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# HISTORY OF RADIO REGULATION

*With a Chronology of the Federal Radio Commission  
and the Federal Communications Commission*

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*(Editor's Note: Treatise which follows was all-inclusive of the subject of communications, wired and all phases of broadcast, and has been edited so that only developments pertaining directly to commercial broadcasting are presented.)*

## Preliminary Regulation

Marconi's practical experiments with "wireless" at the turn of the century invited a quick succession of radio development that made some orderly supervision of this new means of communication necessary. The need for a common distress call for ships was recognized at the preliminary International Radio Telegraph Conference held in Berlin in 1903. The 1906 International Radio Telegraph Conference in Berlin proposed adoption of "SOS" to supplant "CQD" as a marine distress signal. On January 23, 1909, "CQD" calls sent out by Jack Binns speeded rescue to the steamship "Florida" in collision off New York.

## Radio Act of 1910

On June 24, 1910, the United States enacted a law ordering wireless installation on passenger-carrying steamships. The Department of Commerce, on July 1, 1911, organized a Radio Division to enforce this 1910 requirement. The value of wireless was again demonstrated in the saving of more than 700 lives in the "Titanic" disaster on April 14, 1912, when Jack Phillips and Harold Bride were the heroes. Regulations to secure uniformity of practice in wireless communication were adopted by the International Radio Telegraph Conference at London in July, 1912.

## Radio Act of 1912

On August 13, 1912, the United States adopted the Radio Act of 1912 which placed licensing of wireless stations, wireless operators, and amateurs, in the hands of the then Secretary of Commerce and Labor. "Radio Communication Laws of the United States," issued August 15, 1919, classified early broadcasters as

"limited commercial stations" and "special amateur stations."

Station KDKA, first listed in the "Radio Service Bulletin" for November 1, 1920, was licensed as a commercial land station. Initial regulations governing operation of broadcasting stations as such appear in the "Radio Service Bulletin" of April 1, 1922. At that time the "wavelength" of 360 meters (approximately 830 kilocycles) was assigned for the transmission of "important news items, entertainment, lectures, sermons, and similar matter." Stations engaged in this service held limited commercial licenses and their operators were licensed by the Department of Commerce. Recommendations of the First National Radio Conference, held at Washington on February 27, 1922, were promulgated into regulations by the Secretary of Commerce. A new type of broadcast station came into being, with minimum power of 500 watts and maximum not to exceed 1000 watts, whose programs "must be carefully supervised and maintained to insure satisfactory service to the public." Mechanically operated musical instruments were to be used only in an emergency and during intermission periods in regular programs.

The Interdepartment Radio Advisory Committee was formed by the Secretary of Commerce at the suggestion of the First National Radio Conference. It met as a temporary body from March 8 to April 16, 1922, after which it organized on a permanent basis. The Second National Radio Conference, March 20, 1923, made certain recommendations which were embodied in supplemental Department of Commerce regulations. Under their provisions, broadcast of telegrams or letters was permitted so long as the signer was not addressed in person and the text was of general interest. Reallocation of wavelengths, on May 15, 1923, further established the "broadcasting

development class" of station. Power was not permitted to exceed 1000 watts without special authority from the Secretary of Commerce.

The Third National Radio Conference, October 6 to 10, 1924, deemed increased power desirable, so the Department of Commerce authorized up to 5000 watts for experimentation. The Radio Service Bulletin for January 2, 1925, showed but one station—KOA—operating with power of 1000 watts. The next month's listing revealed KGO and WEAJ operating with 2000 watts, and KFI, KYW, WBZ, WGY, WLW, WOC and WTAM with 1500 watts, and about a dozen stations using 1000 watts. Following the Fourth National Radio Conference, November 9 to 11, 1925, several stations began to use 5000 watts, and KDKA and WJZ were indicated as operating with "variable" power.

### Air Chaos of 1926

During the early part of 1926 the Zenith Radio Corporation was charged with operating its broadcast station "on a wavelength and at times which were not authorized." Resultant court opinion characterized provisions of the Radio Act of 1912 as "general, indefinite and ambiguous." The Attorney General was asked by the Secretary of Commerce for a ruling. According to the Circuit Court of Cooke County, Illinois, in the *Tribune Company versus Oak Leaves Broadcasting Station, Inc.*, case, Acting Attorney General Donovan, on July 8, 1926, rendered an opinion which, in effect, advised that "broadcasting stations coming within the prescribed band could not be regulated, except for the purpose of designating normal wavelengths. . . . and that the Act conferred no general authority to fix hours of operation or to limit power." Consequently, the list of broadcast stations published in the Radio Service Bulletin for January 31, 1927, carried this explanation: "The power and wavelengths given in this table were compiled from applications for licenses furnished the Department by owners of the stations. Since the Department does not make assignments in either respect, this list is not necessarily in conformity with wavelengths or power actually used." The listing showed KGA operating with 20 kilowatts, others employing 5 kilowatts, and still others using "variable" power. There was bedlam on the air. More than 200 radio stations sprang up within two months. Many broadcasters jumped their frequencies and increased their power and operating time at will.

On December 8, 1926, Congress legislated that broadcast license renewals should not be granted for more than 90

days, and those of other classes of stations not longer than two years.

### Federal Radio Commission

The Radio Act of 1927, approved February 23 of that year, created the Federal Radio Commission. For some time after its organization, the Federal Radio Commission was obliged to devote a major portion of its time to straightening out the tangle in the broadcast band that was precipitated in 1926. With only 90 channels available, it was impossible to care for the 732 broadcast stations as then operating. Promulgation of new rules and regulations caused about 150 of these broadcasters to surrender their licenses. Under the Radio Act of 1927 the Federal Radio Commission was to be the licensing authority for all radio services. At the end of that year the Federal Radio Commission was to become an appellate body to review decisions of the Radio Division of the Department of Commerce in making allocations. Its authority as a licensing body was extended annually by Congress until December 18, 1929, when an act was approved continuing its powers "until otherwise provided by law."

#### 1927

On April 5, the Commission established the broadcast band ranging from 550 to 1500 kilocycles. Six frequencies were cleared for Canadian use and provision made for sharing 11 channels with that country. The Radio Service Bulletin of April 30, showed several stations operating with power of 20 kilowatts or more, and authorization for station WGY to use 56 kilowatts.

On May 5 the Commission ordered announcement of broadcast call letters every 15 minutes. Action to prevent speculation transfer of control was initiated by the in radio stations in connection with Commission on May 13. Hearings on interference started June 7. Announcing of mechanical recordings was required by order of August 16. The International Radiotelegraph Conference, meeting at Washington October 5 to November 25, resulted in many technical adjustments, including allocation of the entire range of frequencies from 10 to 60,000 kilocycles, effective January 1, 1929. On November 14 the Commission moved to clear channels of heretodyning.

#### 1928

On March 28, the so-called "Davis Amendment" was adopted. It amended the Radio Act of 1927 to provide "a fair and equitable allocation of licenses, wave-

lengths, time for operation and station power" by states within the five zones established to bring about "equality of radio broadcasting service, both of transmission and reception." A Commission order of April 20 prohibited removal of studios outside borders of states in which they were then located. On May 11 the Commission called public attention to Section 18 of the Radio Act of 1927 with reference to use of broadcasting facilities by candidates for public office. A Commission order of August 30 set up 96 broadcast channels of which number 40 were designated as "clear channels," 34 as "regional channels" and 6 as local channels." An order of September 7 fixed the power of clear channel stations at 25 kilowatts but allowed 50 kilowatts operation on an experimental basis. Regulations to prevent program duplication at night were promulgated September 8. (Execution of this order was frequently postponed). Further requirement as to announcing mechanical reproductions was made October 26. Initial steps to provide for television were taken on October 31. On October 31 the Commission banned future use of transmitters employing damped wave emissions. Further reference to announcing mechanical reproductions was made November 26. Allocation of frequencies between 1500 and 6000 kilocycles was announced December 22.

### 1929

Additional provisions for television broadcast were made January 14. On March 4 the Radio Act of 1927 was amended in minor particulars. Time of operation with respect to local standard time, daylight saving time, etc., was defined March 23. Width of channels in the high frequency band were stipulated April 5. On June 10 priority was ordered for "SOS" calls. On June 10 the Commission authorized issuance of subpoenas for witnesses. Rules governing relay broadcasting were announced June 10. Restrictions on the use of damped waves by broadcasters was amended September 13. On September 18 the Commission extended to December 31 proposed restrictions on chain programs. Allocation of frequencies between 1500 and 6000 kilocycles to include geophysical service was announced October 11. An order of November 8 regulated the kind of apparatus to be used to reduce interference between stations. As of November 9, the following stations were operating with 50 kilowatts—KDKA, KFI, WBCN,

WEAF, WENR, WFAA, WGY, WLW, WTAM and WTIC. New requirements for announcing mechanical transcriptions were announced December 5. On December 18 the Radio Act of 1927 was amended in minor details. An order rescinding previous orders regarding duplication of chain programs, was adopted December 20.

### 1930

A further order on damped wave transmission was issued January 3.

*New York v. Federal Radio Commission*, March 12, 1930, (36 F (2nd) 115, cert. denied). The Court of Appeals of the District of Columbia affirmed an order of the Commission denying an existing station the right to operate full time and requiring it to share time with another station. The court held that a radio licensee has no property right in a license and that such a licensee, even if it be a city, is subject to Federal regulation under the interstate commerce clause and may be deprived of its license without compensation.

Broadcast allocation regulations were amended April 7. High frequency channel width regulations were announced April 14. An order of April 21 required applications for license renewals to be filed 30 days prior to their expiration.

*Federal Radio Commission v. General Electric Co.*, May 19, 1930, (281 U. S. 464). Writ of certiorari dismissed. The Supreme Court held that the Commission had no jurisdiction to review a decision of the Court of Appeals for the District of Columbia which reversed an order of the Radio Commission refusing an application to renew an existing license for full time operation of a broadcasting station. Its reasoning was that it could not review the proceeding in the lower court because it was not a case or controversy, but only an administrative proceeding in which the Court of Appeals acted as a "superior and revising agency." The jurisdiction of the Court of Appeals over Commission decisions was then defined by Section 16 of the Radio Act of 1927 which was subsequently amended. (See discussion of *Federal Radio Commission v. Nelson Bros. Bond & Mortgage Co.*, p. 9 infra).

Posting of licenses in transmitter locations was required under date of May 19. An order of May 23 established maximum rated carrier power for broadcast transmitters.

*Great Lakes Broadcasting Co. v. Federal Radio Commission*, and companion

cases, June 2, 1930, (37 F. (2nd) 993, cert. denied 281 U.S. 706). The Court of Appeals for the District of Columbia upheld a Commission decision denying the application of a part-time station to be given more operating time on another frequency. The Court held that the fact that one station had been using the channel for a long time gives it no preference since no station has any fixed right in a frequency as against the Federal regulatory power.

An order of June 17 provided a quota system to comply with the "Davis Amendment." Rules of practice and procedure were announced June 25. On September 29 the Commission repealed its order of May 13, 1927, intended to prevent speculation in broadcast stations in connection with transfer of control. Maximum rated power of transmitters was specified October 6. On October 15 and 16 the so-called "high power hearings" were held. An order of October 27 related to auxiliary studios and remote control apparatus.

### 1931

*White v. Johnson*, January 5, 1931, (282 U.S. 367), *American Bond & Mortgage Co. v. United States*, January 5, 1931 (282 U.S.374). The Court refused to entertain certificates of questions certified by Circuit Court of Appeals as to whether a person continuously broadcasting and having a going business acquired a property right holding that the questions were too general.

Plan of equalization of quota service under zones was announced January 8. An order of February 12 defined the broadcast day, experimental period, unlimited time stations, etc. Instructions for keeping logs were announced February 16. On March 24 amendments of April 7, 1930, to allocation set-up were repealed. Transmitter power rating requirements were amended March 26. (Same were repealed April 20). Requirements for broadcast station licensed persons were announced May 11. An order of May 15 required broadcast applications to be filed 60 days prior to expiration of license. An order of May 25 established tube rating and specified transmitter power, etc.

*Duncan v. United States*, June 1, 1931, (48 F. (2nd) 128, cert. denied, 283 U.S. 863). The Court of Appeals, Ninth Circuit, affirmed the conviction of Duncan who had been convicted of violating Section 29 of the Radio Act of 1927, prohibiting the broadcast of obscene, indecent, and profane language. The Court held that the enactment of such a provision was within the power of Congress under the interstate commerce clause.

On June 22 the frequency tolerance in the broadcast band was changed to 50 cycles, effective a year from date. Certain provisions re channel width were amended June 24. Band width and type of emission were designated September 3. "Rules and Regulations of the Federal Radio Commission" were adopted November 7. They embodied principles established by previous orders with slight modifications. On November 17 construction permits were granted WHAM, WBZ, WHAS, WAPI, KVOO, KFAB, WOR, WCAU, WSM, WSB, WHO - WOC, WCCO, KOA, KPO and KSL. The Commission's annual report for the fiscal year 1931 published extensive "Empirical Standards used as Basis for Engineering Testimony in Hearings Concerning Broadcast Stations."

### 1932

*American Bond & Mortgage Co. v. United States*, February 23, 1932, (52 F. (2nd) 318, cert. denied, 285 U.S. 538). The Court of Appeals, Seventh Circuit, affirmed a decree of a district court which enjoined the operation of a station which was being operated after the Commission had refused an application to renew its license. The Court held the Federal Radio Act of 1927 to be constitutional under the Commerce clause and that the order denying renewal was not contrary to law. It held that licensees had no property interests in their licenses, despite expenditures made on the faith thereof.

The International Radio Conference at Madrid, Spain, September 3 to December 10, 1932, completely revised the agreement signed at Washington in 1927, and culminated in the International Telecommunications Convention, ratified by the United States. The Federal Radio Commission's annual report for the fiscal year 1932 set forth certain developments in Empirical Standards of Allocation of Frequencies, dealing largely with "Transmitter Locations."

### 1933

*Trinity Methodist Church South v. Federal Radio Commission*, January 16, 1933, (62 F. (2d) 850, cert. denied, 288 U.S. 599). The Court of Appeals of the District of Columbia held that Congress had the power to regulate radio broadcasting under the interstate commerce clause, that an existing licensee had no property interest in the license, that the Commission may deny his application for renewal of a license without violating the Constitutional guarantees against the taking of property without due process, and that the Commission had not erred in concluding that certain objectionable

programs broadcast by the licensee were contrary to the public interest. The Commission's order was affirmed.

*Radio Investment Co. v. Federal Radio Commission*, March 4, 1933 (62 F. (2d) 381, cert. denied, 288 U.S. 612). The Court of Appeals of the District of Columbia held that the Commission had not erred in granting the application of one of two existing time-sharing stations and terminating the other's temporary license. Both stations had asked for modification of their licenses and for unlimited hours of operation. The station which had been deleted had been found by the Commission to have violated its license and the Commission's regulations and to have rendered a program service inferior to that of the other station.

*Federal Radio Commission v. Nelson Bros. Bond & Mortgage Co.*, and related cases, May 8, 1933 (289 U.S. 266). Judgment of Court of Appeals reversed, and cause remanded, with directions to affirm the decision of the Commission. The Supreme Court held that the standard of public interest, convenience or necessity was not so vague as to render the Radio Act of 1927 unconstitutional. It held that the Commission had not acted arbitrarily in deleting a station in an over-quota state and assigning the frequency vacated to a station in an under-quota state.

*Boston Broadcasting Co. v. Federal Radio Commission*, October 23, 1933 (67 F. (2d) 505, cert. denied, 290 U.S. 679). The Court of Appeals of the District of Columbia, held that the Commission's decision in denying an application for renewal of a station license was not contrary to law and that the findings of the Commission were supported by substantial evidence and were not arbitrary or capricious. It appeared that the licensee was insolvent, that it had made certain misstatements as to ownership in the application and that the station had not operated in the past within the terms of its license.

*Pote v. Federal Radio Commission*, October 23, 1933. The Court of Appeals of the District of Columbia held (67 F. (2d) 509 cert. denied 290 U.S. 680), that it was without jurisdiction over an appeal by a proposed transferee to whom the Commission had denied consent to a transfer of a license.

### Federal Communications Commission

At the request of President Roosevelt, Secretary of Commerce Daniel C. Roper in the summer of 1933 appointed an in-

terdepartmental committee to study the telecommunications situation. The Committee consisted of Secretary Roper, Chairman; Dr. Irwin Stewart, State Department; Lt. Commander Edward M. Webster, Coast Guard, Treasury Department; Maj. General Irving J. Carr, Chief Signal Officer, War Department; Capt. S. C. Hooper, Chief of Naval Communications; Maj. General Charles McK. Saltzman, former chairman of the Federal Radio Commission, then serving as a member of the United States Shipping Board; Dr. J. H. Dellinger, Chief of the Radio Section, Bureau of Standards, and Herbert L. Pettey, secretary of the Federal Radio Commission. In an advisory capacity were Senator C. C. Dill, Chairman of the Senate Interstate Commerce Committee; Representative Sam Rayburn, Chairman of the House Interstate and Foreign Commerce Committee, and Dr. W. M. W. Splawn, adviser to the House Interstate and Foreign Commerce Committee.

In October, 1933, this Committee reported to the President that "the communications service, so far as Congressional action is involved, should be regulated by a single body." Accordingly, it recommended establishment of a new body to which would be transferred the jurisdiction of the Interstate Commerce Commission over common carriers by wire or wireless, the authority of the Federal Radio Commission over radio broadcasting, and jurisdiction of the Post Office Department over telegraph companies and telegraph lines.

On February 26, 1934, the President sent a special message to Congress urging passage of a Communications Act and creation of the Federal Communications Commission. His message read:

...I have long felt that the for the sake of clarity and effectiveness the relationship of the Federal Government to certain services known as utilities should be divided into three fields; Transportation, power and communications. The problems of transportation are vested in the Interstate Commerce Commission, and the problems of power, its development, transmission, and distribution, in the Federal Power Commission. In the field of communications, however, there is today no single Government agency charged with broad authority. The Congress has vested certain authority over certain forms of communications in the Interstate Commerce Commission, and there is in addition the agency known as the Federal Radio Commission. I recommend that

the Congress create a new agency to be known as the Federal Communications Commission, such agency to be vested with the authority now lying in the Federal Radio Commission and with such authority over communications as now lies with the Interstate Commerce Commission—the services affected to be all of those which rely on wires, cables, or radio as a medium of transmission. It is my thought that a new commission such as I suggest might well be organized this year by transferring the present authority for the control of communications of the Radio Commission and the Interstate Commerce Commission.. The new body should, in addition, be given full power to investigate and study the business of existing companies and make recommendations to the Congress for addition legislation at the next session.”

On February 27, 1934, Senator Dill and Representative Rayburn introduced bills to carry out the President's recommendations. Senate Bill 2910 provided “for the regulation of interstate and foreign communications by wire or radio and for other purposes.” House Resolution 8301 was identical in many respects, the chief difference being in the sections relating to broadcast. Extensive hearings were held on the Senate Bill which, amended, was reintroduced on April 4, 1934, as S. 3285. It passed the Senate on May 15 and was referred to the Committee on Interstate Commerce. That committee held hearings for several days on H.R. 8301, the companion bill, and in executive session worked out a substitute measure, S. 3285. The Senate Interstate Commerce committee reported it with amendments in Senate Report No. 781, on April 19, 1934. On June 1, 1934, Representative Rayburn from the House Committee on Interstate and Foreign Commerce reported out S. 3285 in House Report No. 1850. After two hours of debate but without a record vote, the House passed the bill that same day. The measure which came through the House differed materially from the original Senate bill. Title 3 of the Senate bill, containing numerous amendments to the Radio Act of 1927, was eliminated from the House bill, which repealed the Radio Act of 1927 but re-enacted its provisions without change. The bill went to conference and on June 8, 1934, Representative Rayburn filed a conference report which appeared in full in the Congressional Record of that date. The following day this conference report was adopted by both the Senate and the House, and the measure was sent the President for his signature. On June 19, 1934, the Communications Act was signed by President Roosevelt. The Act took effect, as to Sections 1 and

4, on July 1, 1934, and as to its remaining provisions on July 11, 1934.

## 1934

*Unity School of Christianity v. Federal Communications Commission*, May 21, 1934, (69 F. (2d) 570 cert. denied 292 U.S. 646). The Court of Appeals for the District of Columbia affirmed an order of the Commission which granted full time operation on a certain frequency to a station which had been operating on a share-time basis with another station, even though the effect of such order was to delete operation by such other station. The Court found that the Commission's decision was supported by substantial evidence.

The Federal Communications Commission started to function July 11, when the Commissioners took their oaths of office. Three Divisions—Broadcast, Telegraph, and Telephone—were established by Commission Order No. 1, July 17. Order No. 3, September 28, directed the Broadcast Division to conduct public hearings on non-profit radio programs as required by Section 307 (c) of the Act. Administrative Order No. 1, December 14, enjoined Commission personnel from giving verbal interpretations of provisions of the Act.

## 1935

Appointment of the original seven members of the Commission was not confirmed until February 7, 1935, when the Senate did so without objection rules of practice and procedure. Organization of the FCC Employees Credit Union was announced September 16.

October 21, 1935, *Sykes v. Jenny Wren Co.* The Court of Appeals (78 F. (2d) 729, cert. denied 296 U.S. 624), held that the District Court was without jurisdiction to enjoin the Commission from acting upon an application for a license. It was held that the plaintiff, an existing station complaining of the proposed competition of the applicant for a license, must pursue his statutory remedy of appeal to the Court of Appeals for the District of Columbia should he be aggrieved by any final decision the Commission might make.

Creation of the Federal Radio Education Committee was announced by the Commission December 18.

## 1936

Order No. 14, May 13, made Rule 229, as amended, (allocation of frequencies) effective July 1, 1936. (Order No. 15,

May 13, related to hearings on objections to Order No. 14.) On June 5, Congress amended the Communications Act repealing provisions of the "Davis Amendment" carried over from the Radio Act of 1927, which had provided for "fair and equitable allocation of (broadcast) facilities to each state," and repealing that portion of the Act which had divided the country into five broadcast zones. On August 8, 1936, the United States ratified and deposited at London, the "Safety of Life at Sea" Convention which was signed in London May 31, 1929.

The annual report for 1936 refers to the appointment of a "Standing Committee on Rules," representative of the different departments with the General Counsel as chairman, having the duty of drafting regulations from time to time for the consideration of the Commission.

### 1937

Order No. 18, October 13, allocated frequencies to services in the band from 10 to 30,000 kilocycles. Order No. 19, October 13, allocated frequencies to services in the band from 30,000 to 300,000 kilocycles. Order No. 20, October 13, abolished the Broadcast, Telegraph, and Telephone divisions created in Order No. 1.

*Eastland Co. v. Federal Communications Commission*, and companion case, *Congress Square Hotel Co. v. Federal Communications Commission* October 25, 1937 (92 F. (2d) 467, cert. denied 302 U.S. 735). The Court of Appeals of the District of Columbia affirmed a decision of the Commission granting a construction permit to one of two applicants for the use of a certain frequency, denying the application of the other, and overruling the objections of an existing station in the same city. The Court held that since the Division of the Commission rendering the decision had acted on the evidence, there was no error despite a change in personnel in the Commission after the hearing of oral testimony. The order of the Commission was not a violation of its rules against repetitious applications where a prior applicant held some stock in but did not control the present applicant. The finding of the Commission on the question of the economic effect of a new station on existing stations is conclusive.

The First Inter-American Radio Conference, held at Habana, Cuba, November 1 to December 13, initiated the subsequent North American Regional

Broadcasting Agreement. Convention and Agreement ratified on July 21, 1938, Arrangement ratified on July 18, 1938. Order No. 23, November 10, extended orders and regulations promulgated by abolished divisions. Order No. 24, November 10, amended Part 1 of rules and regulations relating to practice and procedure. Order No. 25, November 11, required the Secretary to make a record of all communications received by the Commission relating to applications. Order No. 26, November 11, required the Secretary to prepare a weekly list of all applications received. Order No. 28, November 29, authorized the Secretary and Chief Engineer to act on certain routine applications.

### 1938

Limitations on the use of spark sets and technical agreements to improve radio service generally were agreed to at the International Radio Conference at Cairo, Egypt, February 1 to April 8. General Regulations ratified August 25, 1939. Order No. 35, February 23, authorized the Secretary to issue travel orders.

*United States v. Baker*, February 28, 1938 (93 F. (2d) 332 cert. denied 303 U.S. 642). The Circuit Court of Appeals, Fifth Circuit, reversed a judgment of the District Court convicting Baker for operating radio apparatus without a license. The appellate court held that the scheme of Baker, by which he made phonograph records in Texas, transported the records to Mexico, and played them there over Mexican radio stations so as to be heard in the United States was not within the scope of Sec. 325(b) of the Act, since the sound waves were not reproduced in the United States.

Order No. 36, March 1, assigned Commissioners duties for March. On March 18, the Commission on its own motion, by Order 37, authorized an investigation of network broadcast practices. Order No. 38, March 23, required broadcasting companies to file earnings, reports and other data with the Commission.

*Missouri Broadcasting Corp. v. Federal*

*Communications Commission*, March 28, 1938 (94 F. (2d) 623, cert. denied 303 U.S. 655). The Court of Appeals of the District of Columbia affirmed an order of the Commission which granted a permit to one of two applicants for the same frequency in the same city and denied it to the other. The Court held that though it was error for the Commission to fail to file a statement of grounds for its decision simultaneously with its order denying the application, yet in this case it was harmless because applicant had filed a motion for rehearing with knowledge of such reasons. The court also found that the evidence was sufficient to support the Commission's action.

On April 6 the Commission appointed a committee comprising Chairman McNinch, and Commissioners Walker, Sykes and Brown to conduct the network inquiry. (Sykes was later replaced by Thompson). From June 6 to June 30 hearings were held on proposed new and modified Rules and Regulations Governing Standard Broadcast Stations.

*Saginaw Broadcasting Co. v. Federal Communications Commission*, October 10, 1938 (96 F. (2d) 554 cert. denied 305 U.S. 613). The Court of Appeals of the District of Columbia held that the filing of a petition for rehearing suspends the running of the appeal period, and that an applicant has 20 days from the date of final action on the petition for rehearing within which to file his notice and reasons for appeal. The Court found that the failure of the Commission to make specific findings of fact from the evidence was prejudicial to an applicant for a permit and remanded the case to the Commission.

*Red River Broadcasting Co. v. Federal Communications Commission*, October 10, 1938 (98 F. (2d) 282 cert. denied 305 U.S. 625). The Court of Appeals of the District of Columbia held that the owner of an existing station could not appeal from an order of the Commission granting a construction permit to an applicant in the same territory, unless he had exhausted the administrative remedies afforded by the statute.

Order No. 49, November 9, abolished the Press Division. Order No. 50, November 9, abolished the Examining Division and changed post-hearing procedure. On November 14 hearings began on network inquiry. (Continued intermittently to May 19, 1939.)

## 1939

On January 1 provision was made for holding oral argument on all interlocutory pleadings and motions. On January 3 a proposal for television transmission

was referred to a committee comprising Commissioners Craven, Brown, and Case for study.

*Black River Valley Broadcasts, Inc. v. McNinch*, April 29, 1939, (101 F. (2d) 235, cert. denied 307 U.S. 623). The Court of Appeals of the District of Columbia held that the District Court was without jurisdiction to enjoin the enforcement of a Commission order setting aside a grant of license to plaintiff and ordering a *de novo* hearing on plaintiff's and a conflicting application, since the statutory appeal provided in Section 402 (b) of the Act was a complete and adequate remedy for review of such action. (See *Sykes v. Jenny Wren Co.*, *supra*).

May 22 first Committee report on television study. An engineering conference on Standards of Good Engineering Practice was held June 5 and 6. New Rules and Regulations and Standards of Good Engineering Practice were adopted June 23, to become generally effective August 1, 1939. On July 1 revised rules governing commercial radio operators became effective, incorporating a new examining procedure. Administrative Order No. 2, July 12, authorized an Administrative Board and department heads to act on routine non-policy matters. (Various Amendments.)

*Woodman of the World Life Ins. Society v. Federal Communications Commission*, October 9, 1939 (105 F. (2d) 75, cert. denied 308 U.S. 588). The Court of Appeals of the District of Columbia held that the Commission's findings that interference would not result to a Nebraska station by the granting of an application of a Michigan station to change its equipment and power, was supported by substantial evidence and that therefore the Nebraska station was not aggrieved so as to have an appealable interest.

*Crosley Corp. v. Federal Communications Commission*, November 6, 1939 (106 F. (2d) 833, cert. denied 308 U.S. 605). The Court of Appeals of the District of Columbia held that it had no jurisdiction to entertain an appeal by the holder of a special temporary authorization to carry on experimental programs when the Commission refused to extend the duration of such license.

A second Committee report on television was made November 15. On December 21 the Commission adopted committee report and rules looking toward limited commercialization of television on September 1, 1940.



**1940**

On January 15 hearings opened on proposed limited commercialization of television. (Continued for eight days).

*Federal Communications Commission v. Pottsville Broadcasting Co.* January 29, 1940 (309 U.S. 134). *Fly v. Heitmeier*, January 29, 1940 (309 U.S. 146). Judgments of Court of Appeals for the District of Columbia reversed with directions to dissolve writs of mandamus and to dismiss respondents' petitions. The Supreme Court held that when the Court of Appeals for the District of Columbia reverses a Commission decision denying an application and sends it back for further proceedings, the Commission may reconsider the application along with rival applications, subsequently filed, to determine on a comparative basis which would best serve the public interest. The Court of Appeals for the District of Columbia has no power to prevent the Commission from doing this by requiring a reconsideration of the application on the record.

On March 18 hearings began on possibilities of high frequency (FM) broadcast service. (Continued for 10 days). Order No. 65, March 22, suspended the proposed September 1 date for limited commercial television and ordered further hearing.

*Federal Communications Commission v. Sanders Bros. Radio Station*, March 25, 1940 (309 U. S. 470; rehearing denied, April 22, 1940, 309 U. S. 642). Judgment of Court of Appeals of the District of Columbia reversed a Commission order granting application affirmed. It was held that an existing licensee likely to be financially injured because of competition resulting from the issuance of a license to another has the standing to appeal from an order of the Commission granting the license, for the purpose of pointing out errors of law in the Commission's action. However, economic injury to an existing licensee resulting from proposed competition is not a separate and independent element to be considered

by the Commission in acting upon an application for broadcast facilities inasmuch as such licensee is not protected under the Act from competition. The Commission's order was affirmed.

On March 29, Mexico deposited its ratification of the North American Regional Broadcasting Agreement, to become effective one year from that date (previously ratified by Canada, Cuba, the Dominican Republic, Haiti, and the United States). Reopened television hearings began on April 18. (Continued for 5 days.) Full commercialization of high frequency (FM) broadcasting was authorized May 20 and certain frequency shifts were ordered. Order No. 67, May 22, assigned particular frequencies to FM. Order No. 68, May 22, dismissed without prejudice pending FM applications to permit application on commercial basis. Order No. 69, May 22, called upon experimental FM stations to return licenses for cancellation. A new plan for experimental television development pending industry agreement on uniform system was announced May 28. Allocations to various services of frequencies in the bands 116,000 to 119,000 kilocycles and 156,000 to 162,000 kilocycles, were approved June 4.

Order No. 7, June 7, extended time of broadcast operation from local sunrise to 4 a.m. On June 12 the network inquiry committee submitted its report. New rules and regulations governing television experimental stations were announced June 18. Order No. 75, June 18, required all commercial and amateur operators to furnish proof of citizenship. On June 22 the Commission adopted rules putting FM broadcasting on a commercial basis. Standards of Good Engineering Practice Concerning High Frequency (FM) Broadcast Stations were announced June 28. On July 17 the Commission announced creation of a National Television Systems Committee through cooperation of the Radio Manufacturers Association.

Administrative Order No. 3, July 24, provided for action by the Commission in

the absence of a quorum. On July 24 special emergency radio service rules were changed for clarification. The Defense Communications Board was created by Executive order September 24. High frequency (FM) broadcast rules were amended October 2. On October 6 the Commission authorized a questionnaire on foreign language broadcasts. On October 15 the Commission adopted a new rule requiring international broadcast stations to make verbatim mechanical records of international programs transmitted, and to keep transcripts and other records for a period of two years. An informal engineering conference to consider frequencies for electro-medical apparatus was held November 29.

*Federal Communications Commission v. Columbia Broadcasting Co.* and companion case, November 25, 1940, (——— U. S. ———, 85 L Ed. 109). Order of Court of Appeals of the District of Columbia denying the Commission's motion to dismiss the appeals, reversed. The Supreme Court held that the Court of Appeals did not have jurisdiction to entertain appeals by the proposed transferor and transferee of an existing license from a Commission order refusing consent to the transfer of license.

Oral argument on briefs submitted pursuant to the report of the network inquiry committee was heard December 2 and 3. On December 6 the Commission reported on responses to its foreign language broadcast questionnaire by October 6. A system of distinctive calls for FM broadcast stations was adopted December 6. On December 9 there was an engineering conference on equipment for high frequency (FM) broadcast stations.

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The National Television Systems Committee made report to the Commission on January 27. On January 28, the Commission announced a hearing for March 20 to consider television engineering proposals. Conclusions and agreements reached at the high frequency (FM) engineering conference of December 9 were announced on January 31. On January 31 the Commission approved Recommendations of the Engineering Conference

under the North American Regional Broadcasting Agreement and released a revised list of United States frequency assignments, effective March 29.

## Federal Radio Commission Commissioners

The following were the original five members of the Federal Radio Commission: Rear Admiral W. H. G. Bullard; Judge Eugene O. Sykes; Orestes H. Caldwell; Henry A. Bellows; Colonel John F. Dillon. All were appointed March 15, 1927; Admiral Bullard representing the Second Zone, was named Chairman. He served until his death November 24, 1927. A vacancy then ensued for several months, until his successor Judge Ira E. Robinson was appointed on March 29, 1928. Judge Robinson was made Chairman April 5, 1928; reappointed to the Commission February 23, 1930, for a term of 2 years, and resigned January 15, 1932. He was succeeded by Colonel Thad H. Brown on January 21, 1932, who was appointed for a term of 6 years, and was reappointed to the Federal Communications Commission. Judge Sykes was appointed to represent the Third Zone; reappointed February 23, 1930 for a term of 3 years; reappointed March 20, 1933, for a term of 6 years; elected Chairman March 21, 1933; reappointed to the Federal Communications Commission in July, 1934, for a term of 7 years. Resigned April 5, 1939. O. H. Caldwell resigned February 23, 1929, and was succeeded by W. D. L. Starbuck, representing the First Zone, who was appointed May 2, 1929; reappointed February 23, 1930 for a term of 4 years, which expired February 23, 1934. Henry A. Bellows resigned October 31, 1927 as Commissioner for the Fourth Zone. He was succeeded on November 1, 1927 by Sam Pickard, who served until his resignation on January 31, 1929. He was succeeded by Maj. Gen. Chas. McK. Saltzman, appointed May 2, 1929; reappointed for a term of 6 years on February 23, 1930; made Chairman February 28, 1930, resigned July 19, 1932. He was succeeded by James H. Hanley, appointed to fill the unexpired term ending February 23, 1936. Mr. Hanley was not appointed to the Federal Communications

Commission in 1934. Colonel John F. Dillon, who represented the Fifth Zone, died October 8, 1927, and was succeeded by Harold A. Lafount, appointed November 14, 1927; reappointed February 23, 1930 for a term of 5 years, but was not named to the Federal Communications Commission in 1934.

### Secretaries

Sam Pickard was engaged as Acting Secretary of the Federal Radio Commission on March 15, 1927; made permanent Secretary April 20, 1927, and served until his appointment as Commissioner on November 1, 1927. Carl H. Butman succeeded Mr. Pickard as Secretary from November 1, 1927, serving until he resigned May 1, 1930. James W. Baldwin was appointed Secretary May 5, 1930. He resigned February 28, 1933. Herbert L. Pettey succeeded Mr. Baldwin as Secretary on March 31, 1933, and was made Secretary of the Federal Communications Commission in July, 1934.

### General Counsels

The Federal Radio Commission had no legal division until June 25, 1928. The Department of Justice from time to time detailed Bethuel M. Webster, Jr., Special Assistant to the Attorney General, to assist the Commission in the handling of particular hearings and court cases. On June 25, 1928, the position of General Counsel was filled by appointment of Louis G. Caldwell. Mr. Caldwell served until February 23, 1929, when he resigned. Bethuel M. Webster, Jr., was on March 5, 1929 appointed General Counsel. He resigned December 15, 1929. Colonel Thad H. Brown was then appointed General Counsel, and served from December 15, 1929 until January 21, 1932, when he was named Commissioner. On March 28, 1932, Duke M. Patrick who had been Assistant General Counsel since January 27, 1930, was made General Counsel. He served until his resignation March 1, 1933. From March 1, 1933 to July 11, 1934, George B. Porter, Assis-

tant General Counsel, acted as General Counsel until appointment of Paul D. P. Spearman as General Counsel of the Federal Communications Commission on July 11, 1934.

### Chief Engineers

On August 1, 1928, Dr. J. H. Dellinger was appointed Chief Engineer of the Commission and served until December 1, 1928. He was succeeded by Dr. C. B. Jolliffe who served from March 1, 1930 to November 12, 1935.

### Federal Communications

#### Commissioners

The following were the original seven members of the Federal Communications Commission:

Judge Eugene O. Sykes (D)—Chairman, appointed for a term of 7 years; Col. Thad H. Brown (R)—appointed for a term of 6 years; Paul A. Walker (D)—appointed for a term of 5 years; Norman S. Case (R)—appointed for a term of 4 years; Dr. Irvin Stewart (D)—appointed for a term of 3 years; George Henry Payne (R)—appointed for a term of 2 years; Hampson Gary (D)—appointed for a term of 1 year.

Judge Sykes served as Chairman until March 9, 1935, when he was appointed Chairman of the Broadcast Division. On April 5, 1939 he resigned to enter the private practice of law, and was succeeded by Frederick I. Thompson to fill his unexpired vacancy ending June 30, 1941. Thad H. Brown was named Vice-Chairman of the Broadcast Division on July 17, 1934, and on March 9, 1935, he was named Vice-Chairman of the Telephone Division instead of the Broadcast Division. His term expired June 30, 1940. The President submitted his name to the Senate for reappointment but his nomination failed to be reported out of Committee and, on October 5, 1940, he withdrew his name from nomination. He died February 25, 1941. Ray C. Wake-

field, member of the California Railroad Commission since January, 1937, was, on March 17, 1941, confirmed by the Senate for a seven year term from July 1, 1940, to succeed Thad H. Brown as Commissioner. Paul A. Walker was named Chairman of the Telephone Division on July 17, 1934. He was reappointed for a term of 7 years from July 1, 1939.

Norman S. Case was named Vice-Chairman of the Telephone Division on July 17, 1934. He served until March 9, 1935, when he was named Vice-Chairman of the Broadcast Division. He was reappointed as a member of the Commission for a term of 7 years from July 1, 1938. Dr. Irvin Stewart was named Chairman of the Telegraph Division on July 17, 1934. He served as Commissioner until the expiration of his original term, June 30, 1937, and informed the President that he was not a candidate for reappointment. There was a vacancy on the Commission from June 30 to August 21, 1937, when Commander T. A. M. Craven was appointed for a term of 7 years, succeeding Dr. Stewart. George Henry Payne was named Vice-Chairman of the Telegraph Division July 17, 1934. He was reappointed Commissioner for a term of 7 years from July 1, 1936. Hampson Gary on July 17, 1934, was named Chairman of the Broadcast Division. He resigned as Commissioner December 24, 1934, before his original term expired on June 30, 1935. He was succeeded by Anning S. Prall January 17, 1935. On March 9, 1935, the President designated Mr. Prall Chairman of the Commission, and on July 1, 1935, he was named to succeed himself as Commissioner for a term of 7 years. He died July 23, 1937. To fill Mr. Prall's unexpired term, Frank R. McNinch was nominated by the President August 17, 1937, and took office on October 1, being named Chairman on the same date. He resigned September 1, 1939. Mr. McNinch was succeeded by James Lawrence Fly who was nominated by the President July 27, 1939, for the term expiring June 30, 1942. Mr. Fly took office September 1, 1939, at which time he was designated by the President to serve as Chairman.

## Secretaries

Upon organization of the Federal Communications Commission July 11, 1934, Herbert L. Pettey, who had been secretary of the Federal Radio Commission, was appointed as Secretary of the new Commission. He resigned August 30, 1936. From the time of Mr. Pettey's resignation until May 1, 1937, John B. Reynolds, appointed as Assistant Secretary, acted as Secretary. On that date Thomas J. Slowie was appointed Secretary.

## General Counsels

Paul D. Spearman, who had been Assistant General Counsel with the Federal Radio Commission, was on July 11, 1934, named General Counsel of the Federal Communications Commission. He served until June 30, 1935, when he resigned. He was succeeded on July 3, 1935, by Hampson Gary as General Counsel, who served until December 15, 1938, when his services were terminated. On December 26, 1938, William J. Dempsey who had been Acting General Counsel since December 6, was made General Counsel. He resigned April 25, 1940. He was succeeded on May 6, 1940, by Telford Taylor.

## Commission

Dr. C. B. Jolliffe was carried over from the Federal Radio Commission as Chief Engineer of the Federal Communications Commission. On December 2, 1935, after Dr. Jolliffe's resignation, T. A. M. Craven was named Chief Engineer. He served in this capacity until his appointment on August 21, 1937, as Commissioner. On January 1, 1938, E. K. Jett, Assistant Chief Engineer who had been Acting Chief Engineer, was appointed Commander Craven's successor as Chief Engineer.

## Chief Accountant

The Accounting, Statistical, and Tariff Department was established in October, 1934. On June 7, 1935, William J. Norfleet was appointed Chief Accountant.