his machine helps to prevent common colds. After the broadcast folders are mailed to everybody in the phone book." NAB members will want to watch for this.

### CBS FILES ANSWER TO MUSIC SUIT

In its answer filed February 28, in the Federal Court in reply to the complaint of Harms, Inc., Columbia Broadcasting System reiterated its claim that Columbia stations are still licensed to broadcast music published by the Warner group. Columbia, however, is continuing its policy of not broadcasting any Warner music.

The suit brought by Harms, Inc., contended that a performance of "I Get a Kick Out of You" shortly after midnight on New Year's Eve over WABC constituted a copyright infringement. Columbia denies that it is guilty of infringement, and sets forth in addition the grounds on which it contends that WABC was entitled to perform the number.

The answer points out that both Harms and Cole Porter, the composer, were members of ASCAP at the time WABC obtained from ASCAP the license which grants performing rights in the Warner Bros. compositions up to 1941. Cole Porter, the answer further asserts, remains a member of ASCAP and has specifically assigned his rights to ASCAP for this period.

Not only does Columbia continue to claim that the performance is licensed, but it also claims that Harms, by reason of its actions and representations, is barred from asserting any infringement claim.

### TELEPHONE HEARINGS CALLED

The Federal Communications Commission has announced that the Telephone Division will begin hearings in its telephone investigation on March 17 in this city.

The hearings are in connection with the general telephone investigation called for by Congressional resolution directing a special investigation of all telephone companies engaged directly or indirectly in telephone communications in interstate commerce, and certain other kinds of companies.

### SECURITIES ACT REGISTRATIONS

The following companies have filed registration statements with the Securities & Exchange Commission under the Securities Act:

- International Commodities Corporation, New York City (2-1943, Form A-1)
- Springfield City Water Co., Springfield, Mo. (2-1944, Form A-2)
- Spencer Chain Stores, Inc., Boston, Mass. (2-1945, Form A-2)
- The Famise Corp., Philadelphia, Pa. (2-1947, Form A-1)
- Southeastern Indiana Corp., Indianapolis, Ind. (2-1948, Form E-1)
- American Midland Co., Detroit, Mich. (2-1949, Form A-1)
- Barnett Petroleum Co., Houston, Texas (2-1950, Form A-1)
- Lednew Corp., Jersey City, N. J. (2-1951, Form A-1)
- Kingston Products Corp., Kokomo, Ind. (2-1953, Form A-2)
- S. F. Bowser & Co., Fort Wayne, Ind. (2-1954, Form E-1)
- Mansul Chemical Co., Jacksonville, Florida (2-1955, Form A-1)
- Essex Brewing Co., Haverhill, Mass. (2-1956, Form A-1)
- Burry Biscuit Corp., Linden, N. J. (2-1958, Form A-1)

### PRALL COMMENTS ON FCC WORK

The Federal Communications Commission on Wednesday made public the following statement in connection with the reappointment of Mr. Prall as chairman of the Commission:

Anning S. Prall of New York today began his second year as Chairman of the Federal Communications Commission. He was reappointed for another year by President Roosevelt in an order to become effective March 11.

Mr. Prall, as Chairman, serves as a member of each of the three divisions of the Commission—Broadcast, Telephone and Telegraph. Last July he was appointed by President Roosevelt for a seven-year term, after having served a six-month tenure under his original appointment. He is a native of Staten Island, New York, and represented that district in Congress for twelve years as a Democratic member prior to joining the Commission.

Upon beginning his second year as Chairman of the Commission, Mr. Prall said today:

"Naturally, I am gratified over my reappointment by President Roosevelt to serve as Chairman of the Commission for an-

other year. It will be my constant effort to justify his trust in me by acquitting my office in the best interests of the people of the United States.

"In appraising the work of the Federal Communications Commission it should be kept in mind that, except for radio, the Commission has undertaken an entirely new work. It is breaking new ground in the regulation of telephones and telegraphs. Of necessity, this work has been slow and arduous. The Commission was desirous of avoiding mistakes that might result from undue haste.

"The Commission has not been infallible. It may have made errors of judgment but, I am confident, if it has made any they are inherent in the functioning of any new organization and it will profit by them in its future work."

## SUITS BEGUN BY WARNER BROTHERS

Warner Brothers have announced officially that they have begun the following suits against radio stations and hotels, etc., based on alleged infringement of song copyrights owned by them:

M. Witmark & Sons vs. Associated Broadcasters, Inc., operators of Station WEST, for the alleged infringement of "Sweethearts Forever" on February 27th, 1936. Damages sought: \$250.

Remick Music Corp. vs. Associated Broadcasters, Inc., operators of Station WEST, for the alleged infringement of "Sweet Georgia Brown" on February 26th, 1936. Damages sought: \$250.

Harms, Inc. vs. WGAL, Inc., operators of Station WGAL, for the alleged infringements of "Sleepy Valley" on February 20th and 21st, 1936. Damages sought: \$500.

Harms, Inc. vs. Southern Broadcasting Stations, Inc., operators of Station WGST, for the alleged infringement of "That Old Fashioned Mother of Mine" on January 23rd, 1936. Damages sought: \$5,000.

Harms, Inc. vs. W. D. R. C., Inc., operators of Station WDRC, for the alleged infringement of "That Old Fashioned Mother of Mine" on January 23rd, 1936. Damages sought: \$5,000.

Harms, Inc. vs. Maine Broadcasting Co., operators of Station WLBZ, for the alleged infringement of "That Old Fashioned Mother of Mine" on January 23rd, 1936. Damages sought: \$5,000.

Harms, Inc. vs. Buffalo Broadcasting Corp., operators of Station WKBW, for the alleged infringement of "That Old Fashioned Mother of Mine" on January 23rd, 1936. Damages sought: \$5,000.

Harms, Inc. vs. W. H. E. C., Inc., operators of Station WHEC, for the alleged infringement of "That Old Fashioned Mother of Mine" on January 23rd, 1936. Damages sought, \$5,000.

Harms, Inc. vs. WOKO, Inc., operators of Station WOKO, for the alleged infringement of "That Old Fashioned Mother of Mine" on January 23rd, 1936. Damages sought: \$5,000.

Harms, Inc. vs. Pittsburgh Radio Supply House, Inc., operators of Station WJAS, for the alleged infringement of "That Old Fashioned Mother of Mine" on January 23rd, 1936. Damages sought: \$5,000.

Harms, Inc. vs. Station WESG for the alleged infringement of "That Old Fashioned Mother of Mine" on January 23rd, 1936. Damages sought: \$5,000.

Remick Music Corp. vs. Southern Broadcasting Stations, Inc., operators of Station WGST, for the alleged infringement of "Put On Your Old Grey Bonnet." Damages sought: \$5,000.

Harms, Inc. vs. Southern Broadcasting Stations, Inc., operators of Station WGST, for the alleged infringement of "London On a Rainy Night." Damages sought: \$5,000.

Remick Music Corp. vs. York Broadcasting Co., operators of Station WORK, for the alleged infringement of "Sweet Georgia Brown." Damages sought: \$5,000.

M. Witmark & Sons vs. York Broadcasting Co., operators of Station WORK, for the alleged infringement of "Where the River Shannon Flows." Damages sought: \$5,000.

Harms, Inc. vs. Howell Broadcasting Co., Inc., operators of Station WEBR, for the alleged infringement of "Gringola." Damages sought: \$500.

Harms, Inc. vs. Associated Broadcasters, Inc., operators of Station KSFO, for the alleged infringement of "Continental" and "You Let Me Down." Damages sought: \$600.

Remick Music Corp. vs. WSJS for the alleged infringement of "Sweet Georgia Brown." Damages sought: \$250.

Harms, Inc. vs. Durham Radio Corporation, operators of Station WDNC, for the alleged infringement of "That Old Fashioned Mother of Mine." Damages sought: \$5,000.

Harms, Inc. vs. North Carolina Broadcasting Co., operators of Station WBIG, for the alleged infringement of "That Old Fashioned Mother of Mine." Damages sought: \$5,000.

Harms, Inc. vs. Florida Broadcasting Co., operators of Station WMBR, for the alleged infringement of "That Old Fashioned Mother of Mine." Damages sought: \$5,000.

Harms, Inc. vs. Station WDAE for the alleged infringement of "That Old Fashioned Mother of Mine." Damages sought: \$5,000.

Harms, Inc. vs. Orlando Broadcasting Co., operators of Station WDBO, for the alleged infringement of "That Old Fashioned Mother of Mine." Damages sought: \$5,000.

Harms, Inc. vs. W. L. A. C., Incorporated, operators of Station WLAC, for the alleged infringement of "That Old Fashioned Mother of Mine." Damages sought: \$5,000.

Harms, Inc. vs. Voice of St. Louis, Inc., operators of Station KMOX, for the alleged infringement of "That Old Fashioned Mother of Mine." Damages sought: \$5,000.

T. B. Harms vs. WVO Broadcasting Company (WNEW) for the alleged infringement of the song "Every Now and Then"; and M. Witmark & Sons vs. Marcus Loew Booking Agency (WHN) for the alleged infringement (two times) of the song "Where the River Shannon Flows." In each case \$5,000 damages and an accounting of the profits are sought.

M. Witmark & Sons vs. Don Lee Broadcasting System (KHJ, Los Angeles) for the alleged infringement of the song "Mine Alone," seeking \$5,000 damages and an accounting of the profits.

Remick Music Corp. vs. Don Lee Broadcasting System (KHJ, Los Angeles) for the alleged infringement of the song "Whistle and Blow Your Blues Away," seeking \$5,000 damages and an accounting of the profits.

M. Witmark & Sons vs. Northern Corporation (WMEX, Boston) for the alleged infringement of the song "Gypsy Love Song," seeking \$5,000 damages and an accounting of the profits.

Remick Music Corp. vs. Onondaga Radio Broadcasting Corp. (WFBL, Syracuse) for the infringement of the song "Get Happy," seeking \$5,000 damages and an accounting of the profits.

M. Witmark & Sons vs. Central New York Broadcasting Corporation (WSYR, Syracuse) for the alleged infringement of the song "The Words Are In My Heart," seeking \$5,000 damages and an accounting of the profits.

Remick Music Corp. vs. WCFL Cooperative System, Inc. (WCFL, Chicago) for the alleged infringement of the song "Put On Your Old Grey Bonnet," seeking \$250 damages and an accounting of the profits.

M. Witmark & Sons vs. WWL Development Company, Inc. (WWL, New Orleans) for the alleged infringement of the song "Let's Have Breakfast in Bed," seeking \$5,000 damages and an accounting of the profits.

M. Witmark & Sons vs. WCFL Cooperative System, Inc. (WCFL, Chicago) for the alleged infringement of the songs "That Old Irish Mother of Mine," "Lulu's Back In Town" and "Sunrise and You," seeking \$750 damages and an accounting of the profits.

Remick Music Corp. vs. Associated Broadcasters, Inc. (KSFO, Los Angeles) for the alleged infringement of the song "Sweet Georgia Brown," seeking \$300 damages and an accounting of the profits.

Harms, Inc. vs. 1 Fifth Avenue for the alleged infringement of four numbers, "Dancing in the Dark," "As Time Goes By," "Night and Day" and "April in Paris," for which \$1,000 Damages and an accounting of the profits are demanded.

M. Witmark & Sons vs. A. & U. Restaurant, Inc., operators of the Hollywood Restaurant, for the alleged infringement of "Lullaby of Broadway" and "Forty-Second Street," for which \$500 damages and an accounting of the profits are sought.

Harms, Inc. vs. Plaza Operating Co., operators of the Hotel Plaza, for the alleged infringement of "Dancing in the Dark," for which \$250 damages and an accounting of the profits are sought.

Harms, Inc. vs. Waitt Operating Co., operators of the Hotel Weylin, for the alleged infringement of "A Picture of Me Without You," "April in Paris," "Night and Day," "Miss Otis Regrets," and "Why Shouldn't I," for which \$1,250 damages and an accounting of the profits are sought.

Harms, Inc. vs. St. Moritz-On-The-Park, Inc., operators of the St. Moritz Hotel, for the alleged infringement of "Where Am I" and "Begin the Beguine," for which \$500 damages and an accounting of the profits are sought.

Remick Corp. vs. Village Grove Amusement, Ltd., operators of The Nut Club, for the alleged infringement of "Moonlight Bay," "Would You Like To Take A Walk" and "Nagasaki," for which \$1,000 damages and an accounting of the profits are sought.

New World Music Corp. vs. Paradise Catering Corp., operators of the Paradise Restaurant, for the alleged infringement of "I



Got Rhythm," for which \$250 damages and an accounting of the profits are sought.

Harms, Inc. vs. Vincent Astor, operator of the Hotel St. Regis, for the alleged infringement of "I Get A Kick Out of You" and "Why Shouldn't I," for which \$500 damages and an accounting of the profits are sought.

M. Witmark & Sons vs. New Yorker Hotel Corp., operator of the Hotel New Yorker, for the alleged infringement of "Rose In Her Hair" and "Ah, Sweet Mystery of Life," for which \$500 damages and an accounting of the profits are sought.

Remick Music Corp. vs. The Village Farm Barn for the alleged infringement of "Put On Your Old Grey Bonnet," "Memories," "Sweet Georgia Brown" and "Would You Like To Take A Walk," for which \$1,000 damages and an accounting of the profits are sought.

Other new Harms actions against broadcasters include nine for the alleged infringement of "That Old Fashion Mother of Mine" on January 23rd, 1936. Damages of \$5,000 each are sought from radio stations WFEA, WCAU, KOMA, WKRC, WBNS, WSMK, WSPD, WADC and WMBG. The tenth suit is against Station WORK for the alleged infringement of "L'Amour Toujours L'Amour" on February 24th. Damages of \$5,000 are sought from that station also.

## FEDERAL TRADE COMMISSION ACTION

### Complaints

The Federal Trade Commission has alleged unfair competition in complaints issued against the following companies. The respondents will be given an opportunity for hearing to show cause why cease and desist orders should not be issued against them.

**No. 2733.** Charging unfair representations in radio programs, newspapers and other printed matter concerning washing machines sold in interstate commerce, a complaint has been issued against **Taylor Washing Machine Co., 2921 West Madison St., Chicago.**

The complaint charges the company, through its sales representatives, with procuring sales contracts by fraud and false pretenses and with false and misleading assertions which "lull the public and prospective purchasers into a false sense of security and trust in dealing with respondent."

The company is charged with a lack of good faith in soliciting customers by advertising a "free home trial" and a "free home demonstration" of its \$49.50 Taylor washing machine. In this connection, it is alleged that the respondent procures signatures to instruments in writing and in blank by falsely representing such paper to be a "receipt," "insurance policy" or evidence of the signer's "willingness to accept a demonstration" covering the washing machine delivered or to be delivered and represented as on trial or demonstration, when in fact, according to the complaint, the respondent's undisclosed intention is to use such instruments as contracts, or to convert them into contracts of sale for merchandise.

Threats of suits and harassment in employment are among the methods assertedly used by the respondent to impose on prospective purchasers the provisions of contracts to which they were not legally bound, and it is charged that the respondent, without authority of State laws, exercised powers of attorney to assign wages and salaries under purchase contracts.

These practices are alleged to constitute unfair methods of competition in violation of the Federal Trade Commission Act.

**No. 2734.** A complaint has been issued charging **H. E. Martindale**, trading as **Federal Institute of Meats & Marketing, 805½ Sheridan Road, Menominee, Mich.**, with representations to the effect that his correspondence school business is a branch of or connected with the United States Government.

Martindale, who sells courses in butchery and meat packing, is alleged to have advertised his business as the "Central States Division, Federal Institute-Meats-Marketing, Washington, D. C. H. E. Martindale, Divisional Director. Central States Office, Menominee, Mich."

**No. 2735.** Unfair methods of competition in connection with the sale of silver-plated ware is alleged in a complaint issued against **International Silver Co.**, having its principal place of business at **Meriden, Conn.**, with sales offices at Chicago, New York, San Francisco, St. Louis and Toronto, and factories at Meriden, Wallingford, Norwich and Waterbury, Conn., and Hamilton and Niagara Falls, Canada.

According to the complaint, the respondent features the word "Rogers" in the trade names of various brands of silver-plated ware it manufactures and sells to customers, including retail department stores and jewelry stores, and further described two of its brands, "Anchor Rogers Anchor" and "Star Rogers & Bros.

A-1," as "Original Rogers Silver-Plate" and "Genuine Rogers Silver-Plate."

These two particular brands were for many years sold to the purchasing public at \$50 for a set of 50 pieces, it is alleged, and to retail dealers at a discount of 50 per cent, but for the last two or three years, the complaint charges, the respondent has allowed retailers an additional trade discount of 40 per cent on the purchase price of the two brands. This 50 plus 40 per cent discount makes the net purchasing price to retailers \$15 a set, the complaint points out, and permits them to make a corresponding reduction in the retail price at which they resell the sets.

In connection with the sale of "Anchor" and "Star" products, International Silver Co., it is charged, furnishes retailers with booklets and price lists which describe its "half-price sales plan" and which booklets contain samples of advertising for the use of retailers in promoting the sales plan, and, according to the complaint, many retailers have made use of the suggested newspaper advertisements, which represent that sales of such sets are "half-price sales," and that the normal value and the usual and customary retail and selling price of each set is \$50, or approximately that sum. In many instances, the complaint sets forth, the respondent pays a portion of the cost of the newspaper advertising.

The complaint alleges, however, that the price the respondent represents as the customary sales price does not reflect the true customary sales price, but is fictitious and exaggerated, and further alleges that the respondent's practice of falsely advertising its products for sale at half of the represented regular retail price tends to deceive purchasers as to the quality, value, grade and price of its silver-plated ware.

Such alleged misrepresentations, it is charged, enable retailers to increase their sales of the respondent's ware, lessen the market for the products of manufacturers who honestly represent the true retail value of their silver-plated ware, and tend to divert trade to the respondent from competitors who truthfully advertise and sell their products at half-price, or who do not misrepresent the actual value of such products.

**No. 2736.** **Capon Water Co., Capon Springs Mineral Water, Inc., and Louis Austin**, president of and majority stockholder in both companies, located at 1712 Walnut St., **Philadelphia**, are named respondents in a complaint alleging unfair competition in the sale and distribution of a mineral water designated "Capon Springs Water." Austin also operates a branch office at Capon Springs, West Virginia.

The complaint charges that the respondents, in promoting the sale of their product, circulate booklets and leaflets which contain assertions, many made by doctors and laymen, representing that their mineral water will cure or is beneficial in the treatment of a wide variety of afflictions and diseases, including kidney, bladder and liver disorders, rheumatism, acid conditions, diabetes, and high blood pressure, when, in fact, the complaint alleges, use of the water, whether by drinking or by external application, is not a cure or a beneficial treatment for the diseases and afflictions enumerated.

**No. 2738.** Misbranding of the porcelain ware and china ware it sells in interstate commerce is alleged in a complaint issued against **Atlas China Co., Inc., 710 Wythe Ave., Brooklyn, N. Y.**

The complaint charges that the respondent company purchases supplies of foreign and domestic-made porcelain ware and china-ware, undecorated and known as "blanks," which it causes to be processed, decorated and branded with the words "Limoges," "French Decoration" and "Hand Painted."

### Stipulations

The Commission has issued the following cease and desist orders:

**No. 1630.** **Strem Studios, Inc., 429 Penn Ave., Pittsburgh**, having branches in Boston, Washington, Detroit, Columbus, O., and Richmond, Va., dealer in photographic portraits, agrees to stop advertising that its work is "Photography's Latest Creation," "Distinctive Portraiture," or that its "Gold-O-Graf" photographs are made in natural colors, are oil paintings or made on motion picture film, when, in fact, according to the stipulation, the pictures are produced by application of transparent oil colors and are not oil paintings, and are not made on motion picture film. The respondent also stipulates that it will not misrepresent its prices.

Orders for "Gold-O-Graf" photographs, according to the stipulation, were obtained by salesmen, who gave purchasers coupons entitling them to the portraits at alleged reduced prices. These visits were followed up by cameramen who took the pictures and collected the balances due, forwarding the negatives to the Pittsburgh studio. Proofs were then delivered to the customers

by so-called "proof men" and additional orders solicited. The price of \$1.95 and other prices advertised as special or reduced, were in fact the regular and usual prices, according to the stipulation.

**No. 1631. La Mode Garment Co., 711 West Lake St., Chicago,** manufacturing women's dresses, underwear, pajamas, and uniforms for waitresses, agrees to stop using the word "Linene," simulating the word linen, implying that certain of its products are made of the fiber of the flax plant, when this is not true.

**No. 1632. J. H. Smith Veneers, Inc., 433 East Erie St., Chicago,** engaged in importing, processing and veneering of woods, will no longer use phrases such as "African Walnut," or "Oriental Walnut," implying that the products are made of wood derived from trees of the walnut family, when this is not true.

**No. 1633. Samuel and Isadore Sobel, trading as Sobel Brothers, 150 Duane St., New York City,** wholesalers of shoes, will discontinue employing the word "Doctor" or the abbreviation "Dr.," or any imitation thereof in connection with the trade name or brand for their products, in any way tending to mislead buyers into believing that the shoes are made in accordance with the design or under supervision of a doctor, or contain special orthopedic features resulting from medical advice and services, when this is not true. The stipulation says that recently the respondents caused the designation "Dr." to be changed to "De," so that certain of their trade names read "De Benedict's," "De Cushman's" and "De Bell."

**No. 1634. M. Burton Aronson, Harrison & Dearborn Sts., Chicago, trading as M. Burton & Co.,** jobbers and wholesalers of jewelry, will cease using in printed matter the word "gold," alone or in connection with the word "solid," implying that rings so described are made wholly of gold. The stipulation provides that when initials affixed to such rings are composed in part of gold, the word "gold," if used as descriptive only of the initials, shall be conspicuously accompanied by suitable markings to clearly indicate the actual carat or fineness of the gold used, and to show that only the initials are thus described.

**No. 1635. Elliott E. Goldman, 1566 Vyse Ave., Bronx, New York City, trading as The London Pipe Co.,** selling smoking pipes by mail order, agrees to stop using the phrase "The London Pipe Company" in any manner tending to deceive buyers into believing that the respondent is associated with The London Pipe Co., Ltd., of London, England, established in 1837. The respondent's products are not made or manufactured in London, England, or by The London Pipe Co., Ltd., of that city, according to the stipulation, but are made by a concern in the United States. The respondent also agrees to desist in advertising his products for sale "For a limited time only, \$1.00," when this price is not a special price for a limited time only.

**Nos. 1636-1637. Troy Blanket Mills, of Troy, N. H.,** agrees, in selling its blankets and automobile robes, either directly or through a sales agency, to forego use on labels attached to its goods of the words "All Wool," implying that they are composed wholly of wool, when, according to the stipulation, they are made in part of material other than wool. The respondent sold its products branded "All Wool," through its sales agency, L. C. Chase & Co., Inc., of Sanford, Me., according to the stipulation. L. C. Chase & Co. entered into a similar stipulation with the Commission.

**No. 1638. Moses B. Nierenberg, 43 West 33rd St., New York City, trading as Dundee Knitting Co.,** manufacturing knitted outerwear, consisting of sweater coats, ribbed coats, bathing suits and other articles, will cease using the words "Jersey City, N. J.," and "Newark, N. J.," in connection with the word "Mills," implying that the respondent has a factory in either of these cities, when this is not true. The stipulation points out that the respondent's products are made in Brooklyn.

**No. 1639. Trading as The Church Merchant Laboratories, 1619 North Bailey St., Philadelphia,** Eddie Adair and Cornelius Henney, co-partners, selling a product called "Lady-Luck," agree to discontinue representing that use of this article will prevent runs, snags and breaks in hosiery, rayons, silk, chiffon and lingerie, or that its use makes the fabrics treated therewith proof against all spot-producing materials or makes the colors fast. The respondents agree to ban use of the word "Laboratories" as part of their trade name, when, in fact, they do not own, control or operate a laboratory.

**No. 1640. Dextora Company, 600 North White River Parkway, Indianapolis,** manufacturing malt and health food products, agrees not to employ on labels or other advertisements, the words "Malt Syrup," to designate products not made entirely from malted barley. The respondent also will discontinue describing a product not composed wholly of barley malt flavored with

hops, by means of the following assertions: "100% Pure," "Unadulterated," "Made from selected barley malt and choicest Oregon hops," and "Wizard Malt Syrup is a concentrated extract of pure barley malt flavored from the juice of the choicest selected Oregon hops." The expression "Triple Strength" will not be employed in representing malt products not of triple strength.

**No. 2116. The Goodyear Tire and Rubber Company, of Akron, Ohio,** its subsidiaries and their officers, agents, etc., are directed to cease and desist from discriminating in price between Sears, Roebuck & Co., and the respondent Goodyear's retail dealer customers by selling automobile tires to the said Sears, Roebuck & Co. at net realized prices which are lower than the net realized prices at which the said respondent sells the same sizes of tires of comparable grade and quality to individual tire dealers or other purchasers.

In arriving at the said net realized prices, the order requires the respondent to "take into account and make due allowance, and only due allowance, for differences in the cost of transportation and selling tires to individual tire dealers on the one hand and Sears, Roebuck & Co. on the other." The order concludes by stating that nothing therein "shall restrict the respondent's liberty to remove the discrimination either by increasing its price to Sears, Roebuck & Co., or by lowering its price to its other customers."

**No. 2474. United Distilling Co., 216 East Pearl St., Cincinnati,** has been ordered to discontinue representing that it is a distiller of the whiskies, gins and other spirituous beverages it sells in interstate commerce.

Under the order, the respondent is directed to cease and desist from representing, through use of its corporate name on stationery, in advertising, on labels of bottles, or in any other way, that its beverages are manufactured through the process of distillation, or that it owns or operates a plant where such beverages are distilled, until it actually does own and operate a plant for such purposes.

**No. 2682. Sessions Clock Co., Forestville, Conn.,** has been ordered to discontinue certain unfair methods of competition in the sale of its products.

The company is directed to stop representing directly or by implication in catalogues, advertising matter, or on labels, that the cases of clocks made and sold by it are mahogany, when not made from wood derived from trees of the mahogany family.

## FEDERAL COMMUNICATIONS COMMISSION ACTION

### HEARING CALENDAR

Monday, March 16

#### HEARING BEFORE AN EXAMINER (Broadcast)

WSMB—WSMB, Inc., New Orleans, La.—Renewal of license, 1320 kc., 500 watts, 1 KW LS, unlimited time.

Tuesday, March 17

#### HEARING BEFORE AN EXAMINER (Broadcast)

WAIM—Wilton H. Hall, Anderson, S. C.—C. P., 590 kc., 250 watts, 1 KW LS, unlimited time. Present assignment: 1200 kc., 100 watts, unlimited time.

WDBO—Orlando Broadcasting Co., Inc., Orlando, Fla.—Modification of license, 580 kc., 1 KW, unlimited time. Present assignment: 580 kc., 250 watts, unlimited time.

Wednesday, March 18

#### HEARING BEFORE AN EXAMINER (Broadcast)

WHBI—May Radio Broadcast Corp., Newark, N. J.—Modification of license, 1250 kc., 1 KW, 5 KW LS, share with WNEW. Present assignment: 1250 kc., 1 KW, 2½ KW LS, shares with WNEW.

NEW—Carl S. Taylor, Dubois, Pa.—C. P., 780 kc., 250 watts, daytime.

Thursday, March 19

#### HEARING BEFORE AN EXAMINER (Broadcast)

NEW—Eugene DeBogory, tr/as Dallas Radio Research Engineers, Dallas, Tex.—C. P., 1570 kc., 1 KW, unlimited time.

NEW—Gulf Coast Broadcasting Co., Corpus Christi, Tex.—C. P., 1330 kc., 250 watts, 500 watts LS, unlimited time.

### ORAL ARGUMENT BEFORE THE BROADCAST DIVISION

#### Examiner's Report No. I-159:

NEW—Robert E. Cole, d/b as Washington Broadcasting Co., Washington, Pa.—C. P., 1330 kc., 250 watts LS, daytime (facilities of WNBO).

#### Examiner's Report No. I-160:

WADC—Allen T. Simmons, Tallmadge, Ohio.—C. P., 1320 kc., 1 KW, 5 KW LS, unlimited time. Present assignment: 1320 kc., 1 KW, 2½ KW LS, unlimited time.

#### Examiner's Report No. I-150

NEW—Clark Standiford, Visalia, Calif.—C. P., 1310 kc., 100 watts, unlimited time.

#### Examiner's Report No. I-96:

NEW—Charles C. Theis, Wichita, Kans.—C. P., 1210 kc., 100 watts, unlimited time.

### APPLICATIONS GRANTED

WDBJ—Times-World Corp., Roanoke, Va.—Granted C. P. to install new equipment, increase day power from 1 to 5 KW, move transmitter and studio locally in Roanoke.

WIOD-WMBF—Isle of Dreams Broadcasting Corp., Miami, Fla.—Granted C. P. to install new equipment.

WRJN—Racine Broadcasting Corp., Racine, Wis.—Granted modification of C. P. covering changes in equipment, approval of antenna and transmitter site from Racine to Mt. Pleasant, Wis.

KBIX—Oklahoma Press Pub. Co., Muskogee, Okla.—Granted modification of C. P. approving transmitter site and studio in Muskogee, and proposed antenna system.

KWBG—W. B. Greenwald, Hutchinson, Kans.—Granted consent to voluntary assignment of license to The Nation's Center Broadcasting Co., Inc.

WMBR—Florida Broadcasting Co., Jacksonville, Fla.—Granted C. P. to make changes in equipment.

WHBL—Press Publishing Co., Sheboygan, Wis.—Granted C. P. to move station locally and make changes in equipment and antenna system.

KYA—Pacific Broadcasting Corp., San Francisco, Calif.—Granted consent to voluntary assignment of license to Hearst Radio, Inc.

NEW—Ben S. McGlashan, Portable-Mobile and aboard Aircraft NC-351Y (Los Angeles).—Granted C. P. for general experimental broadcast pickup service, frequencies 31100, 34600, 37600 and 40600 kc., 10 watts.

NEW—Miss. Valley Broadcasting Co., Inc., Portable-Mobile, East St. Louis, Ill.—Granted C. P. for general experimental broadcast pickup service, frequencies 31100, 34600, 37600 and 40600 kc., 5 watts.

NEW—Atlantic Broadcasting Corp., Portable-Mobile, New York City.—Granted C. P. for general experimental broadcast pickup service, frequencies 31100, 34600, 37600, 40600, 86000-400000, 401000 and above, 50 watts.

NEW—Nichols & Warinner, Inc., Portable-Mobile, Long Beach, Calif.—Granted C. P., general experimental broadcast pickup service, frequencies 3100, 34600, 37600 and 40600 kc., 2 watts.

NEW—WBNS, Inc., Portable, Columbus, Ohio.—Granted C. P. for broadcast pickup station in temporary service, frequencies 1646, 2090, 2190 and 2830 kc., 20 watts.

NEW—Voice of Longview, Texas, Portable-Mobile.—Granted C. P., broadcast pickup, temporary service, frequencies 1622, 2060, 2150 and 2790 kc., 40 watts.

### SET FOR HEARING

NEW—Donald A. Wike and H. E. Studebaker, d/b as Wike and Studebaker, Baker, Ore.—Application for C. P. for new station, 1370 kc., 100 watts night, 250 watts day, unlimited time, site to be determined.

KLO—Interstate Broadcasting Corp., Ogden, Utah.—C. P., already in hearing docket, amended to read: Make changes in equipment; move transmitter to 3 miles southwest of center of Kaysville, on Lake Shore near Kaysville, Utah; install directional antenna; increase power from 500 watts night and

day to 1 KW night, 5 KW day; extend commencement date to within 15 days after grant and completion date to within 60 days thereafter.

KWBG—The Nation's Center Broadcasting Co., Inc., Hutchinson, Kans.—Application for C. P. to install new equipment; move transmitter locally, approximately 3 miles; change frequency from 1420 kc. to 1120 kc.; increase power from 100 watts to 1 KW.

WJBO—Baton Rouge Broadcasting Co., Inc., Baton Rouge, La.—Application for C. P. to make changes in equipment; install approved antenna system; increase night and day power from 100 to 500 watts, hours of operation from unlimited to specified hours, requesting facilities of WGCM.

WJAC—WJAC, Inc., Johnstown, Pa.—Application for C. P. to make changes in equipment; increase day power from 100 watts to 250 watts; move transmitter site locally.

WRDW—Augusta Broadcasting Co., Augusta, Ga.—Application for C. P. to make changes in equipment; move transmitter from Augusta, Ga., to Satcher Estate, on edge of the city, North Augusta, S. C.; increase power from 100 watts night and day to 250 watts night, 500 watts day; change frequency from 1500 kc. to 1240 kc.

NEW—Foreign Lands Corp., Honolulu, T. H.—Application for C. P. for new station, 600 kc., 1 KW, unlimited time, site to be determined.

NEW—The Brockway Co., Watertown, N. Y.—Application for C. P. for new station, 1270 kc., 250 watts, daytime, site to be determined.

NEW—Black Hawk Broadcasting Co., Waterloo, Iowa.—Application for C. P. for new station, 1370 kc., 100 watts, unlimited time, site to be determined.

NEW—WKY Radiophone Co., Oklahoma City, Okla.—Application for C. P. for new experimental relay station, frequencies 6020, 9510, 11810, 15170, 17760, 21480 kc., 5 KW night and day.

NEW—The Farmers & Bankers Life Ins. Co., Wichita, Kans.—Application for C. P. for new station, 1210 kc., 100 watts, unlimited time.

NEW—Frank M. Dunham, Fort Dodge, Iowa.—Application for C. P. for new station, 1210 kc., 100 watts, unlimited.

NEW—Theodore E. Johnson, Houston, Tex.—Application for C. P. for new station, 1210 kc., 100 watts, unlimited.

KGMB—Honolulu Broadcasting Co., Ltd., Honolulu, T. H.—Consent to the transfer of control of the Honolulu Broadcasting Co., Ltd. (a Hawaiian corporation, licensee of station KGMB and permittee station KHBC), to the Pacific Theatres & Supply Co., Ltd. (also a Hawaiian corporation).

NEW—Winona Radio Service, a partnership, Winona, Minn.—Application for C. P. for new station, transmitter and studio site to be determined with Commission's approval; 1200 kc., 100 watts, unlimited.

NEW—Earl Weir, St. Petersburg, Fla.—Application for C. P. for new station, 1370 kc., 100 watts, unlimited.

### ORAL ARGUMENTS GRANTED

NEW—Ex. Rep. No. 1-189: Golden Empire Broadcasting Co., Sacramento, Calif.—Oral argument granted to be held April 30, 1936.

NEW—Royal Miller, Sacramento, Calif.—Oral argument granted to be held April 30, 1936.

WTFI—Ex. Rep. No. 1-195: Liberty Broadcasting Co., Athens, Ga.—Oral argument granted to be held April 16, 1936.

NEW—Ex. Rep. No. 1-196: V. H. Lake and H. E. Stanford, L & S Broadcasting Co., Atlanta, Ga.—Oral argument granted to be held April 16, 1936.

### ACTION ON EXAMINERS' REPORTS

KID—Ex. Rep. No. 1-143: KID Broadcasting Co., Inc., Idaho Falls, Idaho.—Granted C. P. to move transmitter, and increase power from 250 watts night, 500 watts day, to 500 watts night, 1 KW day; 1320 kc., unlimited time. Examiner R. L. Walker sustained in part. Order effective May 19, 1936.

NEW—Ex. Rep. No. 1-146: William S. Thellman, New Castle, Pa.—Denied C. P. for new station to operate on 1420 kc., 100 watts, daytime. Examiner M. H. Dalberg sustained. Order effective May 26, 1936.

NEW—Ex. Rep. No. 1-178: E. L. Clifford, Pottsville, Pa.—Denied C. P. for new broadcast station to operate on 580 kc., 250 watts, daytime. Examiner M. H. Dalberg sustained. Order effective May 26, 1936.

WJAS—Ex. Rep. No. 1-190: Pittsburgh Radio Supply House, Pittsburgh, Pa.—Granted modification of C. P. to increase day power from 2½ KW to 5 KW, 1290 kc.; 1 KW night, 5 KW day, unlimited time. Examiner R. L. Walker sustained. Order effective May 19, 1936.

NEW—Ex. Rep. No. 1-194: Geo. E. Carter, Homer G. Wolfe and Clara I. Knight, d/b as Carter & Wolfe, Mansfield, Ohio.—Denied C. P. for new broadcast station to operate on 1370 kc., 50 watts night, 100 watts day, unlimited time (site to be determined). Examiner R. L. Walker sustained. Order effective May 19, 1936.

### RENEWAL OF LICENSES

The following stations were granted renewal of licenses for the regular period:

KDYL, Salt Lake City; KFBB, Great Falls, Mont.; KFIO, Spokane, Wash.; KFKU, Lawrence, Kans.; KFOX, Long Beach, Calif.; KFSG and auxiliary, Los Angeles; KGCA, Decorah, Iowa; KGGF, Coffeyville, Kans.; KGHL, Billings, Mont.; KHSL, Chico, Calif.; KLCN, Blytheville, Ark.; KOIN, Portland, Ore.; KOL, Seattle, Wash.; KPAC, Port Arthur, Tex.; KQW, San Jose, Calif.; KRGV, Weslaco, Tex.; KRKD and auxiliary, Los Angeles; KROW, Oakland, Calif.; KRSC, Seattle, Wash.; KWLC, Decorah, Iowa; WBRC, Birmingham, Ala.; WCAD, Canton, N. Y.; WCAL, Northfield, Minn.; WCSH, Portland, Maine; WDAE, Tampa, Fla.; WDEL, Wilmington, Del.; WDOD, Chattanooga, Tenn.; WDSU, New Orleans, La.; WPBM, Indianapolis, Ind.; WHA, Madison, Wis.; WIS, Columbia, S. C.; WKAQ, San Juan, P. R.; WLB, Minneapolis, Minn.; WMAC, Boston, Mass.; WNBZ, Saranac Lake, N. Y.; WORC, Worcester, Mass.; WREN, Lawrence, Kans.; WRR, Dallas, Tex.; WTAW, College Station, Tex.; WTCN, Minneapolis, Minn.; WXYZ, Detroit, Mich.

### MISCELLANEOUS

KXL—KXL Broadcasters, Portland, Ore.—Granted order to take depositions in re application for renewal of license.

WBNX—Standard Cahill Co., Inc., New York City.—Granted oral argument on April 16, 1936, on application for C. P. to install new equipment, move transmitter, and increase power from 250 watts to 1 KW.

NEW—Plain Dealer Pub. Co., and Monroe F. Rubin and Ruth Rubin.—Denied petition requesting Broadcast Division to hear application for transfer of control of WHK and WJAY to the U. B. Company instead of to an examiner.

WHBI—May Radio Broadcast Corp., Newark, N. J.—Granted continuance of hearing, set for March 18, 1936, on application for increased daytime power from 2½ to 5 KW.

WAAW—Omaha Grain Exchange, Omaha, Nebr.—Denied motion to reconsider and grant application to assign license to Nebraska Broadcasting Co. Case to proceed to hearing as heretofore ordered.

L & S Broadcasting Co., Atlanta, Ga.—Granted request that oral argument on its application for a C. P. to erect new radio station at Atlanta be consolidated with oral argument on application of WTFI to move station from Athens to Atlanta.

KDYL—Intermountain Broadcasting Corp., Salt Lake City.—Suspended grant made February 13 to install new equipment, to make local move, and increase day power to 5 KW, and set application for hearing on protest of KLO, Ogden, Utah.

Metro Broadcasting Co., Los Angeles, Calif.—Remanded to docket for purpose of receiving certain documentary evidence and for taking further testimony.

G. D. Goff, Tampa, Fla.—Granted oral argument, before Broadcast Division on March 26, 1936, on application for C. P. to erect new radio station at Tampa to operate on 1500 kc., 100 watts, unlimited.

Dorrence D. Roderick, El Paso, Tex.—In this case concerning the application for C. P. for new station to operate on 1500 kc., 100 watts, unlimited time, the Broadcast Division, upon its own motion, reconsidered its action of February 21, 1936, in granting the application and designated the same for hearing. (Action taken March 3, 1936.)

### APPLICATIONS DISMISSED

The following applications, heretofore set for hearing, were dismissed at request of applicants:

NEW—Springfield Newspapers, Inc., Springfield, Mo.—Applied for C. P., 790 kc., 1 KW, daytime.

NEW—Voice of Black Hills, Rapid City, S. Dak.—Applied for C. P. for new station, 1200 kc., 100 watts, specified hours.

WWRL—Long Island Broadcasting Corp., Woodside, L. I., N. Y.—Applied for modification of license, 1500 kc., 100 watts, 250 watts LS, specified hours (to change specified hours).

KFOX—Nichols & Warinner, Inc., Long Beach, Calif.—Applied for voluntary assignment of license, 1250 kc., 1 KW, unlimited.

WEST—Associated Broadcasters, Inc., Easton, Pa.—Applied for modification of C. P., 1200 kc., 100 watts, 250 watts LS, unlimited day, shares WKBO night.

NEW—R. C. Coshorn and Lester E. Cox, d/b as Capitol Broadcasting Co., Jefferson City, Mo.—Applied for C. P., 920 kc., 500 watts, daytime.

### APPLICATION DENIED

The Ohio Broadcasting Co., Canton, Ohio.—Denied special temporary authority to operate station WHBC pending action on application for assignment of license and C. P. from Edward P. Graham to the Ohio Broadcasting Co., but for a period not to exceed 30 days.

### APPLICATIONS RECEIVED

#### First Zone

WMCA—Knickerbocker Broadcasting Co., Inc., New York, N. Y.—570 Modification of license to increase power from 500 watts to 1 KW day and night.

WHN—Marcus Loew Booking Agency, New York, N. Y.—License 1010 to cover construction permit (B1-P-336) for changes in equipment and increase in day power.

WHN—Marcus Loew Booking Agency, New York, N. Y.—License 1010 to use old W.E. 304-A (1-KW) transmitter as an auxiliary transmitter.

WHN—Marcus Loew Booking Agency, New York, N. Y.—Authority 1010 to determine operating power by direct measurement of antenna.

WEVD—Debs Memorial Radio Fund, Inc., New York, N. Y.—1300 Modification of license to change frequency from 1300 kc. to 1400 kc. and hours of operation from share-WBBR, WFAB and WHAZ to unlimited time, facilities of WBBC, WLTH, WARD and WVFW. Amended to install directional antenna.

WBNY—Roy L. Albertson, Buffalo, N. Y.—License to cover construction permit (B1-P-402) as modified for new station to be operated on 1370 kc., 100 watts, 250 watts day, all hours except those assigned to WSVS.

WILH—Merrimac Broadcasting Co., Inc., Lowell, Mass.—Special 1370 experimental authorization for a "satellite" station to be operated on 1370 kc., 10 to 100 watts day and night, unlimited time, site to be determined, Lawrence, Mass., to be operated in addition to WLLH in Lowell, Mass., and synchronously with WLLH, for period to 7-1-36.

WBBC—Brooklyn Broadcasting Corp., Brooklyn, N. Y.—Modification 1400 of license to change hours of operation from share-WLTH, WCGU and WFOX to share-WITH. Requests facilities of WARD and WFOX. Amended to change hours of operation from share-WLTH to unlimited time. Requests facilities of WARD, WLTH and WVFW.

WHEC—WHEC, Inc., Rochester, N. Y.—Modification of construction 1430 permit (B1-P-819) for new equipment and move of transmitter to further request move of transmitter from 183 Main Street, E. Rochester, N. Y., to Mt. Read Blvd., ½ mile north of Lyell Avenue, Rochester, N. Y., and antenna changes. Also extend commencement and completion dates 60 days and 6 months, respectively.

NEW—The Ogdensburg Publishing Co., Inc., Ogdensburg, N. Y.—1500 Construction permit for a new station to be operated on 1500 kc., 100 watts, unlimited time.

#### Second Zone

NEW—W. H. Marolf, Escanaba, Mich.—Construction permit for 1500 a new station to be operated on 1500 kc., 100 watts, unlimited time.

#### Third Zone

NEW—J. R. Maddox and Dr. W. B. Hair, d/b as Chattanooga 590 Broadcasting Co., Chattanooga, Tenn.—Construction permit for a new station to be operated on 590 kc., 1 KW, unlimited time. Amended to make changes in directional antenna.

WKY—WKY Radiophone Co., Oklahoma City, Okla.—Construction 900 permit to install new equipment; increase power from 1 KW to 5 KW; move transmitter from West 39th Street

(highway 8 miles west of), Oklahoma City, Okla., to site to be determined, near Oklahoma City, Okla. Amended to make antenna changes, change power from 1 KW to 1 KW, 5 KW day, and omit request for move of transmitter.

**NEW**—Bayou Broadcasting Co., Houston, Tex.—Construction permit for a new station to be operated on **1200 kc.**, 100 watts, unlimited time.

**WFBC**—Greenville News-Piedmont Co., Greenville, S. C.—License **1300** to cover construction permit (B3-P-220) as modified to install new equipment, increase power, and move transmitter.

**W4XH**—Virgil V. Evans, d/b as The Voice of South Carolina, Spartanburg, S. C.—Modification of license to include frequencies **31600, 35600, 38600** and **41000 kc.**, and increase power to 50 watts.

#### Fourth Zone

**NEW**—Glenn Van Auken, Indianapolis, Ind.—Construction permit **1050** for a new station to be operated on **600 kc.**, 1 KW, daytime. Amended to change frequency from **600 kc.** to **1050 kc.**

**NEW**—Fred A. Baxter, Superior, Wis.—Construction permit for a **1200** new station to be operated on **1370 kc.**, 100 watts, unlimited time. Amended to change frequency from **1370 kc.** to **1200 kc.**

**WCRW**—Clinton R. White, Chicago, Ill.—Modification of license **1210** to change specified hours.

**NEW**—Tribune Printing Co., Jefferson City, Mo.—Construction **1310** permit for a new station to be operated on **1310 kc.**, 100 watts, daytime.

**KGFW**—Central Nebraska Broadcasting Corp., Kearney, Nebr.—**1310** Consent to transfer control of corporation from Anna H. McConnell and Hugh R. Brown to Clark Standiford and Kate S. Fisher, 548 shares of common stock.

**NEW**—Stanley Reid and Charles Withnell Boegel, Jr., d/b as The **1310** Rapids Broadcast Co., Cedar Rapids, Iowa.—Construction permit for a new station to be operated on **1310 kc.**, 100 watts, unlimited time. Amended to add to name, d/b as The Rapids Broadcast Co.

**NEW**—Albert Lea Broadcasting Corp., Albert Lea, Minn.—Construction permit for a new station to be operated on **1370 kc.**, 100 watts, unlimited time. Amended to change frequency to **1200 kc.**

**NEW**—Albert Lea Broadcasting Corp., Albert Lea, Minn.—Construction permit for a new station to be operated on **1200 kc.**, 100 watts, unlimited time. Amended to change frequency from **1200 kc.** to **1370 kc.**

**WIBC**—Donald A. Burton, Muncie, Ind.—Modification of construction permit (B4-P-248) for equipment changes and in-

crease in power, to further request changes in transmitting equipment and antenna.

**W9XHC**—Kansas State College of Agriculture and Applied Science, Portable-Mobile.—License to cover construction permit for a new general experimental station.

#### Fifth Zone

**KFKA**—The Mid-Western Radio Corp., Greeley, Colo.—Modification of license to increase power from 500 watts, 1 KW day, to 1 KW night and day.

**KFBB**—Buttrey Broadcast, Inc., Great Falls, Mont.—Construction **900** permit to make changes in equipment; increase power from 1 KW, 2½ KW day, to 1 KW, 5 KW day; change frequency from **1280 kc.** to **900 kc.**; and move transmitter from 5 miles south of town on 13th St., Great Falls, Mont., to site to be determined, south of Great Falls, Great Falls, Mont. Requests facilities of KSEI and suggests that KSEI be assigned **1280 kc.**

**NEW**—W. C. Miner, Rock Springs, Wyo.—Construction permit **1310** for a new station to be operated on **950 kc.**, 500 watts, limited time. Amended to change frequency from **950 kc.** to **1310 kc.**, power from 500 watts to 100 watts, hours of operation from limited to daytime, giving studio site as 600 block Dewar Drive, Rock Springs, Wyo., and transmitter site as South West, below town, Rock Springs, Wyo.

**NEW**—H. L. Corley, Trinidad, Colo.—Construction permit for a **1370** new station to be operated on **1370 kc.**, 100 watts, unlimited time.

**KVOE**—The Voice of The Orange Empire, Inc., Ltd., Santa Ana, **1500** Calif.—Consent to transfer control of corporation from Estate of J. S. Edwards, deceased, to J. S. Edwards, Inc., 300 shares common stock.

**NEW**—Ellwood W. Lippincott, Pendleton, Ore.—Construction permit for a new station to be operated on **1500 kc.**, 100 watts, daytime. Amended to change hours of operation from daytime to unlimited, using 100 watts.

**NEW**—J. W. Plame, Huntington Park, Calif.—Construction permit **1500** for a new station to be operated on **850 kc.**, 100 watts, unlimited time. Requests frequency of KIEV. Amended to change frequency from **850 kc.** to **1500 kc.**, omit request for KIEV's frequency and request frequency of KVOE, give studio site as 6221 Pacific Blvd, Huntington Park, Calif.

**KABF**—James McClatchy Co., Portable.—License to cover construction permit for a new broadcast pickup station.

**W6XKF**—Ben S. McGlashan, Portable-Mobile.—License to cover construction permit for a new general experimental station.



# The National Association of Broadcasters

NATIONAL PRESS BUILDING \* \* \* \* \* WASHINGTON, D. C.  
 JAMES W. BALDWIN, Managing Director

## NAB REPORTS

Vol. 4 - - No. 14  
 MARCH 19, 1936

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### DUFFY BILL HEARINGS

Hearings on the Duffy Copyright Bill S. 3047 before the House Patents Committee continue. The NAB appeared before the Committee Tuesday (17) and had not completed its testimony when this Report went to press. A report covering testimony offered in support of the Bill will be furnished for the information of members.

### WARNER BROTHERS LICENSES

The Managing Director next week will confer with Herman Starr of Warner Brothers with reference to the expiration of the MPHC licenses March 31st.

Delayed by hearings on the Duffy Copyright Bill in personally participating in earlier negotiations Mr. Baldwin requested an Advisory Committee consisting of H. K. Carpenter, Walter Damm, John Gillin, Jr., broadcasters, and Philip G. Loucks, attorney, to confer with Mr. Starr last week. This Committee reported that Warner Brothers have been unable so far, from data submitted to stations, to arrive at any basis upon which to predicate a per-piece plan of licensing stations on and after April 1, 1936. Mr. Starr advised the Committee that the present method (based on the highest quarter hour rate) was not working out satisfactorily, since a number of inequalities had been discovered as a result of the practice of many stations publishing national or general rates much higher than those at which time is generally sold. The basis for future licenses, Mr. Starr said, should be the local or retail quarter-hour rate which might result in a higher multiplier being applied.

Mr. Starr also advised the Committee that pending the receipt of complete local or retail rate information on NAB stations from the Association it would be impossible to commit Warner Brothers to any material change in the present method of figuring station license fees.

Regarding per-piece, Mr. Starr advised the Committee that as long as stations bought a large amount of music on the flat fee system Warner Brothers would never consent to a per-piece plan which did not include a minimum guarantee, or minimum use which would yield a total amount commensurate with their estimate of the value of Warner Brothers catalogues.

In the event he is unable to establish a revised basis for licensing, before April 1, Mr. Starr said he would offer stations an extension of probably one month, on the terms now in force.

In a telephone conversation with Mr. Starr since the Advisory Committee made their report the Managing Director was informed that the Warner Brothers had no intention whatever of returning to the ASCAP.

The Managing Director is endeavoring to furnish complete information to Warner Brothers with respect to local or retail rates

and will pursue the negotiations to determine the best terms available after April 1.

### RECOMMENDS NEW ILLINOIS STATION

Champaign News-Gazette, Inc., filed an application with the Federal Communications Commission asking for a construction permit for a new broadcasting station to be located at Champaign, Ill., to use 1370 kilocycles, 100 watts power and unlimited time.

Examiner George H. Hill in Report No. I-207 recommends that the application be granted in part, "authorizing the applicant to operate said station during daytime hours only, and that the request for nighttime hours of operation be denied."

The Examiner states that granting the application for daytime hours would not cause any interference but nighttime hours would cause objectionable interference. "There is a need in the Champaign area for the services of a radio station broadcasting local programs, and there is adequate local talent in the area to supply the needs of such a station."

### BROOKLYN CASES AGAIN POSTPONED

The Federal Communications Commission has announced that hearings in the so-called Brooklyn cases has been postponed until May 7. There have been several changes in the program for hearing these cases.

### INCREASE POWER RECOMMENDED FOR KVSO

Broadcasting Station KVSO, Ardmore, Okla., has filed an application with the Federal Communications Commission asking that its power be increased from 100 watts to 100 watts and 250 watts LS. Also that its hours of operation be increased from daytime to unlimited. The station now operates on a frequency of 1210 kilocycles and no change is asked.

Examiner R. H. Hyde, in Report No. I-206, recommends that the power increase be granted but that the increase in hours of operation be denied. The Examiner found that there is need in the Ardmore area for such improvement as would be made by increasing the station's power and this would not increase interference. It was found, however, that operation of the station during the nighttime hours would cause objectionable interference.

### SIGN WITH WARNERS

The following broadcasting stations have signed Warner Brothers contracts in addition to those already announced: WAGM, WCBM, WSIX, KROW, KPND, KMTR, WGPC, WRBL, and WATL.

### ADS NOT TAXABLE BY STATES

National advertising is interstate commerce and is not subject to a state sales tax, State District Judge M. A. Otero, Jr., ruled in a decision given at Santa Fe, New Mexico, February 15.

The decision came as the result of a suit filed by Western Live Stock, a monthly live stock magazine published at Albuquerque, against the New Mexico Bureau of Revenue. Attorney General Frank Patton filed notice of appeal to the State Supreme Court.

Although Western Live Stock was the only publication appearing in the suit, several daily and weekly newspapers were supporting the suit financially, and only the day before the decision the New Mexico Press Association had officially endorsed the stand taken by the magazine and had assessed members of the organization for funds with which to carry on the contest.

The tax is generally regarded as a sales tax, although it was enacted as an excise tax for support of the state's schools. Several publications have contended that the state has in effect recognized it as a sales tax by issuing tax tokens, which are given in

exchange by consumers for the amount of tax on purchases. Retail establishments have thus been able to pass the tax on to consumers. Newspapers have collected from local and state advertisers the amount of the tax, but have had to absorb the tax on national advertising. Many of the state's publishers have paid the latter under protest, some contending that it was not only unconstitutional but that it amounted to a tax on gross income.

### DENIAL RECOMMENDED FOR POWER INCREASE

Broadcasting Station WEAN, Providence, R. I., applied to the Federal Communications Commission for a power increase from 500 to 100 watts, that it be allowed to move its transmitter, and asked for authority to install new equipment. It operates on a frequency of 780 kilocycles.

Examiner John P. Bramhall in Report No. I-205 has recommended that the application be denied. The Examiner found that the area proposed to be served by the changed location is already receiving ample radio service and some slight interference might be caused.

### NEW ALABAMA STATION RECOMMENDED

James R. Doss, Jr., applied to the Federal Communications Commission for a construction permit for a new broadcasting station to be located at Tuscaloosa, Ala., using 1200 kilocycles, 100 watts power and daytime operation only.

Examiner John P. Bramhall in Report No. I-208 recommended that the application be granted. The Examiner states that there is need for additional daytime service in the area proposed to be served and that therefore granting of the application would be in the public interest.

### RECOMMENDS NEW CALIFORNIA STATION

The Valley Electric Company filed an application with the Federal Communications Commission asking for a construction permit for a new station to be located at San Luis Obispo, Cal., to use 1200 kilocycles, 250 watts power and daytime operation. Also the E. E. Long Piano Company filed an application with the Commission asking for a construction permit for the same place to use the same frequency with 100 watts power and unlimited time.

Examiner George H. Hill in Report No. I-204 recommended that the application of the Valley Electric Company be granted and that of the E. E. Long Piano Company be denied. He found that there is need for local broadcasting at San Luis Obispo and that granting of the application of the electric company for daytime service would not cause any objectionable interference with any existing or proposed station. On the other hand the Examiner found that granting of the piano company's application would cause nighttime interference to the service area of Station KGFJ, Los Angeles. He therefore recommends that the application of the electric company be granted and the piano company be denied.

### MORE WARNER BROTHERS SUITS

Official announcement has been made by Warner Brothers that they have begun additional suits against radio stations, hotels, night clubs and restaurants based on alleged infringement of song copyrights owned by them.

The twenty-one latest suits filed include seventeen against radio stations KSCJ, KTRH, WHAS, KVOR, WBRC, WALA, KLRA, WSBT, WREC, WCAO, WBT, KWKH, WQAM, WFBL, WSJS, WWL and WJR for the alleged infringement on January 23rd of "That Old Fashioned Mother of Mine." The suits are being brought by Harms, Inc., publishers of the song, and damages of \$5,000 are being sought from each of the seventeen stations.

Harms is also seeking \$5,000 damages from Station KWKH for alleged infringement on February 17th of the song entitled "Three Little Words." Remick Music Corp., another Warner music publishing subsidiary, is bringing suit against Station WOCL, Jamestown, N. Y., for the alleged infringement on February 26th of "Whistle and Blow Your Blues Away," demanding \$250 damages therefor. M. Witmark & Sons is also bringing suit against WOCL, for the alleged infringement of "The Words Are In My Heart" on February 26th, for which also \$250 damages are sought. Witmarks have also filed an action against WSOC, Charlotte, N. C., for the alleged infringement on February 23rd of Victor Herbert's "Gypsy Love Song." Damages of \$250 are sought from WSOC.

Actions have also been filed in the following cases:

Harms, Inc., vs. 34th St. Hotel Corporation (Hotel McAlpin) on the number "Sleepy Valley."

Harms, Inc. vs. Realty Hotels, Inc. (Hotel Biltmore) on the numbers "April in Paris," "The Continental," "Blow Gabriel Blow," "Why Shouldn't I" and "The Blue Room."

Harms, Inc. vs. 870 Seventh Ave. Corp. (Hotel Park Central) on the numbers "Why Shouldn't I," "Dancing in the Dark" and "I Get A Kick Out of You."

Harms, Inc. vs. Milnag Leasing Corp. (Hotel Edison) on the songs "I Get A Kick Out of You" and "Anything Goes."

Harms, Inc. vs. MacFayne Corp. (Leon & Eddie's) on the song "Where Am I."

Harms, Inc. vs. The Famous Door on the song "Why Shouldn't I."

M. Witmark & Sons vs. 151 East 50th Street Restaurant Corp. on the song "When Irish Eyes Are Smiling."

Remick Music Corp. vs. Hotel St. George Corp. on the song "Chinatown My Chinatown."

Remick Music Corp. vs. Connie's Management Corp. (Connie's Inn) on the song "Nagasaki."

Remick Music Corp. vs. Chin Restaurant Corp. (Chin's Chinese Restaurant) on the song "Sweet Georgia Brown."

An injunction and \$250 damages, plus an accounting of profits, are sought on each song.

1. Harms, Inc. vs. 58-59 Realty Corporation (Hotel Essex House) for the use of the song "Suddenly."

2. Harms, Inc. vs. Hotel Astor, Inc. for the use of the song "The Blue Room."

3. Harms, Inc. vs. Roosevelt Hotel, Inc., for the use of the songs "Dancing in the Dark" and "Night and Day."

4. Harms, Inc. vs. Childs Company, Inc., for the use of the song "Where Am I?"

5. Harms, Inc. vs. New York Ambassador, Inc. (Ambassador Hotel) for the use of the songs "The Continental," "Night and Day" and "Begin the Beguine."

In all of the restaurant and hotel actions damages of \$250 for the alleged infringing use of each song and an accounting of the profits are demanded.

In addition to the suits filed against hotels and restaurants, Remick Music Corp., M. Witmark & Sons and Harms, all Warner music subsidiaries, have filed through correspondent attorneys the following suits:

Harms, Inc. vs. Central Texas Broadcasting Co., operating Station WACO; Harms, Inc. vs. Wichita Falls Broadcasting Co., operating Station KGKO; Harms, Inc. vs. WDOD Broadcasting Corp., operating Station WDOD; and Harms, Inc. vs. Savannah Broadcasting Corp., operating Station WTOG, all of whom are alleged to have infringed on the song "That Old Fashioned Mother of Mine" and from each of whom \$5,000 damages are demanded.

Remick Music Corp. vs. May Radio Broadcasting Corp., operating Station WHBI, for the alleged infringement of "Kentucky Days," for which \$250 damages are demanded.

M. Witmark & Sons vs. WWL Development Company, Inc., operating Station WWL, for the alleged infringement of "Let's Have Breakfast in Bed," for which \$5,000 damages are demanded.

Harms, Inc. vs. Charles C. Carlson, operating Station WJBW, demanding \$1,750 damages for the alleged infringement of "Three Little Words," "Let's Put Out The Lights," "I'm One of God's Children," and "Lost My Rhythm, Lost My Music, Lost My Man."

Harms, Inc. vs. WWL Development Company, Inc., operating Station WWL, for the alleged infringement of "Let's Put Out The Lights," for which \$5,000 damages are demanded.

Remick Music Corp. vs. Main Auto Supply Co., operating Station WOWO, for the alleged infringement of "It Had To Be You," "The Japanese Sandman" and "Breezin' Along With The Breeze," for which \$15,000 damages are demanded.

Harms, Inc. vs. W. D. S. U., Inc., operating Station WDSU, for four alleged infringements of "I'm Just An Ordinary Human," for which \$5,000 damages are demanded.

Harms, Inc. vs. Adelphia Hotel Co., Philadelphia, operating Cafe Marguery, for the alleged infringements of "The Girl Friend" and "Night and Day," for each of which \$250 damages are demanded.

### NEW QUOTA FACILITIES ASSIGNED

The Federal Communications Commission has announced the following quota facilities due and assigned to broadcast stations as of March 14.



**First Zone—Night**

State	Due	Assigned	Units Over or Under	Percent Over or Under
Conn. ....	2.13	1.92	— 0.21	— 10
Del. ....	0.32	0.20	— 0.12	— 38
D. C. ....	0.64	0.60	— 0.04	— 6
Maine ....	1.06	0.99	— 0.07	— 7
Md. ....	2.16	1.98	— 0.18	— 8
Mass. ....	5.63	5.51	— 0.12	— 2
N. H. ....	0.62	0.43	— 0.19	— 31
N. J. ....	5.36	4.105	— 1.255	— 23
N. Y. ....	16.69	18.53	+ 1.84	+ 11
R. I. ....	0.91	1.10	+ 0.19	+ 21
Vt. ....	0.48	0.56	+ 0.08	+ 17
<b>Total</b>	<b>36.00</b>	<b>35.925</b>	<b>— 0.075</b>	<b>— 0</b>

**Third Zone—Day**

State	Due	Assigned	Units Over or Under	Percent Over or Under
Ala. ....	5.99	4.60	— 1.39	— 23
Ark. ....	4.19	4.95	+ 0.76	+ 18
Fla. ....	3.32	5.30	+ 1.98	+ 60
Ga. ....	6.58	5.20	— 1.38	— 21
La. ....	4.75	5.60	+ 0.85	+ 18
Miss. ....	4.55	2.42	— 2.13	— 47
N. Car. ....	7.17	4.85	— 2.32	— 32
Okla. ....	5.42	5.30	— 0.12	— 2
S. Car. ....	3.93	2.70	— 1.23	— 31
Tenn. ....	5.92	7.75	+ 1.83	+ 31
Texas ....	13.18	14.02	+ 0.84	+ 6
<b>Total</b>	<b>65.00</b>	<b>62.69</b>	<b>— 2.31</b>	<b>— 4</b>

**First Zone—Day**

State	Due	Assigned	Units Over or Under	Percent Over or Under
Conn. ....	3.85	3.44	— 0.41	— 11
Del. ....	0.57	0.33	— 0.24	— 42
D. C. ....	1.16	0.90	— 0.26	— 22
Maine ....	1.91	1.42	— 0.49	— 26
Md. ....	3.91	4.10	+ 0.19	+ 5
Mass. ....	10.17	7.35	— 2.82	— 28
N. H. ....	1.11	0.80	— 0.31	— 28
N. J. ....	9.67	5.055	— 4.615	— 48
N. Y. ....	30.14	21.81	— 8.33	— 28
R. I. ....	1.65	1.20	— 0.45	— 27
Vt. ....	0.86	0.86	— 0.00	— 0
<b>Total</b>	<b>65.00</b>	<b>47.265</b>	<b>—17.735</b>	<b>— 27</b>

**Fourth Zone—Night**

State	Due	Assigned	Units Over or Under	Percent Over or Under
Ill. ....	10.14	11.41	+ 1.27	+ 13
Ind. ....	4.30	3.64	— 0.66	— 15
Iowa ....	3.28	5.50	+ 2.22	+ 68
Kansas ....	2.50	2.49	— 0.01	— 0
Minn. ....	3.41	4.18	+ 0.77	+ 23
Mo. ....	4.82	5.24	+ 0.42	+ 9
Nebr. ....	1.83	2.21	+ 0.38	+ 21
N. Dak. ....	0.90	1.40	+ 0.50	+ 56
S. Dak. ....	0.92	0.86	— 0.06	— 7
Wisc. ....	3.90	3.47	— 0.43	— 11
<b>Total</b>	<b>36.00</b>	<b>40.40</b>	<b>+ 4.40</b>	<b>+ 12</b>

**Fourth Zone—Day**

State	Due	Assigned	Units Over or Under	Percent Over or Under
Ill. ....	18.30	16.77	— 1.53	— 8
Ind. ....	7.77	6.54	— 1.23	— 16
Iowa ....	5.93	8.26	+ 2.33	+ 39
Kansas ....	4.51	3.77	— 0.74	— 16
Minn. ....	6.15	5.77	— 0.38	— 6
Mo. ....	8.70	9.74	+ 1.04	+ 12
Nebr. ....	3.30	6.02	+ 2.72	+ 82
N. Dak. ....	1.63	2.10	— 0.47	+ 29
S. Dak. ....	1.66	2.13	+ 0.47	+ 28
Wisc. ....	7.05	6.46	— 0.59	— 8
<b>Total</b>	<b>65.00</b>	<b>67.56</b>	<b>+ 2.56</b>	<b>+ 4</b>

**Second Zone—Night**

State	Due	Assigned	Units Over or Under	Percent Over or Under
Ky. ....	3.38	3.95	+ 0.57	+ 17
Mich. ....	6.25	5.25	— 1.00	— 16
Ohio ....	8.58	9.83	+ 1.25	+ 15
Pa. ....	12.43	12.38	— 0.05	— 0
Va. ....	3.13	4.65	+ 1.52	+ 49
W. Va. ....	2.23	2.19	— 0.04	— 2
<b>Total</b>	<b>36.00</b>	<b>38.25</b>	<b>+ 2.25</b>	<b>+ 6</b>

**Fifth Zone—Night**

State	Due	Assigned	Units Over or Under	Percent Over or Under
Ariz. ....	1.32	1.37	+ 0.05	+ 4
Calif. ....	17.18	19.67	+ 2.49	+ 14
Colo. ....	3.13	4.16	+ 1.03	+ 33
Idaho ....	1.35	1.60	+ 0.25	+ 18
Mont. ....	1.62	2.15	+ 0.53	+ 32
Nev. ....	0.27	0.30	+ 0.03	+ 11
N. Mex. ....	1.28	1.13	— 0.15	— 12
Ore. ....	2.89	4.12	+ 1.23	+ 42
Utah ....	1.54	3.30	+ 1.76	+114
Wash. ....	4.73	7.53	+ 2.80	+ 59
Wyo. ....	0.68	0.40	— 0.28	— 41
<b>Total</b>	<b>36.00</b>	<b>46.18</b>	<b>+10.18</b>	<b>+ 28</b>

**Second Zone—Day**

State	Due	Assigned	Units Over or Under	Percent Over or Under
Ky. ....	6.10	4.25	— 1.85	— 30
Mich. ....	11.28	7.09	— 4.19	— 37
Ohio ....	15.50	12.41	— 3.09	— 20
Pa. ....	22.45	14.95	— 7.50	— 33
Va. ....	5.64	6.54	+ 0.90	+ 16
W. Va. ....	4.03	4.30	+ 0.27	+ 7
<b>Total</b>	<b>65.00</b>	<b>49.54</b>	<b>—15.46</b>	<b>— 24</b>

**Fifth Zone—Day**

State	Due	Assigned	Units Over or Under	Percent Over or Under
Ariz. ....	2.38	1.69	— 0.69	— 29
Calif. ....	31.02	23.65	— 7.37	— 24
Colo. ....	5.66	5.25	— 0.41	— 7
Idaho ....	2.43	2.25	— 0.18	— 7
Mont. ....	2.94	2.95	+ 0.01	+ 0
Nev. ....	0.49	0.30	— 0.19	— 39
N. Mex. ....	2.31	2.95	+ 0.64	+ 28
Ore. ....	5.21	6.19	+ 0.98	+ 19
Utah ....	2.78	3.30	+ 0.52	+ 19
Wash. ....	8.54	9.65	+ 1.11	+ 10
Wyo. ....	1.24	0.40	— 0.84	— 68
<b>Total</b>	<b>65.00</b>	<b>58.58</b>	<b>— 6.42</b>	<b>— 10</b>

**Third Zone—Night**

State	Due	Assigned	Units Over or Under	Percent Over or Under
Ala. ....	3.32	2.65	— 0.67	— 20
Ark. ....	2.32	2.77	+ 0.45	+ 19
Fla. ....	1.84	3.65	+ 1.81	+ 98
Ga. ....	3.64	4.46	+ 0.82	+ 22
La. ....	2.63	5.40	+ 2.77	+105
Miss. ....	2.52	1.32	— 1.20	— 48
N. Car. ....	3.97	4.45	+ 0.48	+ 12
Okla. ....	3.00	3.51	+ 0.51	+ 17
S. Car. ....	2.18	1.30	— 0.88	— 40
Tenn. ....	3.28	6.05	+ 2.77	+ 84
Texas ....	7.30	11.14	+ 3.84	+ 53
<b>Total</b>	<b>36.00</b>	<b>46.70</b>	<b>+10.70</b>	<b>+ 30</b>

## FEDERAL TRADE COMMISSION ACTION

### Complaints

The Federal Trade Commission has alleged unfair competition, in complaints issued against the following firms. The respondents will be given an opportunity for hearing to show cause why cease and desist orders should not be issued against them.

**No. 2737.** A complaint alleging unfair competition in connection with the sale of paint, varnish, enamel and allied products, has been issued against **Davis Paint Co., Inc.**, 14th and Iron Sts., **Kansas City, Mo.**, and eight of its subsidiaries.

Berry J. Davis, who is also named as a respondent, according to the complaint, is president of the Davis Paint Co., Inc., and is principal stockholder in and directs the policies and operations of this company and of its subsidiaries, namely, Burlington Paint Co., W. H. Beard Paint Co., Farm & Home Paint Co., Manchester Paint Corp., New Method Paint Co., Painter's Paint Co., World Star Paint Co., all of Kansas City, Mo., and Robertson Products Co., Cleveland, Ohio.

The Davis Paint Co., the complaint alleges, manufactures all the products sold by it and its subsidiaries, but conceals the fact that it has the controlling interest in the other respondent corporations, and causes such subsidiaries to be advertised as manufacturers, when such is not the fact, by using labels on containers bearing the corporate name of the particular subsidiary making the sale, in connection with phrases such as "Direct From Factory to You."

**No. 2739.** **Sutton Laboratories, Inc., Chapel Hill, N. C.**, is charged in a complaint with unfair competition in the sale of "Linoil," offered as a remedy for treating diseases of the feet.

The respondent's representations, allegedly made in radio broadcasts and in advertising matter, to the effect that "Linoil" will cure eczema, that it is effective in the treatment of athlete's foot, ringworm, or other fungus infections of the feet, in all cases, and that it is an adequate and safe treatment for toe itch of all forms, are untrue, according to the complaint.

Use of such representations, the complaint alleges, tends to lead purchasers to believe they can diagnose the foot ailments from which they suffer, and to purchase the respondent's products in such erroneous belief, whereas, the complaint sets forth, only by a diagnosis by a competent physician can the causes of such diseases be ascertained and successfully treated.

In advertising matter, the complaint charges, the respondent represents through use of the word "Laboratories" in its corporate name that it maintains a laboratory at Durham, N. C., where "Linoil" is compounded, when the respondent does not operate a laboratory, but has a post office lock box at Durham and actually prepares its product in its drug store at Chapel Hill.

Use of the term "Linoil," it is alleged, implies that linseed oil is used in the manufacture of the product, when linseed oil is not present in the preparation.

These misrepresentations, says the complaint, tend to deceive the purchasing public and divert trade to the respondent from competitors who truthfully advertise their products.

**No. 2740.** **W. H. Bonifield, Warren, Ind.**, trading as **Chicopee Medicine Co.**, is named respondent in a complaint alleging unfair competition in connection with the sale of "Chicopee Native Indian Herbs," offered as a medicinal preparation.

On coupons, circulars and cartons, the respondent allegedly represents that his product relieves liver, stomach and kidney disorders, lumbago, rheumatism, and other ailments, when, according to the complaint, the medicine is not a remedy for the ailments enumerated, and its therapeutic value does not warrant assertions that it "is a wonderful remedy of nature"; that it "works surely, safely and quickly"; that it is "the oldest and most reliable medicine known" and "will improve your health 100 per cent in a few weeks' time." The complaint also alleges that the product contains drugs and is not composed of "Native Indian Herbs."

**No. 2742.** **Louis Fabrikant**, trading as **Louis Fabrikant Co.**, 450 Seventh Ave., **New York City**, is charged in a complaint with unfair methods of competition in the sale of textile fabrics used in the manufacture of dress goods.

Fabrikant is said to have invented and perfected a fabric made of brushed tricot knitted rayon and silk having a velvety appearance, and resembling fabrics made from camel's hair, for which he adopted the trademark "Camel Suede."

Distributing his product to wholesalers and retailers, the respondent is alleged to have assisted them in phrasing advertisements which conspicuously displayed the name "Camel Suede," so as to serve as a representation to the public that the fabric was made from camel wool. In many advertisements appeared

the assertion that "Camel Suede is a very soft wool and rayon mixture with a velvety finish," according to the complaint.

**No. 2743.** False representations in advertising are alleged in a complaint against **Justin Haynes & Co., Inc.**, 347 Fifth Ave., **New York City**, engaged in the sale of "Aspirub," an ointment, said to contain, among other ingredients, one and one-half per cent of aspirin.

In newspaper advertisements and on labels on jars and cartons, the respondent allegedly represents that such ointment, due to its aspirin content, has great therapeutic value; that its use will accomplish all the beneficial effects of aspirin, and that its external application is the new way of taking aspirin.

### Stipulations

The Commission has issued the following cease and desist orders:

**No. 01097.** **Trading as Drexel Service Co., Chicago, E. W. Berry and O. G. Kral**, co-partners, selling confections, salted nuts and other counter display products, agree to stop making unmodified representations of earnings in excess of the average earnings of regular salespersons under normal conditions.

**No. 01100.** An individual described as **Yogi Kahn, with headquarters in Chicago, trading as Yogi Brothers**, engaged in the sale of cosmetics, incense and other items said to be connected with Yogi, Hindu, or Eastern mysticism, agrees to stop representing that any of his products are imported from either India, the Holy Land or anywhere in the Orient, or are genuine Hindu products. The respondent agrees to stop using as part of his name the terms "Hindu," "India," "Yogi," and other words tending to mislead prospective purchasers into believing these commodities are compounded or made by a Yogi, or imported from or composed of ingredients imported from India, the Holy Land, or the Orient, until such time as this shall be true in fact.

**No. 01130.** **Lewyn Drug, Inc., Hollywood, Calif.**, selling a preparation for the relief of certain women's ailments, agrees to stop representing that it will safely, quickly and dependably end these troubles, and that it complies with the Federal Food and Drug Act. According to medical opinion given the Commission, the preparation will not accomplish the things claimed for it in a majority of cases, and would be dangerous to use.

**No. 01174.** **Clark-Wright, Inc., Boston**, selling "Thymo Foot Cream," agrees to cease advertising that the preparation will banish or eliminate all foot troubles, and give complete comfort in cases of aching, painful, burning, itching and swelling feet.

**No. 01181.** **Paul's Inc., Minneapolis**, vendor of "Tarola," offered as a combination shampoo and scalp treatment and dandruff preventative, stipulates that it will discontinue representing the article as a competent treatment or effective remedy for itchy scalp; that its use will prevent hair from falling; that it is a competent treatment for dandruff, and other similar allegations.

**No. 01191.** **Burrell-Dugger Co., of Indianapolis**, selling "Group-Over," a poultry remedy agrees to cease alleging that this preparation will stop cold epidemics overnight, or end colds in poultry, or stop wheezing, choking, sneezing, or every sign of a cold overnight. The respondent, under the stipulation, will cease representing that it "guarantees" satisfaction.

**No. 01101.** **The Anacin Co., 8134 McCormick Building, Chicago**, selling "Anacin," agrees to cease advertising that its preparation is a competent treatment for colds, periodic pains or headaches and is considered tremendously effective by doctors and dentists, unless it limits its representations to assertions that "Anacin" relieves symptoms and pains due to such ailments. The respondent stipulates it will discontinue representing that "Anacin" contains four pain-relieving agents and that the formula of the preparation is recognized throughout the world as safe, reliable and prompt in relieving pain."

**No. 01109.** **L. B. Ford, York, Nebr.**, engaged in the sale of "Van-Nae Herb Tea," offered as a weight reducer, stipulates he will discontinue representing that his product is more than a mere laxative and diuretic; that it acts as a fat reducer without dieting or strenuous exercise; that it corrects any body ailment causing excess fat; that it is non-habit forming, and that the drinking of such tea is a sensible, safe and sane method of reducing fat. The respondent also will desist from using the title "Doctor."

**No. 01239.** **J. L. Prescott Co., Passaic, N. J.**, agrees to cease representing that "Oxol," a cleaning compound, destroys odors or kills germs, unless it is clearly indicated in connection with such claims that the product does not destroy all odors or all germs. The respondent stipulates it will not represent that the product "cleanses all it touches"; that disease germs cannot live in the presence of "Oxol," unless the specific germs "Oxol" is

known to kill are named, and that the product's bacteria-de-  
stroying properties are stronger than carbolic acid, unless such  
representation is established by competent evidence.

**No. 2218.** Under an order issued against **Hubert J., William M., and Mary M. McQuestion**, trading as **Northshore Cement Burial Vault Co.**, 2503 Buchanan Road, **Kenosha, Wis.**, are directed to discontinue false representations in connection with the offering for sale and sale of cement or concrete burial vaults.

The respondents are required to cease representing in purported guarantees in advertising, or in any other manner, that their product is a "Vault Eternal," of enduring strength, hermetically sealed, impervious to moisture, an impregnable barrier to every destructive element of the ground, and that it assures undisturbed, peaceful rest.

**No. 2519.** Under an order entered against **Miles L. Finch**, trading as **Associate British Manufacturers**, at 200 Fifth Ave., **New York City**, that respondent is directed to cease and desist from certain misrepresentations in the sale of woolen cloth.

It was found that the respondent is engaged in the sale of genuine Harris Tweed, a hand-woven product made in the Outer Hebrides, Scotland, and also in the sale of certain power-loomed woolen fabrics made in imitation of the genuine Harris Tweed; that in the sale of the imitation product, the respondent so advertised and otherwise represented the imitation woolen goods as to lead the purchasing public to believe that the imitation product it was buying was the genuine Harris Tweed.

**No. 2715.** **Milton Toch**, 1847 68th St., **Brooklyn**, trading as **Universal Ink Co.** and engaged in the sale of liquid and powdered ink, has been ordered to discontinue representing that his business was established prior to 1934, or that he is a manufacturer of powdered ink. The respondent admitted the material allegations of the complaint to be true and did not contest the proceeding.

## FEDERAL COMMUNICATIONS COMMISSION ACTION

### HEARING CALENDAR

Tuesday, March 24

#### HEARING BEFORE AN EXAMINER (Broadcast)

**NEW**—Central Broadcasting Co., Eau Claire, Wis.—C. P., 1050 kc., 250 watts, daytime.

Wednesday, March 25

#### HEARING BEFORE AN EXAMINER (Broadcast)

**KOS**—New Mexico College of Agriculture and Mechanic Arts, Albuquerque, N. Mex.—Renewal of license, 1180 kc., 10 KW, simultaneous day, share night with **KEX**.

Thursday, March 26

#### ORAL ARGUMENT BEFORE THE BROADCAST DIVISION

##### Examiner's Report No. I-161:

**KFRO**—Voice of Longview, Longview, Tex.—C. P., 1210 kc., 100 watts, 250 watts LS, unlimited time (facilities of **KWEA**). Present assignment: 1370 kc., 100 watts LS, daytime.

**NEW**—Oil Capital Broadcasting Assn., James G. Ulmer, Pres., Kilgore, Tex.—C. P., 1210 kc., 100 watts, 100 watts LS, unlimited time (facilities of **KWEA**).

**KWEA**—International Broadcasting Corp., Shreveport, La.—Renewal of license, 1210 kc., 100 watts, 100 watts LS, unlimited time.

##### Examiner's Report No. I-165:

**NEW**—Florida West Coast Broadcasting Co., Inc., Tampa, Fla.—C. P., 1370 kc., 100 watts, 100 watts LS, unlimited time (request facilities of **WPAT**).

##### Examiner's Report No. I-171:

**NEW**—Herbert Lee Blye, Lima, Ohio.—C. P., 1210 kc., 100 watts LS, daytime.

##### Examiner's Report No. I-77:

**NEW**—G. D. Goff, Tampa, Fla.—C. P., 1500 kc., 100 watts, unlimited time.

## APPLICATIONS GRANTED

**WTAG**—Worcester Telg. Pub. Co., Inc., Worcester, Mass.—Granted C. P. to make changes in equipment.

**KFJI**—KFJI Broadcasters, Inc., Klamath Falls, Ore.—Granted C. P. to make changes in equipment.

**WEW**—The St. Louis University, St. Louis, Mo.—Granted C. P. to make changes in equipment.

**WDAE**—Tampa Times Company, Tampa, Fla.—Granted extension of special experimental authority to operate with 2½ KW day from April 1 to Oct. 1, 1936.

**WMBR**—Florida Broadcasting Co., Jacksonville, Fla.—Granted license to cover C. P. authorizing local move of transmitter, changes in equipment, and increase in day power to 250 watts; 1370 kc., 100 watts night, unlimited time.

**WCFL**—Chicago Federation of Labor, Chicago, Ill.—Granted license to cover C. P. for auxiliary equipment.

**WEST**—Associated Broadcasters, Inc., Easton, Pa.—Granted license to cover C. P. approving studio location at 561 Northampton St., Easton, Pa.

**KREG**—The Voice of the Orange Empire, Inc., Ltd., Santa Ana, Calif.—Granted renewal of license for period January 1 to July 1, 1936.

**KABF**—James McClatchy Co., Sacramento, Calif. (Portable-Mobile).—Granted license to cover C. P. (temporary broadcast pickup), frequencies 1646, 2090, 2190, 2830 kc., 50 watts.

**W6XKF**—Ben S. McGlashan, Portable-Mobile (Los Angeles).—Granted license to cover C. P. (general experimental), frequencies 31100, 34600, 37600, 40600 kc., 100 watts.

**W4XH**—Virgil V. Evans, d/b as The Voice of South Carolina, Portable-Mobile (Spartanburg, S. C.).—Granted modification of license authorizing four general experimental frequencies assigned to miscellaneous services in addition to frequencies already assigned, and increase in power from 15 to 50 watts; 31600, 35600, 38600, 41000 and 86000-400000 kc.

**W8XKA**—Westinghouse Electric and Manufacturing Co., Portable-Mobile (Chicopee Falls, Mass.).—Granted renewal of special experimental license for period April 30 to July 30, 1936.

**W3XEY**—The Baltimore Radio Show, Inc., Baltimore, Md.—Granted modification of C. P. approving proposed transmitter site at Belvedere Hotel, southeast corner Chase and Charles Sts., Baltimore, Md.

## SET FOR HEARING

**WWAE**—Hammond-Calumet Broadcasting Corp., Hammond, Ind.—Application for modification of license to change hours of operation from S-WFAM to unlimited day to LS, S-WFAM night.

**NEW**—The Waterloo Times-Tribune Pub. Co., Waterloo, Iowa.—Application for C. P. for new experimental broadcast station, 1550 kc., 1 KW, unlimited time, using antenna array of special design.

**NEW**—The Times Publishing Co., St. Cloud, Minn.—Application for C. P. for new station, 1420 kc., 100 watts, unlimited, transmitter and studio site to be determined subject to Commission's approval.

**WORL**—Broadcasting Service Org., Inc., Needham, Mass.—Application for modification of license to increase day power from 500 watts to 1 KW.

**KGEK**—Elmer G. Beehler, Sterling, Colo.—Application for modification of license to change specified hours to include an additional 30 minutes on Saturdays.

**KSO**—Iowa Broadcasting Co., Des Moines, Iowa.—Application for C. P. to make changes in equipment and increase daytime power from 1 KW to 2½ KW.

**KWKC**—Charlotte Duncan, Admin., Lester E. Cox, Thomas L. Evans, Kansas City, Mo.—Application for C. P. to install new equipment; move station locally from 3912 Main St. to Commerce Bldg., northwest corner 10th and Walnut Sts., Kansas City, Mo.

**WJAX**—City of Jacksonville, Jacksonville, Fla.—Application for modification of license to increase night power from 1 KW to 5 KW. To be heard before the Broadcast Division, date to be determined.

**KFWB**—Warner Bros. Broadcasting Corp., Hollywood, Calif.—Application for modification of license to increase power from 1 KW night, 2½ KW day, to 5 KW night and day. To be heard before the Broadcast Division, date to be determined.

WWJ—The Evening News Assn., Inc., Detroit, Mich.—Application for modification of C. P. to increase nighttime power from 1 KW to 5 KW. To be heard before the Broadcast Division, date to be determined.

WDAY—WDAY, Inc., Fargo, N. Dak.—Application for modification of license to increase night power from 1 to 5 KW. To be heard before the Broadcast Division, date to be determined.

WAVE—WAVE, Inc., Louisville, Ky.—Application for C. P. to make changes in equipment, move transmitter locally to site to be determined, and increase power from 1 to 5 KW. To be heard before the Broadcast Division, date to be determined.

KOIN—KOIN, Inc., Portland, Ore.—Application for modification of license to increase night power from 1 to 5 KW.

KHJ—Don Lee Broadcasting System, Los Angeles, Calif.—Application for modification of license to increase power from 1 to 5 KW. To be heard before the Broadcast Division, date to be determined.

WEEI—Edison Electric Illuminating Co. of Boston, Mass.—C. P., already in hearing docket, amended to read: Install new equipment, use directional antenna, increase power from 1 to 5 KW. To be heard before the Broadcast Division, date to be determined.

KECA—Earle C. Anthony, Inc., Los Angeles, Calif.—Modification of C. P., already in hearing docket, amended to read: Install new equipment, increase night power from 1 to 5 KW. To be heard before the Broadcast Division, date to be determined.

WRC—National Broadcasting Co., Inc., Washington, D. C.—C. P., already in hearing docket, amended to read: Install new equipment, increase power from 1 KW day, 500 watts night, to 5 KW day and night, move transmitter locally to site to be determined. To be heard before the Broadcast Division, date to be determined.

WCSH—Congress Square Hotel Co., Portland, Me.—Modification of license, already in hearing docket, amended to read: Increase power from 1 KW night, 2½ KW day, to 5 KW day and night. To be heard before the Broadcast Division, date to be determined.

KHQ—Louis Wasmer, Inc., Spokane, Wash.—C. P., already in hearing docket, amended to read: Make changes in equipment, increase power from 1 KW night, 2 KW day, to 5 KW night and day. To be heard before the Broadcast Division, date to be determined.

WIOD—WMBF—Isle of Dreams Broadcasting Corp., Miami, Fla.—C. P., already in hearing docket, amended to read: Change frequency from 1300 kc. to 970 kc.; increase power from 1 KW to 5 KW, unlimited time; and install new equipment. To be heard before the Broadcast Division, date to be determined.

### RENEWAL OF LICENSES

The following stations were granted renewal of licenses for the regular period:

KLPM, Minot, N. Dak.; KTRH, Houston, Tex.; KUOA, Fayetteville, Ark.; KWSC, Pullman, Wash.; WAVE, Louisville, Ky.; WCAM, Camden, N. J.; WCAP, Asbury Park, N. J.; WCOP, Boston; WDAY, Fargo, N. Dak.; WHN, New York City; WIBA, Madison, Wis.; WJAS, Pittsburgh, Pa.; WJDX, Jackson, Miss.; WNAD, Norman, Okla.; WNBX, Springfield, Vt.; WNEW, Newark, N. J.; WNOX, Knoxville, Tenn.

WFIL—WFIL Broadcasting Co., Philadelphia, Pa.—Granted renewal of license for the period ending September 1, 1936.

WFIL—WFIL Broadcasting Co., Philadelphia, Pa.—Same for auxiliary.

### ORAL ARGUMENTS GRANTED

NEW—Ex. Rep. No. 1-170: Ralph Perez Perry, Santurce, P. R.—Oral argument granted to be heard June 4, 1936.

NEW—Ex. Rep. No. 1-191: E. W. Atkinson, Watsonville, Calif.—Oral argument granted to be heard June 4, 1936.

KFJM—Ex. Rep. No. 1-199: University of North Dakota, Grand Forks, N. Dak.—Oral argument granted to be heard June 4, 1936.

### APPLICATIONS DENIED

NEW—Harry H. Culver, Beverly Hills, Calif.—Application for C. P., 710 kc., 500 watts, limited time, heretofore set for

hearing, was denied as in cases of default for failure to file an appearance and statement of facts in accordance with Rule 104.6 (e).

KFRO—Voice of Longview, Longview, Tex.—Denied special authority to operate from 6:30 to 10 p. m., CST, March 26, in order to broadcast 10th Anniversary of East Texas Chamber of Commerce.

### APPLICATIONS DISMISSED

The following applications, heretofore set for hearing, were dismissed at request of applicants:

NEW—Ruth W. Adcock and S. E. Adcock, d/b as General Broadcasters, Johnson City, Tenn.—Applied for C. P., 880 kc., 250 watts LS, daytime.

NEW—Ruth W. Adcock and S. E. Adcock, d/b as General Broadcasters, Rossville, Ga.—Applied for C. P., 1120 kc., 250 watts LS, daytime.

WROK—Rockford Broadcasters, Inc., Rockford, Ill.—Applied for authority to transfer control of corporation.

NEW—Herbert Hollister, Emporia, Kans.—Applied for C. P., 1500 kc., 100 watts night, 100 watts LS, unlimited time.

NEW—O. K. Broadcasting Co., Cleveland, Ohio.—Applied for C. P., 1500 kc., 100 watts night, 100 watts LS, unlimited time.

NEW—O. K. Broadcasting Co., Louisville, Ky.—Applied for C. P., 1200 kc., 100 watts night, 100 watts LS, unlimited time.

NEW—Herbert Hollister, Waterloo, Iowa.—Applied for C. P., 1420 kc., 100 watts night, 100 watts LS, unlimited time.

### MISCELLANEOUS

WLAK—Lake Region Broadcasting Co., Lakeland, Fla.—The Broadcast Division directed that C. P. for new station to operate on 1310 kc., 100 watts, unlimited time, be issued in conformity with its action of November 19, 1935, inasmuch as applicants have now complied with Rule 131.

W9XAL—The First National Television Corp., Kansas City, Mo.—Granted consent to voluntary assignment of license from The First National Television Corp., a Kansas corporation, to the First National Television, Inc., a Missouri corporation.

W1XEH—Travelers Broadcasting Service Corp., Avon, Conn.—Granted modification of C. P. of special experimental station to delete frequency 63000 kc. and substitute in lieu thereof the frequency 63500 kc., and to communicate as a broadcast station in the broadcast service on an experimental basis.

KFUO—Evangelical Synod of Missouri, St. Louis, Mo.—Granted motion for continuance of hearing on application for renewal of license set for April 7, 1936, because KSD has applied for its facilities.

Centennial Broadcasting Corp., Dallas, Tex.—Denied petition asking Commission to reconsider action of January 10, 1936, in denying application for new station to operate on 1200 kc., 100 watts, unlimited, and to grant the same.

Ogdensburg Pub. Co., Inc., Ogdensburg, N. Y.—Granted petition to intervene at hearing of application of Ogdensburg Advance Co., Inc., for authority to maintain a studio in Ogdensburg for the production of programs to be transmitted by land wire to the N. Y. Tel. Co. and of the Bell Tel. Co. of Canada to station CFLC at Preston, Ontario.

Bell Broadcasting Co., Temple, Tex.—Granted petition to intervene at hearing of application of Eugene DeBogory for new station at Temple, Tex., which has been designated for hearing on May 5, 1936.

WJBW—Charles C. Carlson, New Orleans, La.—Granted regular renewal of license.

KTFI—Radio Broadcasting Corp., Twin Falls, Idaho.—Granted continuance of hearing on application for extension of special experimental authorization until decision has been rendered on application to change frequency from 1240 kc. to 630 kc.

WNBX—WNBX Broadcasting Corp., Springfield, Vt.—Granted special temporary authority to operate with 1 KW until sunset at Dayton, Ohio, 500 watts night, pending approval of design and erection of directional antenna.

WREC—WREC, Inc., Memphis, Tenn.—Accepted answer to exceptions of WCAO to Examiner's Report No. 1-187, and granted request for oral argument.

WHIO—Miami Valley Broadcasting Corp., Dayton, Ohio.—Reconsidered and granted application to increase daytime power from 1 to 5 KW.

## ACTION ON EXAMINER'S REPORT

NEW—Ex. Rep. No. 1-188: North Side Broadcasting Corp., New Albany, Ind.—Granted C. P. for new broadcast station to operate on **1370 kc.**, 250 watts, day, subject to Rule 131; site to be determined subject to Commission's approval. Order effective May 12, 1936. Examiner R. H. Hyde sustained. (Action taken March 10, 1936.)

## APPLICATIONS RECEIVED

### First Zone

WHDH—Matheson Radio Co., Inc., Boston, Mass.—License to **830** cover construction permit (B1-P-933) to make changes in equipment.

WHDH—Matheson Radio Co., Inc., Boston, Mass.—Authority to **830** determine operating power by direct measurement of antenna power.

NEW—George F. Bissell, Pittsfield, Mass.—Construction permit **1200** for a new station to be operated on **1200 kc.**, 100 watts, daytime.

WHBI—May Radio Broadcast Corp., Newark, N. J.—Modification **1250** of license to use auxiliary transmitter as a main transmitter.

NEW—WDRC, Inc., Hartford, Conn.—Construction permit for a new general experimental station to be operated on **31600, 35600, 38600, 41000, 86000-400000, 401000 kc.**, 50 watts, A1, A2, A3 and special emission.

NEW—Juan Piza, Portable.—Construction permit for a new broadcast pickup station to be operated on **1622, 2060, 2150, 2790 kc.**, 50 watts, A3 emission.

NEW—WODAAM Corp., Mobile—in airplane.—Construction permit for a new broadcast pickup (T) station to be operated on **1622, 2060, 2150, 2790 kc.**, A3 and special emission,  $7\frac{1}{2}$  watts.

### Second Zone

WEST—Associated Broadcasters, Inc., Easton, Pa.—License to **1200** cover construction permit B2-P-472 as modified to move station from Lancaster, Pa., to Easton, Pa., and antenna changes.

WJBK—James F. Hopkins, Inc., Detroit, Mich.—Modification of **1500** construction permit (B2-P-637) for changes in equipment, move of transmitter, and installation of directional antenna, requesting extension of commencement date from 9-30-35 to date of approval and completion date from 3-30-36 to 9-30-36.

NEW—Old Dominion Broadcasting Co., Washington, D. C.—Construction permit for a new general experimental station to be operated on **31600, 35600, 38600, 41000, 86000-400000, 401000 kc.** and above, 100 watts, A3 and special emission.

### Third Zone

KTSA—Southwest Broadcasting Co., San Antonio, Tex.—Voluntary assignment of license from Southwest Broadcasting Co. to KTSA Broadcasting Co.

WSIX—Jack M. Draughon and Louis R. Draughon, d/b as 638 **1210** Tire & Vulcanizing Co., Springfield, Tenn.—Modification of construction permit (B3-P-227) for approval of transmitter site at northeast corner Boscobel and 3rd St., Nashville, and extend commencement date two days after grant and completion date 100 days thereafter, and approval of antenna.

WFBC—Greenville News-Piedmont Co., Greenville, S. C.—Authority to determine operating power by direct measurement of antenna.

NEW—H. A. Hamilton, Asheville, N. C.—Construction permit for **1370** a new station to be operated on **1370 kc.**, 100 watts, daytime. Amended re antenna.

KFJZ—Fort Worth Broadcasters, Inc., Fort Worth, Tex.—Construction permit to install new equipment and increase power from 100 watts to 100 watts, 250 watts day.

NEW—John S. Braun, Waco, Tex.—Construction permit for a new **1500** station to be operated on **1500 kc.**, 100 watts, daytime.

KGKB—East Texas Broadcasting Co., Tyler, Tex.—Construction **1500** permit to make changes in equipment and move transmitter from Tyler Commercial College, 115 South College Street, Tyler, Tex., to  $1\frac{1}{2}$  miles from Court House on North Dixie Highway, Tyler, Tex.

NEW—Dr. F. P. Cerniglia, Monroe, La.—Construction permit for **1500** a new station to be operated on **1500 kc.**, 100 watts, unlimited time.

KNOW—KUT Broadcasting Co., Austin, Tex.—Authority to transfer control of corporation from Southwest Broadcasting Co. to Hearst Radio, Inc., 10,000 shares of common stock.

W5XAU—WKY Radiophone Co., Oklahoma City, Okla.—License to cover new general experimental station.

### Fourth Zone

WMT—Iowa Broadcasting Co., Des Moines, Iowa.—Construction **600** permit to make equipment changes and increase power from 1 KW night,  $2\frac{1}{2}$  KW day, to 1 KW night, 5 KW day (consideration under Rule 6(g)).

WDZ—WDZ Broadcasting Co., Tuscola, Ill.—License to cover **1070** construction permit (B4-P-8) as modified for change in frequency, equipment, and move of transmitter.

WSBC—WSBC, Inc., Chicago, Ill.—Construction permit to make **1210** changes in antenna and move transmitter from Hotel Crillon, 1258 S. Michigan Avenue, Chicago, Ill., to West Town Office Bldg., 2400 Madison Street, Chicago, Ill.

WTAQ—WHBY, Inc., Green Bay, Wis.—License to cover construction permit (B4-P-369) as modified to install new equipment, move transmitter and studio, and change hours of operation.

KWKC—Charlotte Duncan, Administratrix, Lester E. Cox and **1370** Thomas L. Evans, Kansas City, Mo.—Construction permit to install new equipment; move studio from Werby Bldg., 39th and Main St., Kansas City, Mo., to Commerce Bldg., northwest corner 10th and Walnut, Kansas City, Mo.; and transmitter from 3912 Main Street, Kansas City, Mo., to Commerce Bldg., northwest corner 10th and Walnut Streets, Kansas City, Mo.

KWKC—Wilson Duncan, tr. as Wilson Duncan Broadcasting Co., **1370** Kansas City, Mo.—Voluntary assignment of license from Wilson Duncan, tr. as Wilson Duncan Broadcasting Co., to Tom Cleveland. Amended: Assign to Lester E. Cox and Thomas L. Evans instead of Tom Cleveland.

NEW—The Voice of St. Louis, Inc., St. Louis, Mo.—Construction permit for a new general experimental station to be operated on **31600, 35600, 38600, 41000, 86000-400000, 401000 kc.** and above, 100 watts, A3 and special emission.

### Fifth Zone

KGO—National Broadcasting Co., Inc., San Francisco, Calif.—**790** Construction permit to install new equipment, increase power from  $7\frac{1}{2}$  KW to 50 KW, and move transmitter from 5555 East Fourteenth Street, Oakland, Calif., to near Belmont, Calif.

NEW—The Tribune, Great Falls, Mont.—Construction permit to **950** erect a new broadcast station at Great Falls, Mont., to be operated on **550 kc.**, 1 KW night, 5 KW day, unlimited time (facilities KFYZ). Amended to change frequency to **950 kc.**

NEW—Golden Empire Broadcasting Co., Marysville, Calif.—Construction permit for a new station to be operated on **1140 kc.**, 250 watts, daytime.

NEW—James H. Hardy and L. D. Marr, copartners, Pasadena, **1160** Calif.—Construction permit for a new station to be operated on **1160 kc.**, 250 watts, daytime.

NEW—E. N. and S. W. Warner, d/b as Warner Bros., Oakland, Calif.—Construction permit for a new general experimental station to be operated on **31600, 35600, 38600, 41000 kc.**, 200 watts, A3 emission.



# The National Association of Broadcasters

NATIONAL PRESS BUILDING \* \* \* \* \* WASHINGTON, D. C.  
 JAMES W. BALDWIN, Managing Director

## NAB REPORTS

Vol. 4 - - No. 15  
 MARCH 26, 1936

Copyright, 1936. The National Association of Broadcasters

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### WARNER BROS. MUSIC

The managing director this week addressed to those stations licensed to use Warner Brothers music, a memorandum which reads as follows:

"This is in reference to the expiration on March 31st of the Music Publishers Holding Corporation licenses.

"As reported in NAB REPORTS dated March 19th an Advisory Committee selected by me met with Mr. Herman Starr during the week ended March 14th and I was to resume where they left off.

"I visited with Mr. Starr this week. His position concerning per-piece remains unchanged from that expressed to the Advisory Committee namely; that so long as the broadcasters continue to pay for music on the basis of a flat fee such as is done with the ASCAP he cannot find a formula which will insure to him the minimum amount of money which he considers he is entitled to receive for the use of MPHC music. In further explanation of his position he says that the broadcasting industry has not cooperated with him, that generally the industry has endeavored to avoid using his music and that, therefore, he cannot expect any better cooperation should he adopt a per-piece plan.

"A number of other reasons were assigned by Mr. Starr including the claim that when the broadcasters signed new five-year blanket contracts with ASCAP on January 15th the problem of working out a per-piece plan for his music was made extremely difficult.

"He advised me that the best he can do under all existing circumstances is to offer an extension of present licensing agreements with these exceptions:

1. He will use as a base the local or retail rate where such a rate exists.

2. He will require reports covering only Warner Brothers music.

3. He will change the favored nation clause so as to allow the MPHC sufficient latitude to avoid inequalities.

4. He will incorporate in the new agreement a provision which will permit cancellation in the event a per-piece plan can be found which is acceptable to 75 per cent of the copyright agencies and broadcasters.

5. He will offer the agreement for a period of five years.

"It is plain that a situation exists which must be evaluated by each broadcaster in the light of his own requirement."

### COPYRIGHT HEARING DATES

Following an executive meeting of the House Committee on Patents on Monday it was announced that copyright bill hearings will be continued until April 15. Hearings are being held this week when the authors and dramatists are being given a chance to present their side of the case. In the future each week, until the hearings are concluded, the committee will sit on Tuesday, Wednesdays, Thursdays and Fridays.

### NEW JERSEY STATION DENIAL RECOMMENDED

Alfred C. Matthews, applied to the Federal Communications Commission for a construction permit for the erection of a new broadcasting station at Cape May, N. J., to use 1420 kilocycles, 100 watts power and specified hours of operation.

Examiner John P. Bramhall in Report No. I-211 recommends that the application be denied. The Examiner found that the applicant is not financially qualified to operate the proposed station and that the area proposed to be served is now receiving ample radio service "and in addition to this, it is believed that the revenue of a station in Cape May would be insufficient to adequately sustain a station."

### FCC CHANGES PROCEDURE ON VIOLATION NOTICES

The Federal Communications Commission has issued the following statement in which it calls the attention of all licensees to the change of procedure in replying to notices of violation:

Rule 105.23 of the Practice and Procedure of the Federal Communications Commission, which supersedes Rule 24 of the Rules and Regulations of the Federal Radio Commission, requires the licensee of a station to forward within three days after receipt of a notice of violation, a reply to the Commission at Washington, D. C., with a copy to the office originating the complaint when that office is other than the Commission at Washington. This procedure will afford the inspector citing the station for violation an opportunity to review the licensee's reply and present to the Commission for consideration, along with the reply, any facts and observations which are pertinent to the proper handling of the case.

### PRINCESS PAT SEEKS FREE TIME

The letter sent out last week (16th) by Princess Pat, Ltd., seeking to halt certain independent stations on a "you-furnish-the-time we furnish the program basis" will meet with the contempt which it justly deserves. With a sticker attached to the letter advertising an NBC program on Monday night at 9:30 P. M., EST, and commenting on this weekly program on the Blue Network, C. J. Klowden says: These dramas have been reproduced electrically and will be available to a limited number of independent stations who are looking for a real human interest program for their local audiences. Members owning and operating independent stations will not overlook this opportunity of inquiring of Mr. Klowden whether the National Broadcasting Company furnishes time in return for the talent on the Princess Pat programs, and informing him that the independent stations also have a valuable listening audience and produce excellent results for advertisers at minimum costs.

### POWER INCREASES RECOMMENDED FOR DAYTIME

Broadcasting stations WFBR, Baltimore, Md., WOOD and WASH, Grand Rapids, Mich., all operating on a frequency of 1270 kilocycles and all now assigned 500 watts applied to the Federal Communications Commission to increase their power to 1,000 watts.

Examiner Melvin H. Dalberg in Report No. I-209 recommends that this increase be granted as to daytime operation but that it be denied as to nighttime. The Examiner found that in these cases the extra daytime power would not cause any interference with existing facilities but nighttime power increase would cause interference.

## SECURITIES ACT REGISTRATIONS

The following companies have filed registration statements with the Securities and Exchange Commission under the Securities Act:

- F. L. Jacobs Company, Detroit, Mich. (2-1959, Form A-2).  
Davidson Biscuit Company, Mt. Vernon, Ill. (2-1961, Form A-2).  
Canadian Capital Corp., Ltd., Montreal, Canada (2-1962, Form A-1).  
Gotham Silk Hosiery Company, New York City (2-1964, Form A-2).  
Keystone Custodian Funds, Inc., Philadelphia, Pa. (2-1967, Form C-1).  
Administrative Corporation, Jersey City, N. J. (2-1968, Form C-1).  
American Business Shares, Inc., Jersey City, N. J. (2-1969, Form A-1).  
Zem Zem Corporation, New York City (2-1970, Form A-1).  
Peter Fox Brewing Company, Chicago, Ill. (2-1971, Form A-1).  
Blue Lake Gold Mines, Inc., Buffalo, N. Y. (2-1972, Form A-1).  
R. G. Letourneau, Inc., Stockton, Cal. (2-1973, Form A-2).  
Edwin Carew Productions, Inc., Los Angeles, Cal. (2-1974, Form A-1).  
Knudsen Creamery Co. of California, Los Angeles, Cal. (2-1975, Form A-1).  
Rogue River Company, Klamath Falls, Ore. (2-1977, Form E-1).  
Melville Shoe Corporation, New York City (2-1978, Form A-2).  
Frederick Stearns & Co., Detroit, Mich. (2-1979, Form A-2).  
Marlowe Products, Inc., Clifton, N. J. (2-1980, Form A-1).  
United Telephone Protective Committee, Omaha, Nebr. (2-1981, Form D-1).  
S. S. Stafford, Inc., New York City (2-1982, Form E-1).  
S. S. Stafford, Inc., New York City (2-1983, Form D-1).  
McKale's Inc., Seattle, Wash. (2-1984, Form A-2).  
Southwest Investment Co., Inc., Shreveport, La. (2-1985, Form A-1).  
Standard Utilities, Inc., Jersey City, N. J. (2-1986, Form A-1).

## RECOMMENDS DENIAL FOR INCREASED POWER

Broadcasting Station KVI, Tacoma, Wash., applied to the Federal Communications Commission to increase its daytime power from 1,000 to 5,000 watts. The station operates unlimited time on 570 kilocycles.

Examiner Ralph L. Walker in Report No. I-210 recommends that the application be denied. It is pointed out by the Examiner that "the state of Washington is now assigned approximately 13 per cent more than its equitable share of broadcast facilities for daytime operation. The granting of the present application would result in increasing this over quota condition."

## ADDITIONAL WARNERS BROTHER SUITS

Official announcement has been made by Warner Brothers that they have begun additional suits based on alleged infringement of song copyrights owned by them, as follows:

It is alleged that Victor Herbert's "Gypsy Love Song" was infringed by Dempsey's restaurant on March 6th between the hours of 7:30 and 7:40 p. m. Damages of \$250 and an accounting of the profits are demanded for that infringement. M. Whitmark & Sons are the copyright owners.

The Libertino establishment is alleged to have infringed "Mother Machree" on March 6th between 12:45 and 1:30 a. m., and "When Irish Eyes Are Smiling" on March 7th between 12:45 and 1:30 a. m. Both of those songs are also copyrights held by Whitmarks. Five hundred dollars and a profit accounting are demanded.

Harms, Inc., alleges that the Greenwich Village, Inc., night club, infringed on three of its copyrights in the thirty-five minutes between 2:05 and 2:40 a. m. the morning of March 7th. The three tunes were "The Blue Room," "Night and Day" and "Anything Goes." Damages of \$750 and an accounting of the profits are demanded.

Other suits include the following:

Remick Music Corp. vs. Radio Broadcasting Corporation of Idaho, operating station KTFI in Twin Falls, on the song "The Little Old Church in the Valley." \$250.00 damages are demanded.

Harms, Inc. vs. WDSU, Inc., operating station WDSU, New Orleans, on the songs "Where Am I," "Let's Swing It" and "I'm Just an Ordinary Human." \$1500.00 damages are demanded.

T. B. Harms Co. vs. Main Auto Supply Co., operating station WOWO, Fort Wayne, on the song "Two Hearts Carved On A Lonesome Pine." \$5,000.00 damages are demanded.

Remick Music Corp. vs. Savannah Broadcasting Co., Inc., operating station WTOG, Savannah, on the song "Quicker Than You Can Say Jack Robinson." \$500.00 damages are demanded.

M. Witmark & Sons vs. Savannah Broadcasting Co. on the song "When A Great Love Comes Along." \$500.00 damages are demanded.

T. B. Harms Co. vs. Savannah Broadcasting Co. on "Little Man, You've Had A Busy Day." \$250.00 damages are demanded.

M. Whitmark & Sons vs. Florida Capitol Broadcasters, Inc., operating station WTAL, Tallahassee, on the song "You're the Flower of My Heart, Sweet Adeline." \$250.00 damages are demanded.

Harms, Inc. vs. Toledo Broadcasting Co. operating Station WSPD, Toledo, on the song "Flowers for Madame." \$5,000.00 damages are demanded.

M. Whitmark & Sons vs. Miami Valley Broadcasting Co., operating station WHIO, Dayton, Ohio, on the song "Why Can't This Night Go On Forever." \$5,000.00 damages are demanded.

## FEDERAL TRADE COMMISSION ACTION COMPLAINTS

The Federal Trade Commission has alleged unfair competition in complaints issued against the following companies. The respondents will be given an opportunity for hearing to show cause why cease and desist orders should not be issued against them.

**No. 2744.** Charging unfair competition in the sale of "Nu-Nail," a widely advertised toilet preparation, a complaint has been issued against **Berenice Cohn**, of 270 South Windsor Boulevard, **Los Angeles**, trading as **Bergo Laboratories**.

The respondent is alleged to have advertised in newspapers, magazines, circulars, counter displays and other media, that "Nu-Nail" is a nail food, effective conditioner and rejuvenator, and that it eliminates brittleness, breaking of the nails, splitting, peeling, and ingrown toe nails. These assertions are untrue, according to the complaint.

**No. 2745.** Complaint has been issued against **Kalo Inoculant Co.**, of **Quincy, Ill.**, charging unfair competition in the sale of nitrogen-fixing bacteria with a humus base used to extract and transfer nitrogen from the air to leguminous plants.

Purchasing the humus containing the bacteria in bulk from a New Jersey corporation, the respondent, according to the complaint, sells its product in tin cans under the name "Humogerm," to wholesalers, retailers and jobbers of seed.

The unfair competition is alleged to consist of representations in farm magazines and other advertising media to the effect that the containers are packed with a definite, ascertainable, minimum number of nitrogen-fixing bacteria, and that each can of the product contains a specified definite minimum number of living legume bacteria throughout the entire course of the distribution period, when, according to the complaint, these are not the facts, and such data cannot be accurately ascertained.

**No. 2746.** Unfair competition in connection with the sale of silver-plated hollow ware is alleged in a complaint issued against **Friedman Silver Co. Inc.**, 1226 Flushing Ave., **Brooklyn, N. Y.**

For many years, according to the complaint, certain letters stamped upon hollow ware products have signified to the purchasing public and to the trade that such products are electroplated nickel silver, and that the embossed decorations thereon consist of white metal.

The complaint charges the respondent company stamps certain of its hollow ware products with the same letters, but that such products do not have the qualities and do not contain the materials which the purchasing public and the trade have come to expect in products so stamped.

**No. 2747.** **York Caramel Co.**, College Ave. and Oak Lane, **York, Pa.**, engaged in the manufacture and sale of candy, is charged in a complaint with unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act.

The complaint alleges that the respondent packs its candy in assortments so as to involve the use of a lottery scheme, whereby ultimate purchasers of a small piece of such candy may win, without additional cost, a larger piece.

**No. 2748.** False representations concerning "Ortosan," a facial treatment, are alleged in a complaint against **Arpaul Co. Inc.**, 333 West 52nd St., **New York City**, charging violation of Section 5 of the Federal Trade Commission Act.

The complaint alleges that the respondent, in connection with the sale of "Ortosan," represents by radio broadcasts and in advertising matter that the preparation is five creams in one, perfected during a period of twenty-five years and endorsed by leading medical authorities and beauty specialists; that it restores



contours of the face, chin and neck, and eliminates sagging lines, wrinkles and skin blemishes; that it combines in one cream everything that is needed to give a woman a beautiful skin, and that it is different from any facial cream on the market.

**No. 2749.** Complaint has been issued against **Eugene D. Petry**, doing business as **Warner Studios**, 1317 F St., **Washington, D. C.**, alleging unfair methods of competition in offering for sale and in the sale of photographs and portraits. The respondent, who also has studios in other cities, is charged with violation of Section 5 of the Federal Trade Commission Act.

Salesmen employed by Petry, the complaint alleges, contact prospective purchasers, and, to induce them to visit the respondent's studio to have photographs made, offer and sell coupons at purported "special prices" ranging from 50 cents to \$1.50, which coupons are represented as having a "regular value" of from \$3.50 to \$7.50 when used at the respondent's studio.

It is charged the respondent represents that the "regular value" of his photographs is far in excess of the prices at which such photographs ordinarily sell in Washington, when, according to the complaint, such photographs are actually of the same type and quality ordinarily selling for from \$1 to \$2.

**No. 2750.** **The L. D. Caulk Co., Milford, Del.**, is named respondent in a complaint alleging false representations in connection with the sale of a dental amalgam alloy, used as a dental filling and sold under the trade name "The Twentieth Century Alloy Improved (Caulk)."

The complaint charges that the respondent solicits the business of dentists and dental supply houses by advertising in trade papers and magazines and in circulars that its product has a certain crushing strength average which is higher than that found in dental amalgam alloys sold by competitors; and that its "Twentieth Century Alloy" assures greater durability and has other qualities not found in the products of competitors.

### Stipulations

The Commission has issued the following cease and desist orders:

**No. 01344.** **M. J. Breitenbach Co., New York City**, distributor of Gude's Pepto-Mangan, agrees to cease representing that this product restores health by enriching the blood, revives weakened blood cells, or creates new energy, and that the product has any healing value beyond that of a simple tonic, in the treatment of anemic, run down, or overworked persons, or of invalids, convalescents and the aged. Other similar representations also will be discontinued.

**No. 01192.** **Nova Sal Laboratories, Inc., Brooklyn**, will discontinue representing that its product is a prescription used by thousands of doctors; that it tends to reduce fever, or is less depressant than most other compounds, and other assertions of like import.

**No. 01343.** **Vita Ray Corporation, Lowell, Mass.**, engaged in selling facial creams and lotions, agrees to cease and desist from representing that any of its products correct "goose flesh," make the skin grow young, and "revitalize" withering cells; that Vita-Ray Cream "restores" youth to the complexion, and is the only cream containing vitamin D, and the only cream capable of penetrating the skin.

**No. 01173.** **Siroil Laboratories, Inc., Detroit**, agrees to ban the representation that Siroil is a competent treatment or effective remedy for psoriasis or dandruff, that any definite proportion of cases treated with the preparation have been relieved, unless this assertion is supported by reliable medical evidence; that the preparation represents a tremendous advance over any other treatment for psoriasis, and that complete elimination of either psoriasis or dandruff has been effected in hundreds of cases through use of only one bottle of this substance, and other similar representations.

**No. 2588.** **R. H. Sharot**, trading as **Modex Mills Co.**, 15 Moore St., **New York City**, a jobber in the export business, has been ordered to stop advertising that he is a manufacturer, mill operator, or owner. Sharot sells hosiery, underwear, raincoats and other articles of apparel.

Findings are that the respondent's representations on letterheads and in advertising matter that he is a manufacturer or mill operator, tend to deceive buyers into believing that they are dealing with a manufacturer of established business standing, and thereby gaining an advantage by saving a middleman's profit, when this is not a fact.

**No. 2599.** Under an order the **Diamond Match Co.**, 30 Church St., **New York City**, is directed to discontinue use of the word "Safety" in the brand name of certain matches it manufactures and sells in interstate commerce.

The company is ordered to cease the use of the word "Safety" as part of any brand name it uses in labeling matches which are the type commonly known as "strike-anywhere" matches.

**No. 2617.** **T. O. Loveland and J. L. Records**, of **Iowa City, Iowa**, trading as **Commercial Manufacturing Co.** and **Brenard Manufacturing Co.**, have been ordered to discontinue certain unfair trade practices in the sale and distribution of radios.

Use of the word "Manufacturing" as a part of the respondents' trade name, or in advertising literature, as descriptive of their business, is prohibited in the order unless and until the respondents own and control a complete factory in which they manufacture the radios so represented.

The order directs the respondents to cease and desist representing through advertising literature, distributors' agency agreements, or through representations by traveling salesmen, that retail dealers, upon execution of agency agreements to sell the respondents' radios, will obtain certain advantages such as an exclusive franchise for a particular territory, and a guarantee by the respondent of a certain number of sales at a specified profit.

**No. 2680.** **Consolidated Trading Corporation**, 15 Moore St., **New York City**, trading as **Modex Mills**, has been ordered to cease and desist from representing through its trade name, or in any other manner, that it is a manufacturer or the owner or operator of a mill at which are manufactured the commodities which it sells.

In the complaint against this respondent, it was set out that the respondent is engaged in selling hosiery, underwear, raincoats, dresses, and general wearing apparel, and cosmetics to purchasers in foreign countries, but that is not a manufacturer or a mill operator.

**No. 2700.** **Julius Abrahams**, 942 Market St., **Philadelphia**, trading as **Philadelphia Badge Co.**, has been ordered to cease representing that the stamp photos he manufactures and sells are purchased, used or endorsed by the United States Government or any of its agencies.

The respondent is directed to discontinue making such representation regarding his product through newspaper and magazine advertisements, by radio broadcasting, or in any other manner.

The Commission found that the respondent's assertion that the Government is among the nationally known users of his photo stamps causes the purchasing public to buy such products in the erroneous belief that they are purchased in large quantities by the Government, and, by inference, that they are endorsed by the Government.

**No. 2713.** **Roma Wine Co., Inc.**, 405 Montgomery St., **San Francisco**, has been ordered to discontinue representing that any wine it sells is genuine "Chateau Yquem," unless the wine it so designates is produced from grapes grown upon the estate of the Marquis de Lur-Saluze, located in the Province of Bordeaux, France, and manufactured, aged, processed and bottled at the Chateau Yquem situated upon that estate.

Under the order, the respondent is prohibited from using the name "Chateau Yquem" on stationery, labels, invoices, in advertising matter, or in any other manner.

The Commission found that the respondent company sells wine it manufactures from California-grown grapes and, in representing it as "Chateau Yquem," misleads and deceives the purchasing public.

### Complaints Dismissed

The Commission has dismissed the following complaints:

**No. 2279.** A complaint charging **Mead Johnson & Co., Inc.**, of **Evansville, Ind.**, with unfair competition in maintenance of a resale price policy for infant diet and nutrition products, has been dismissed.

Dismissal was ordered on the ground that use of the methods and practices charged in the complaint was employed for only a brief period and to a limited extent and without the knowledge and consent of the responsible officials of the respondent company; that as soon as such officials learned of their use they were discontinued, such discontinuance being prior to complaint, and upon the assurance of the attorney for the respondent in open hearing before the Commission that such methods and practices would not be resumed.

**No. 2689.** The Commission has also entered an order closing its case against **Jung & Schade Laboratories**, 1418 Somer St., **Milwaukee, Wis.**, because the respondent corporation is no longer in business. The case was closed without prejudice to the right of the Commission to reopen it should the facts warrant such action.

The complaint in this case alleged that the respondent, in advertising matter, made false representations concerning "Vi-Vo," which had been offered for sale as an effective treatment for alcoholic excesses.

## FEDERAL COMMUNICATIONS COMMISSION ACTION

The usual Tuesday meeting of the Broadcast Division of the Commission was not held because members of the Division are sitting in on the hearings in connection with the telephone investigation. It is expected that the Broadcast Division will meet later this week.

### HEARING CALENDAR

Thursday, April 2

#### ORAL ARGUMENT BEFORE THE BROADCAST DIVISION

##### Examiner's Report No. I-167

KMED—Mrs. W. J. Virgin, Medford, Oregon—Modification of license; 1410 kc., 250 watts, specified hours (6 a. m. to 9 p. m.)

Friday, April 3

#### HEARING BEFORE THE TELEPHONE DIVISION

WCOA—The Pensacola Broadcasting Co., Complainant v. American Telephone and Telegraph Company, Defendant—*Complaint*: with reference to rates over circuits from Mobile via Flomaton to Pensacola.

#### APPLICATIONS RECEIVED

##### First Zone

WFAB—Fifth Avenue Broadcasting Corp., New York, N. Y.—1300 Modification of license to change hours of operation from shares: WHAZ, WEVD, WBBR, to shares: WHAZ, WBBR (present hours, plus those now used by WEVD, contingent upon WEVD's change in frequency, 1-ML-B-1304).

NEW—Arthur E. Seagrave, Lewiston, Maine—Construction permit 1420 to erect a new broadcast station, to be operated on 1420 kc., 100 watts, 250 watts-day, time not given. Amended: to give time as unlimited.

W9XBS—National Broadcasting Co., Inc., Chicago, Ill.—Modification of license to operate transmitter by remote control from 222 North Bank Drive, Chicago.

##### Second Zone

WSAI—The Crosley Radio Corp., Cincinnati, Ohio—License to 1330 cover construction permit (B2-P-890) to make equipment changes and move transmitter.

##### Third Zone

WDBO—Orlando Broadcasting Company, Inc., Orlando, Fla.—580 Construction permit to make changes in antenna, move transmitter from Ft. Gatlin Hotel, 545 N. Orange Ave., Orlando, Fla., to Dubsdread Country Club Area near Orlando, Fla., and increase power from 250 watts to 1 KW.

NEW—Charles T. Copeland, Jr., & W. H. May, d/b as Broadcast 1210 Service Co., Troy, Ala.—Construction permit to erect a new broadcast station to be operated on 1210 kc., 100 watts power, daytime operation. Amended: for equipment changes, change name by adding d/b as Broadcast Service Co., and give transmitter site as 1½ miles S. Court Square on Troy-Elba Highway, Troy, Alabama.

NEW—Jack E. Brantley, Mrs.; Jack E. Brantley, & Jack E. 1310 Brantley, Jr., Savannah, Ga.—Construction permit for new broadcast station to be operated on 1310 kc., 100 watts, unlimited time. Amended: by adding names of Mrs. Jack E. Brantley, & Jack E. Brantley, Jr.

NEW—H. Wimpy, Albany, Ga.—Construction permit for a new 1420 broadcast station to be operated on 1420 kc., 100 watts, 250 watts-day, unlimited time. Requests facilities of WGPC.

WHBB—Dr. Wm. J. Reynolds, & Wm. J. Reynolds, Jr., Selma, 1500 Ala., voluntary assignment of license from Dr. Wm. J. Reynolds, & Wm. J. Reynolds, Jr., to W. J. Reynolds, Jr., J. C. Hughes, & J. S. Allen, d/b as Selma Broadcasting Co.

##### Fourth Zone

KFDM—Sabine Broadcasting Co., Inc., Beaumont, Texas—Con- 560 sent to transfer control of corporation from Mrs. Virginia B. Gilliam to J. M. Gilliam, 32½ shares common stock.

NEW—Harry J. Grant, Milwaukee, Wisc.—Construction permit 1010 for a new station to be operated on 1010 kc., 1 KW, unlimited time. Amended: To change type of equipment, change power from 1 KW to 250 watts, 500 watts-day and change directional antenna to vertical antenna.

NEW—KMJB Broadcasting Co., by Myron J. Bennett, Pres., 1300 Minot, N. D.—Construction permit for a new broadcast station to be operated on 1300 kc., 1 KW power, unlimited time, requesting facilities of KLPM.

WMBH—Joplin Broadcast Co., Joplin, Mo.—Consent to transfer 1420 of control of corporation from W. M. Robertson, and W. H. Spurgeon to Joplin Globe Publishing Co., 90 shares of common stock.

##### Fifth Zone

NEW—Ben S. McGlashan, San Diego, Calif.—Construction permit 550 for a new station to be operated on 1210 kc., 100 watts, daytime. Amended: To change frequency from 1210 kc. to 550 kc., and power from 100 watts to 250 watts.

KIRO—Queen City Broadcasting Co., Seattle, Wash—Authority 650 to install automatic frequency control.

KGHL—Northwestern Auto Supply Company, Inc., Billings, Mont. 780 —Extension of special experimental authorization to operate on 780 kc., for a period from 4-1-36 to 7-1-36.

NEW—The Tribune, Great Falls, Mont.—Construction permit for 950 a new broadcast station to be operated on 950 kc., 1 KW; 5 KW-day, unlimited time. Amended: To omit request for facilities of KFVR.

NEW—Ed Klies, Helena, Mont.—Construction permit to erect a 1210 new broadcast station to be operated on 1210 kc., 100 watts-250 watts day, unlimited time. Amended: Re; Equipment.

NEW—Albuquerque Publishing Co., Albuquerque, N. M.—Con- 1370 struction permit for a new station to be operated on 1370 kc., 100 watts, unlimited time.

NEW—D. Reginald Tibbetts, Berkeley, Calif.—Construction per- mit to change frequency from 3110 kc., to 31600, 35600, 38600, 41000 kc., using 200 watts.

Standard Radio Inc., Hollywood, Calif.—Authority to transmit programs (Electrical Transcription) to foreign countries. (CHWC, Regina Sask, Canada, and CFRB, Toronto, Ont., Canada).