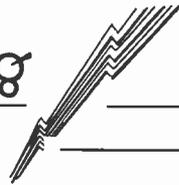


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## New 'Crackdown' Era at FCC Foreseen

By SOL TAISHOFF

### Pot o' Gold Action Is Viewed as Only a Mild Sample; Fly Swings Balance of Power Toward Rigid Control

A NEW siege of "crackdown" regulation of broadcasting, evidently aimed at every phase of station operation short of rate regulation, appears to be brewing at the FCC under its recently revitalized leadership.

Indications have been seen not only at hearings held during the last few weeks, but in FCC decisions and in the newest onslaught on the program problem. The action of Feb. 8 in transmitting to the Department of Justice the facts concerning the NBC-Red *Pot o' Gold* program is viewed as only a mild forerunner of harsher measures to come.

The turn in events is ascribable to what appears a clear demarcation of viewpoints among members of the Commission, with Chairman James Lawrence Fly, who has held the balance of power, apparently casting his lot with the rigid-regulation forces. Prior to Mr. Fly's appointment last fall, this group included Commissioners Paul A. Walker, F. I. Thompson and George H. Payne. The more conservative group, which fostered industry cooperation rather than mailed-fist methods, comprised Commissioners T. A. M. Craven, Thad H. Brown and Norman S. Case.

#### Compromise Decision

Chairman Fly, who is credited with having performed what seemed impossible by keeping the Commission's internecine squabbles at a minimum, insofar as public prints are concerned, is in the forefront of the impending new policy attitudes and pronouncements. Commissioner Thompson, whose tenure began only last April, also is represented as a vigorous advocate of reforms in commercial broadcasting.

The decision to refer the *Pot o' Gold* program to the Department of Justice was a compromise. Considered first by the FCC, along with

another local prize-contest program, at a morning meeting Feb. 7, the majority is understood at first to have favored setting down all of the stations involved for hearings on renewal of their licenses. This would have been a repetition of the actions in such well-publicized instances as the Orson Wells "Martian Invasion" and the Mae West episode, which precipitated cries of censorship from the industry, the press and the public that still linger as examples of bureaucracy running rampant.

Having postponed the more drastic action by referring these two prize-award programs to the Department, the new FCC majority, however, does not propose to drop the matter, it is apparent. On the contrary, the view appears to be that the stations can be cited for cancellation of licenses upon filing of their renewal applications, at which time the intention would be to review past programs of the stations to test their ability to serve "public interest" in the future.

### Lottery Warning Is Foreseen In Pot o' Gold Action of FCC

FEELING action was necessary because of a plethora of complaints from members of Congress, theatre owners and others over the mushroom growth of radio prize contests similar to the *Pot o' Gold*, the FCC Feb. 8 ordered transmitted to the Department of Justice for possible action under the lottery laws facts concerning the sensational Tums NBC-Red presentation along with a local prize offer in Texas.

Marking a revival of program scrutiny by the FCC, referring of the programs to the Department of Justice follows procedure instituted last year by the FCC, premised on the view that it cannot undertake criminal prosecutions. The complaints against *Pot o' Gold* alleged infraction of Section 316 of the Communications Act, prohibiting lotteries. Nevertheless, in this particular instance it is known that the matter has been before the Commission for some time and that the legal opinion was that no direct violation of the statute was involved.

Following the FCC action, John Butler, vice-president of Stack-Goble Advertising Agency, placing the Tums account, asserted that the program had been approved by the Post Office Department on Oct. 12, 1939, and that the Department had written the St. Louis postmaster advising him that *Pot o' Gold* literature was available. He asserted it was his belief that "the

program is legal from every angle."

No comment was forthcoming from NBC. It is known, however, that network attorneys had sought to verify the legality of the program before it was accepted last fall and that its investigations yielded no objections.

#### Other Complaints

Presumably it is the intention of the Commission to serve notice that while it has no direct jurisdiction over programs, it is inclined to look with disfavor upon the mounting volume of contest offers. It has not only received complaints against *Pot o' Gold* and the local Texas program but also sporadic comments regarding local offerings in other areas involving auto license plate contests, variations of "Bingo" and similar outcroppings of the same basic idea which are regarded as borderline.

In referring the cases to the Department, after a full day of discussion Feb. 7, the FCC said the Department was asked to take such action as it deems necessary. It also offered its full cooperative assistance if desired.

The Texas citation involved programs on KWFT, Wichita Falls, and KBST, Big Springs, purportedly sponsored by Mead's Bakery, on which complaints had been received, apparently through a radio inspector. KWFT reported Jan. 29 that it had discontinued the pro-

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This has been described as censorship "after the fact", and is of a character that technically may prove to be in violation of the anti-censorship provision of the Communications Act.

Indeed, the "review" idea has been strongly expressed by several FCC members in the "crackdown" camp. It is accepted as a foregone conclusion that should the Department of Justice see fit to prosecute the prize-contest instances as lotteries of a character banned by the Communications Act, the Commission's majority would be disposed to take prompt action. And should there be a criminal conviction, the Commission could exercise its authority in summary fashion, if it saw fit, by swift revocation of licenses.

#### Brinkley Precedent

The legal yardstick, which Chairman Fly regards as fundamental in giving the Commission authority to cite stations on programs in considering renewals, is the decision of the U. S. Court of Appeals for the District of Columbia of a decade back in the case of Dr. John R. Brinkley, the so-called "goat gland" doctor whose station in Milford, Kan., was deleted by the old Radio Commission. In sustaining the Commission, the court used the Biblical quotation, "By their fruits shall ye know them". Because of Dr. Brinkley's use of his former station, KFKB, as a "personal mouthpiece" in advertising his hospital, and patent medicine operations, the court sustained the Commission's findings that his programs were not in the public interest. Dr. Brinkley afterward set up his border station at Villa Acuna, Mexico, and has been operating there since, with a hospital at Del Rio, Tex., just across the border.

The philosophy of Chairman Fly and his adherents appears to be that the Commission is duty-bound to deal in terms of "people" rather than field strength contours, technical policing of the spectrum and other routine regulatory functions. Facilities, he maintains, should be allocated in the light of service to the public—and service is programs, not microvolts.

Cited as an example of this was the recent grant without hearing of a new regional station in Minneapolis, despite implied engineering

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