

## Giveaway Court Test

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travened the rules set forth in the Order. The guaranty of a jury trial provided in the Sixth Amendment will be circumvented if this procedure is permitted to stand and if the Commission becomes the enforcement agency of Sec. 1304."

Counsel for all three networks stressed that unless a permanent injunction is issued against the rules, not only the broadcasters but the sponsors of affected programs would suffer irreparable injury. They pointed out that FCC's rules do not spell out in clear language the precise type of giveaway programs that would be liable to legal action.

Arguing for dismissal of the networks' motion to set aside the rules, Mr. Cottone insisted that FCC was acting in the public interest. He noted that the Commission enacted its proposed rules in reliance upon rule-making authorization in the Communications Act and declared they were designed to implement Sec. 1304 of the Criminal Code.

Mr. Cottone replied to the plaintiff's assertion that the FCC lacked power to enforce its rules in assuming a function of the criminal courts, by citing its authority under Section 1304. He indicated the programs FCC seeks to prohibit are allegedly in violation of this section and broadcasting them would be a criminal offense.

"It would be proper for the Commission to deny licenses to those stations who broadcast this type of program," Mr. Cottone declared.

### FCC's Interest

Mr. Cottone answered the argument advanced by plaintiffs that the Commission would set itself up as a censoring body, by saying that the FCC "never had this intention." He assured the court that FCC was interested only in upholding the public interest and not in restricting free speech or public enterprise.

Describing FCC's concept of "chance," Mr. Cottone declared this element was present in telephone giveaways because selection was made from a "great mass of people."

Mr. Cottone said he could boil down the factor of consideration to "the fact that you have got to be listening and be at the telephone at the time the giveaway program is broadcasting."

Mr. Cottone stressed that a sponsor buys time on the air and gives away prizes on his programs only if he believes he will attract a large audience that will be exposed to his products. He declared that the usual result increased sales of the advertised product.

"The vice lies in luring people by the bait of a lottery to buy what they otherwise would not have, or might not have, bought," Mr. Cottone asserted.

At one point during Mr. Cot-

tone's argument, Judge Leibell asked why the proposed rules would include telephone giveaways and not the studio giveaways. Mr. Cottone replied that the factor of consideration was not "so clear" in the studio as in the telephone type of giveaway. He explained further that in studio giveaways, the element of entertainment was significant because persons of unusual background or circumstances were selected. This rigid type of selection, he added, had the effect of weakening the "chance" factor.

But Mr. Cottone made the point that it was possible the Commission might include studio giveaways under its proposed order.

## OPS CLARIFIES

RATES charged by all agencies which sell radio and television time, including station representative firms, are exempt from price control, the Office of Price Stabilization made plain last week.

OPS issued a "catch-all" order bracketing station representation firms with advertising agencies and radio-TV broadcasters, which previously had been exempted from price ceilings.

Agency authorities said the directive was aimed at "small groups or independent contractors" in the industry, although not identifying the nature of these companies. But they explained it stemmed from a petition filed by Harrington, Righter & Parsons, TV station representative.

Radio-TV broadcasters have been exempt from the time the Defense Production Act was passed in 1950. Advertising agencies were decontrolled in a later amendment to the Act.

### How It Started

The confusion arose when OPS asked HR&P why it had not filed as a service agency. The company's attorneys replied they felt station representatives were or should be exempt. They explained the link between advertising agencies and stations.

Station Representatives Assn. said it never has received any notification from OPS indicating representation firms come under the agency's rules. Thus, OPS' action last week was regarded as a clarifying regulation.

Removed from price controls under the order are rates, fees and charges of "advertising and those agencies that sell radio and television time."

These are services, OPS explained, "which do not exert a significant effect upon the cost of living of the average American family or business costs and the continued control of which involves administrative difficulties which are disproportionate in relationship to the value of such control

## 'Kissing Santa' Banned

IF MAMA wants to kiss Santa, that's her business but at least three station managers decided last week that such goings-on are not for the ears of children. The phonograph record, "I Saw Mama Kissing Santa Claus," has been banned from KBWL Blackwell, Okla., WSAZ-AM-TV Huntington, W. Va., and CJOR Vancouver, B. C. Station officials commented the lyrics might destroy a child's faith in the jolly old gentleman.

He made clear that he did not know whether the Commission had this under consideration.

## Air Time Decontrol Includes Station Reps

to the stabilization program."

Explaining its reasoning, OPS continued:

Advertising agencies have already been decontrolled and the provisions of the Defense Production Act of 1950, as amended, preclude control over radio and television broadcasting. Agencies that sell radio and television time, while in a separate category, perform functions that are incident to those performed by both the advertising and broadcasting industries. It is therefore not advisable to continue control over this group of service suppliers while contiguous service suppliers at both ends of its operation are not under control.

Other categories newly exempt include business consultants, managers and agents of professional entertainers and rental of costumes (sales of such garments previously were removed from controls). Services of actors, actresses and athletes were decontrolled earlier.

The new action was spelled out under Amendment 31 of General Overriding Regulation 14. Effective date was last Wednesday.

## EMPLOYMENT HIGH

### Labor Dept. Reports

EMPLOYMENT in nearly all consumer goods industries was "significantly higher" last month than the "depressed levels" of a year ago, the Labor Dept.'s Bureau of Labor Statistics reported last Wednesday.

Military electronics will reach an employment peak in the spring of 1953, the report added, predicting that overall production schedules indicate a continued slowing down in rate of growth for military end products next year. Military goods expansion and recovery in consumer goods has carried employment 640,000 above last year's level.

## A King-Size Local Client

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and children was effectively made, the company believed, in its *Breakfast With Paula*, aired from 8:45 to 9 a.m. each morning from the coffee shop of the Claypool Hotel; Dick Stone's *Eat-itorially Speaking*, 11:30 to 12 noon, and with *Kingan's Klubhouse*, again emceed by Mr. Carnegie, from 6:45 to 7 p.m. Thus there are included morning, noon and evening programming interests reaching almost every type of audience.

WIRE executives, in addition to continuous planning on the Kingan-sponsored shows, also have worked out a plan which aids the sponsor in similarly direct but unpaid for ways. Kingan products are sampled and displayed on the station's *S'prize Party*.

Five years of carefully planned growth have resulted in broadcast maturity for Kingan and a "KING-size" account for WIRE.

## CBS SET GAIN

### Ads Stimulate Sales

TV SET sales of CBS-Columbia Inc., manufacturing subsidiary of CBS, have jumped 100% in the six months since the company launched its expanded advertising and promotion campaign, which includes intensified use of radio spot commercials plus the firm's regular use of radio and other media, President David H. Cogan reported last week.

Mr. Cogan said that in key TV station markets the company is spending about \$250,000 during the final quarter of 1952 for radio spots and special newspaper ads using the names of dealers individually or in groups according to area. This, he said, is aside from regular dealer cooperative advertising and CBS-Columbia's overall national campaign. Latter includes sponsorship of *Doris Day Show* on CBS Radio (Tues., 10:05-30 p.m. EST).

Gerald Light, CBS-Columbia advertising manager, said the company "is spending a much greater percentage of its total sales volume on advertising than any other company in the industry" and will "continue to do so."

## WISN Asks Review

WISN Milwaukee, Hearst Corp. outlet, petitioned FCC last week to reconsider its mid-November memorandum opinion and order denying the station's petitions for immediate grant of the long-pending vhf Ch. 10 application of WISN and to review the Sixth Report and Order decision to reserve Ch. 10 for educational use there [B•T, Nov. 17, June 30, 23]. WISN contended the Commission failed to "distinguish between licensing proceedings and rule-making proceedings so far as the rights of parties are involved."