

Bacon Named by BBC; Avery to Join Chicago Free & Peters Office

WITH resignation of Lew Avery as director of sales of WGR and WKBW, Buffalo, to join the Chicago office of Free & Peters, national station representatives, announcement was made by I. R. Lounsbury, executive vice-president of Buffalo Broadcasting Corp.



Mr. Bacon



Mr. Avery

of the appointment of John A. Bacon to the sales post. Both appointments are effective Jan. 1.

Mr. Avery for the last six years has headed the sales department of the Buffalo stations and is well known in industry and agency circles. He was chairman of the NAB Sales Managers' Division last year and was an important factor in the founding of the group. Free & Peters includes the BBC outlets among the stations it represents.

Mr. Bacon until recently was national advertising manager of the *Buffalo Times*, Scripps-Howard paper which post he held for seven years. During the preceding three years he was national advertising representative in New York for the Scripps-Howard Newspapers. He has been active in both Chamber of Commerce and Greater Buffalo Advertising Club activities and is well known in both national and local advertising circles.

Mr. Avery began in radio in 1917 when he became a station designer, announcer, engineer, manager and owner. In April of that year—three years before the advent of broadcasting as such—he went on the air with a half-kilowatt open-core transmitter with Leyden Jar condensers and a rotary spark gap. The station was closed under Federal Government orders. In 1926 he became an announcer and production man for WGY, Schenectady, and in 1928 joined the Mohawk-Hudson Power Corp. as assistant advertising director. Early in 1930 he joined BBDO, New York, and was assigned to radio on all local accounts between Albany and Detroit. He joined WGR-WKBW in 1932 as manager of planning and service and became director of sales in January, 1933.

Utilities Use Air

THE utility gas companies of metropolitan New York on Dec. 4 started a 13-week series of quarter-hour musical programs, *Home Harmonies*, on WMCA, New York. The program, featuring Ted Steele on the Novachord, is heard Sundays, 5:45-6 p.m., and Monday through Friday, 6:30-6:45 p.m. Sponsored by The Group of Eight Gas Utilities Companies, the account was placed through BBDO. Companies listed in the sponsoring association are Brooklyn Borough Gas Co., Brooklyn Union Gas Co., Consolidated Edison Co., Kings County Lighting Co., Long Island Lighting Co., New York & Richmond Gas Co., Public Service Co. of New Jersey, and Westchester Lighting Co.

FCC Show Cause Order Is Challenged By WINN Pending Ruling on WGRC

AUTHORITY of the FCC to issue an "order to show cause" why its construction permit should not be recalled, was questioned by the Kentucky Broadcasting Co. of Louisville in its response filed Dec. 5 with the Commission. On Nov. 20 the FCC had cited the corporation, which tentatively has been assigned the call letters WINN, on the ground that it is not financially qualified to operate the proposed station, based on its own contentions.

William A. Porter, Washington attorney for the proposed new 100-watter, pointed out that after the construction permit had been granted last May, WGRC, New Albany, Ind., across the river from Louisville, had appealed from the decision and the appeal now is pending. He contended that exclusive jurisdiction of the entire matter was thereby lodged in the U. S. Court of Appeals for the District of Columbia and that the Commission is without jurisdiction to issue a show cause order or take any other action affecting the status of the construction permit until there is a final adjudication.

Going Ahead

Issuance of the show cause order established another precedent in the revised legal procedure of the FCC. It grew out of the contention by the prospective station, headed by D. E. (Plug) Kendrick, general manager of KITE, Kansas City, that the FCC, in granting fulltime to WGRC, had set up a competitive situation which "would result in such severe loss of operating revenue" to the proposed station as to "impair the service which it could render." [BROADCASTING, Dec. 1].

In his response, Mr. Porter produced affidavits from principals in Kentucky Broadcasting Co., including himself as counsel, designed to show that the corporation was actively proceeding with installation of the new station and that it would suffer severe financial loss if the construction permit were revoked or otherwise set aside. Moreover, he contended that the allegations made in WINN's petition for rehearing of the WGRC grant could not be construed as an admission or evidence of facts prejudicial to the rights of the Kendrick group. It was held that issuance of a license covering the construction permit for the operation of the new station is simply a "ministerial act" and that he believed the company as the holder of a construction permit may exercise "such substantive rights and such procedural remedies as are available to the licensee of a radio station."

Because the construction permit was issued to WINN prior to the granting of the WGRC application for fulltime on 1370 kc., the Kentucky corporation stated it believed it had the right to petition the Commission to exercise the same remedies against WGRC which the latter had been permitted to exercise against his company "so that the matter would remain in status quo until such time" as the Court of Appeals has rendered its decision on the appeal of WGRC.

It was contended that WINN, in its petition for rehearing, in no way meant to abandon the construction permit and operation of the new station and that since the construction permit was issued, the corporation had contracted for material, equipment and supplies amounting to \$6,254.90 together with a site and location in the Tyler Hotel. In addition, it has spent another \$6,808 in prosecuting its application and for other expenses, all of which would be a complete loss should the Commission recall and revoke the permit.

It was brought out there is \$12,000 in cash deposited in a Louisville bank aside from the two negotiable promissory notes executed by Mr. Kendrick, each amounting to \$6,500, which would mean that upon demand the corporation would have \$25,000 in cash. In addition, it was stated Mr. Kendrick had agreed and bound himself to lend the corporation another \$25,000 if and when called upon.

Mr. Porter mentioned that he had handled the Kentucky Broadcasting Corp. application from its inception and that the company had left the manner and method of prosecuting the application to his judgment and discretion. He said he was directed by the corporation to take whatever steps he deemed necessary to protect its interests and consequently had protested the Commission's action in granting the WGRC fulltime application. The FCC was asked to vacate and set aside its show cause order.

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