

simply because we are in the newspaper and radio business. This is outright discrimination. . . .

"The FCC, in many of its decisions, has stated that the 'diversification of control of the media of mass communication' is a factor which may be considered with others, everything else being substantially equal, in determining between applicants. On the other hand, in this case it has done what its various members have said in decisions, in public talks and in appearances before committees of Congress it would never do, namely, discriminate against an applicant solely because of its ownership of newspapers and radio stations."

In its appeal to the federal court, Anthony Wayne held that the Commission had given controlling weight to newspaper ownership and newspaper practices which were beyond the control of Messrs. Fleming and McNutt. It said that the Commission had "distorted" the record to minimize factors favoring Anthony Wayne, and that it had departed from its own standards by giving weight "to alleged monopoly or anti-trust violations not supported by proof in this proceeding or by actual convictions."

Using the diversification principle for its own benefit, Anthony Wayne claimed that the FCC had "departed from its own standards" in this regard.

The appeal also cites the Commission as "arbitrarily and capriciously ignoring and refusing to give weight to clearly proven and admitted elements of superiority in appellant's proposal, including superiority of program, studio, equipment, personnel and technical proposals." Anthony Wayne claimed that its en-

gineering proposals promised coverage of 98% more area and 47.5% more people than its opponent. Generally, the FCC finds *bona fide* applicants eligible in legal, financial and technical matters and thus rules out these considerations in comparative hearings.

Referring to the Commission's finding that the forced combination rate for national and classified advertising was not in the public interest, though the Commission admitted it was not illegal, Anthony Wayne declared that "This finding stigmatizes two men of outstanding character and reputation in their community as being unfit to own a television station because of the fact that a newspaper in which they are stockholders is bound by a valid contract to a corporation which allegedly carries on a practice which the Commission objects to but does not find illegal."

Mr. McNutt is the former Democratic leader who held important posts under President Roosevelt.

Fort Wayne News-Sentinel owns WGL in that city.

Reversal of Fresno Ch. 12 Initial Grant Requested

CONTENDING the "over commercialism" alleged by an FCC hearing examiner to KFRE Fresno cannot support an initial decision to grant television ch. 12 to its competitor KARM there, the FCC Broadcast Bureau petitioned the Commission last week to reverse the examiner's recommendation [B•T, Sept. 13].

The Bureau held the examiner overlooked other more significant differences between KARM and KFRE, both of whom also filed

exceptions to the examiner's ruling.

The Broadcast Bureau's exceptions to the initial decision said "that the ultimate conclusion in this case is not supported by proper findings of fact and conclusions. . . . Since in our view a grant to KARM cannot be supported on the theory that KFRE has indulged in over-commercialization, discriminated against local advertisers in favor of national and regional advertisers, or that a grant to KARM will stimulate competition or that its proposal should be preferred to enable it to recoup operating losses, other areas of differences which are significant must be considered."

The Broadcast Bureau said that the "significant differences" relate to participation in civic and community activities and planning for the proposed station. The Bureau noted the "superior participation" in civic activities on the part of KFRE President Paul R. Bartlett and concluded: "Accordingly, we believe that KFRE has demonstrated, for comparative purposes, a degree of planning and sense of licensee responsibility, which point to an inference that its proposal is more dependable than KARM's in terms of continuing responsiveness to community need."

WSYR REVOCATION SOUGHT BY WNDR

WNDR Syracuse, N. Y., last week petitioned the FCC to revoke the licenses of WSYR-AM-FM-TV there.

WNDR charged that Samuel I. Newhouse through his control of the WSYR stations and of the only evening daily newspaper, *The Herald Journal*, and of the only morning daily newspaper, the *Post Standard*, has been "engaged in a combination and conspiracy to monopolize interstate trade and commerce" which has injured WNDR and has gained competitive advantages for Newhouse.

WNDR alleged that Mr. Newhouse requires all "general" advertisers to purchase newspaper advertising in the newspapers as a unit at combination rates, that WNDR is charged more than other local advertisers and that it must advertise as a unit at combination prices in both newspapers.

WNDR further alleged that Mr. Newhouse and his newspapers, in order to drive WNDR out of business and to give the WSYR stations a competitive advantage, published false news items regarding a pending suit between WNDR and its creditors and spread false rumors pertaining to WNDR's business stability.

The WSYR stations also gained competitive advantage over WNDR, it was charged, by affording WSYR advertisers prominent newspaper displays and news column publicity free of charge as an inducement for the advertisers to advertise with the WSYR stations.

WKY Answers Protest To Montgomery Buy

CALL for the FCC to decide "at this time" how far a newspaper which also owns radio and tv stations must go in publicizing competing broadcast properties was made last week by WKY Radiophone Co., associated in ownership with the *Oklahoma City Daily Oklahoman* and *City Times*.

The Oklahoma City broadcast licensee (WKY-AM-TV) made this declaration in an opposition to last month's protest by KWTV (TV) Oklahoma City and WCOV-AM-TV Montgomery, Ala., against the \$1 million purchase by WKY of WESA-AM-TV Montgomery, Ala. [B•T, Oct. 25].

The two protesting stations asked the Com-

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