

SCHARFELD QUESTIONS HEARING METHODS

New procedures of FCC doubted by chairman of ABA committee on communications.

GRAVE doubts that the FCC's new hearing procedures [B•T, July 19] will work out satisfactorily were expressed last week by Arthur W. Scharfeld, chairman of the Committee on Communications, Administrative Law Section, American Bar Assn.



MR. SCHARFELD

In a last minute supplement to his 31-page yearly report, Mr. Scharfeld, senior member of the Washington law firm of Scharfeld, Jones & Baron, termed certain factors in the new hearing methods "a retreat to a position further back than that taken prior to the establishment of the points of reliance system." He said that the new rules do not meet the full requirements of Sec. 309 of the Communications Act or the aim of the President's Conference on Administrative Procedure.

The FCC's new hearing procedures call for a written affirmative case and eliminate the "points of reliance" requirement which has caused a lot of contention.

In discussing the new written presentation for direct examination, Mr. Scharfeld called attention to the Commission's qualification that oral examination will be permitted to "explain" the direct testimony. This, Mr. Scharfeld contended, is a loophole which will cause contests on what is an "explanation" as against its "amplification." The Commission specifically ruled out oral "amplification" of written presentations.

Written presentations, Mr. Scharfeld said, resulted in the loss of the creditability factor and the appearance and presentation judgments possible only with personal testimony. It could result, he said, in "canned" testimony and the substitution of literary talent for knowledge of the principals.

Mr. Scharfeld also felt that the lack of a

requirement for specification and particularization in advance of hearings will permit surprise testimony "with consequent unfairness as well as delays . . ."

The bulk of Mr. Scharfeld's report is a discussion of Commission actions during the past year, with significant emphasis on purported inconsistencies.

The Commission has gone too far in permitting competing media to become "parties in interest" in protest cases, Mr. Scharfeld said. He also said the Commission has been inconsistent in granting standing as a protestant to one party who did not meet the requirements of spelling out the facts and charges relied on with specificity, yet denying it to another party which did meet that criterion. Mr. Scharfeld also questioned the legality of oral argument on protests rather than full "evidentiary" hearings. Maybe the Commission is seeking to minimize the impact of a protest on the early establishment of tv service, Mr. Scharfeld suggested, and then added:

"To minimize, however, is also to nullify; what Congress giveth, the Commission taketh away."

EDUCATIONAL TV GRANTED AT TULSA

THE 32nd noncommercial educational tv grant was issued by the FCC last week to Oklahoma Educational Tv Authority for vhf ch. 11 at Tulsa. This is the second noncommercial educational grant in as many weeks.

The new tv station will operate with effective radiated power of 75.9 kw visual and 45.7 kw aural with antenna height above average terrain of 1,270 ft. The application disclosed that the grantee proposes to lease its transmitter site from vhf ch. 6 KOTV (TV) Tulsa.

Foundation Quiz Under New Attack

A SPECIAL House Committee which has ground to a stop in its investigations of tax-exempt foundations ran into new criticism that the special group itself be investigated.

Rep. Jacob K. Javits (R-N. Y.) last week proposed that the House Rules Committee investigate the special group headed by Rep. Carroll Reece (R-Tenn.) Rep. Reece has charged the Ford Foundation, which finances the Tv-Radio Workshop, of appropriating \$15 million "to 'investigate' the investigating powers of Congress." Mr. Reece's committee also had been considering taking testimony from the H. L. Hunt-financed Facts Forum, producer of several radio-tv shows [B•T, June 7, May 31, 17]. The committee ended its public hearings after a series of stormy sessions.

If Rep. Javits' proposal is approved, it would call on the Rules Committee to recommend probing the Reece Committee.

Meanwhile, a proposal by Sen. Pat McCarran (D-Nev.) affecting foundations was killed last week by a Senate and House joint conference committee.

Sen. McCarran's amendment adopted July 1 as an amendment to the omnibus tax reform bill, would have ended the tax-free status of foundations which contributed to "subversive" organizations or their members.

Foundations had argued that inadvertent

violations of this ban could not have been avoided.

Paul G. Hoffman, board chairman of the Fund for the Republic Inc., set up as a separate operation by the Ford Foundation and against which Rep. Reece's remarks were directed, last week denied the charges saying the Fund is completely independent of the Ford Foundation.

Ex-Sen. Moody Dies; Was Radio-Tv Moderator

FORMER radio-tv forum moderator and ex-U. S. Senator Blair Moody, Michigan Democrat, died last Wednesday at University Hospital, Ann Arbor, Mich. He was 52. Mr. Moody, who was to resume his campaign for the Democratic senatorial nomination, planned to run against Sen. Homer E. Ferguson (R-Mich.) in November. Only a few hours before his death, Mr. Moody's campaign headquarters had issued a statement reporting he was recuperating from an attack of virus pneumonia.

Before being appointed in 1951 to the Senate by Gov. G. Mennen Williams, to fill the unexpired term of the late Sen. Arthur H. Vandenberg, Mr. Moody moderated for six years a radio-tv program, *Meet Your Congress*. He was Washington correspondent for the *Detroit News* for 18 years before entering the Senate. He was defeated in 1952 for election to the Senate in his own right by Charles E. Potter (R-Mich.), then a House member and currently chairman of the Senate Communications Subcommittee. Mr. Moody held a 10% minority interest in Independent Tv Inc., applicant for a tv ch. 6 outlet at Whitefish Bay, Wis. He also was 14% stockholder in Independent Newspapers Co. and 10% in Leader Newspapers Inc.

Fetzer Answers FCC On Lincoln Transfer

TRANSFER of ch. 12 facilities of KOLN-TV Lincoln, Neb., from John E. Fetzer interests to a trustee, with eventual operation by the U. of Nebraska, does not involve violation of FCC's duopoly rule, the Commission has been informed in letters answering FCC's McFarland letter indicating a hearing on the bid may be necessary [B•T, May 17, March 29].

Mr. Fetzer, whose purchase of ch. 10 KFOR-TV Lincoln was approved by FCC upon disposition of the ch. 12 facilities, told the Commission the purpose of first transferring the ch. 12 facilities to a trustee was to expedite a switch of KOLN-TV to ch. 10 since the university was not prepared to assume direct ownership at this time.

He indicated that although his firm will provide for operation of the transmitter and supply studio facilities and other services, actual programming functions and responsibility will be assumed by the trustee in cooperation with the U. of Nebraska. Mr. Fetzer said he would not permit himself to be put in any position to influence policy or programming.

His explanation was affirmed by the trustee, Byron J. Dunn, a local banker, and by Clifford M. Hardin, chancellor of the school. Mr. Hardin wrote FCC that the school's board of regents has approved appointment of a television committee to consult and cooperate with Mr. Dunn in program operation of the station, providing student and faculty services as well as other school facilities.

Sponsor Apologizes

CAPITAL Transit Co., Washington, D. C., which sponsored news commentator Drew Pearson on WTOP-TV Washington, has apologized to Sens. Styles Bridges (R-N. H.) and Herman Welker (R-Idaho) for statements made about the two Senators during Mr. Pearson's June 20 telecast. Letters of apology from the firm's president, J. A. B. Broadwater, placed in the *Congressional Record* last week by Sen. Barry M. Goldwater (R-Ariz.), said Mr. Pearson's statements did not reflect the views of Capital Transit and that the firm does not intend to renew its contract with the Washington commentator.