Calendar No. 1742

70th Congress, 2d Session | SENATE | Report No. 1715

FEDERAL RADIO COMMISSION

FEBRUARY 11, 1929.—Ordered to be printed

Mr. DILL of Washington, from the Committee on Interstate Commerce, submitted the following

REPORT

[To accompany S. 4937]

Your committee on Interstate Commerce, to whom was referred S. 4937, entitled "A bill continuing the powers and authority of the Federal Radio Commission under the radio act of 1927, and for other purposes," having held hearings on the bill and having had it under consideration, hereby reports the same to the Senate with the recommendation that the bill do pass.

This bill is similar to the bill passed a year ago which continued the original jurisdictional powers of the commission until March 16, 1929. By this bill those powers are continued until March 16, 1930. It continues also the period during which the members of the commission shall receive their annual salaries for another year, that is, until March 16, 1930.

The bill also places the same short limitations upon the length of time covered by licenses and authorizes the commission to pay general counsel a salary of $10,000 per annum, and to pay not to exceed three assistants $7,500 per annum.

Unless this legislation is enacted, the original jurisdiction now and heretofore exercised by the commission will lapse and the commission will become in name an appellate body. That would mean that the duties of the commission would become uncertain and irregular instead of so constant and so pressing as they now are that they occupy all of the attention of all of the commission all of the time.

The formulation of regulations not yet made is a most important duty for the commission to perform. There should be regulations to cover the location of stations, the kind of apparatus to be used, privileges and restrictions as to chain broadcasting, proceedings covering revocation of licenses and the use of stations by candidates for public office.

Regulations are also needed to cover amateur, experimental, and ship licenses and to cover hearings before the commission. All of this work would be transferred to some subordinate official with civil-service clerks in the Department of Commerce, when it should be performed by men who have been studying these subjects continuously and who have had enough experience in connection with them to make the kind of regulations that will be helpful and fair to all

The commission has been so busy with reallocation of stations in the broadcasting band and with consideration of new problems arising from applications for different uses of short waves, transcontinental, interoceanic, and international, that the members have been unable to perform the duties just mentioned. With the allocation of broadcasting stations reasonably complete, it is believed the members of the commission will be able to take up these unfinished tasks and complete most of them within the coming year.

There is still a large number of hearings pending to be held in connection with broadcasting applications and complaints as to actions already performed by the commission. In addition to this, the commission must consider the questions arising as to television and also complete its negotiations with Canada as to the use of the short-wave lengths. In addition to this, it should be remembered that the commission has only within the past few months been able to set up a working organization. Its filing and docketing system is interlocked and connected, but should this bill not pass, the whole system would necessarily have to be reorganized.

Practically everything the Secretary of Commerce would be empowered to do, could and would be appealed to the commission. Changes of any kind in the allocation of time, power or wave lengths to broadcasting stations would displease somebody and appeals would follow. This would necessitate practically a duplication of much of the work already done by the commission. Thus it appears the commission would be required to do over again almost everything the subordinates of the Secretary of Commerce might do, except the performance of the mere administrative acts that can be performed by clerks under the commission as well as under the Secretary of Commerce.

After the problems of a judicial and legislative nature confronting the commission have been passed upon and the entire policy of the commission determined in all fields of radio service, this would not be true to such a great extent as at present.

The continuation of limitation of 90 days for the period for licenses for broadcasting stations and for one year, for other stations, is highly desirable in order that the commission may be free to allocate frequencies, time of operation, and power from time to time, as new developments in the radio art make advisable.

When Congress passed the radio act of 1927, it was intended that attorneys for the commission should not be included under the classification act or the civil service, but the Comptroller General has ruled otherwise. As a result, the commission can not pay more than $6,500 for counsel to handle its legal business. Cases are pending in the courts that raise legal questions as to the right of Congress to legislate in a manner that will effectually protect the use of radio for the future.

Litigants are claiming vested rights in the use of frequencies, time on the air, and power, because of prior appropriation or use. If these contentions should prevail, all effective regulation by Congress would be gone. These litigants are employing the most eminent and able attorneys in the country to prove these claims. Your committee believes it is imperative that the commission be given authority to employ the best counsel available at reasonable salaries and respectfully urges the great importance of this provision.

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Continuing Federal Radio Commission to March 16, 1930

HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE COMMERCE UNITED STATES SENATE

SEVENTIETH CONGRESS

SECOND SESSION

ON

S. 4937

A BILL CONTINUING THE POWERS AND AUTHORITY OF THE FEDERAL RADIO COMMISSION UNDER THE RADIO ACT OF 1927, AND FOR OTHER PURPOSES

FEBRUARY 4, 5, 6, 7, and 8, 1929

Printed for the use of the Committee on Interstate Commerce

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1929

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CONTINUING FEDERAL RADIO COMMISSION TO MARCH 16, 1930

MONDAY, FEBRUARY 4, 1929

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE COMMERCE,
Washington, D. C.

The committee met, pursuant to call of the chairman, at 10.30 o'clock a. m., Monday, February 4, 1929, in the committee room, Capitol, Senator James E. Watson (chairman) presiding.

Present: Senators Watson (chairman), Couzens, Fess, Goff, Sackett, Glenn, Smith, Dill, Hawes, Black, and Wagner.

Also present: Commissioners O. H. Caldwell and Harold A. Lafount, members of the Federal Radio Commission.

The CHAIRMAN. We have a quorum present. The committee will be in order. We have met for the purpose of considering Senate bill 4937, to continue the powers and authority of the Federal Radio Commission, which bill is as follows:

A BILL Continuing the powers and authority of the Federal Radio Commission under the radio act of 1927, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all the powers and authority vested in the Federal Radio Commission by the Radio act of 1927, approved February 23, 1927, shall continue to be vested in and exercised by the commission until March 16, 1930; and wherever any reference is made in such act to the period of one year after the first meeting of the commission, such reference shall be held to mean the period of three years after the first meeting of the commission.

SEC. 2. The period during which the members of the commission shall receive compensation at the rate of $10,000 per annum is hereby extended until March 16, 1930.

SEC. 3. Prior to January 1, 1931, the licensing authority shall grant no license or renewal of license under the radio act of 1927 for a broadcasting station for a period to exceed three months and no license or renewal of license for any other class of station for a period to exceed one year.

SEC. 4. The commission is authorized to appoint a general counsel and pay him a salary of $10,000 per annum and not to exceed three assistants to such general counsel, at salaries of $7,500 each per annum. It may appoint such other legal assistants as it may from time to time find necessary for the proper performance of its duties and as from time to time may be appropriated for by Congress.

The CHAIRMAN. This committee determined that we would not have extensive hearings, and that we would confine ourselves very largely to the consideration of the bill. At the request of the committee we asked one of the members of the commission, whomsoever the commission might designate, to come up to-day and answer whatever questions the members of the committee might see fit to ask. I notice that Commissioners Caldwell and Lafount are here. Which of you gentlemen shall it be?

Commissioner CALDWELL. Commissioner Lafount.

The CHAIRMAN. Mr. Lafount. All right, you may sit down opposite the reporter, Mr. Lafount.

STATEMENT OF HON. HAROLD A. LAFOUNT, COMMISSIONER, FEDERAL RADIO COMMISSION

The CHAIRMAN. How long have you been on the commission, Mr. Lafount?

Commissioner LAFOUNT. Fifteen months.

The CHAIRMAN. As a member of the commission are you of the opinion that the life of this commission should be continued another year?

Commissioner LAFOUNT. Yes, sir; I am.

The CHAIRMAN. What is your reason for that?

Commissioner LAFOUNT. Particularly because I see no better place to put the work, the administrative part of the work which the commission is now doing, their work as an administrative body. I do not know just where else it could be handled successfully at this time. If the present bill were not passed and the act remained as it now exists, the Department of Commerce actually would take the administration over. The Department of Commerce, I believe, is not equipped for this work, but of course could take over the entire organization of the Radio Commission and handle it perhaps fairly well. But even so the commission would remain as an appellate body, in which capacity they will perhaps be required to sit possibly 75 per cent of their time, and therefore they might just as well be supervising this other work.

Senator DILL. Has not the Department of Commerce at this time men of experience in dealing with this whole situation to whom this could be turned over and who would be able to handle it effectively?

Commissioner LAFOUNT. Well, of course, they have Mr. W. D. Terrell there, who is very competent, very efficient, but very fully occupied with the work that he is now doing. He certainly would be capable, but perhaps rather over-worked.

The CHAIRMAN. Is there anybody in the Department of Commerce now that does anything with reference to radio?

Commissioner LAFOUNT. Oh, yes. Yes, the Department of Commerce has quite an organization, in its Radio Division.

The CHAIRMAN. For what purpose?

Commissioner LAFOUNT. They do all the patrolling, the police work.

Senator DILL. All the supervisors in the various sections are connected with that department.

Commissioner LAFOUNT. All the supervisors are under their charge.

Senator COUZENS. Is there any duplication of work as the result of this?

Commissioner LAFOUNT. No, sir; there is not. A line is very sharply and distinctly drawn between the two, and there is no duplication.

Senator COUZENS. Any conflict there?

Commissioner LAFOUNT. No, sir; no conflict.

Senator DILL. They make their reports to the Department of Commerce, and those reports are then turned over to the commission, are they not?

Commissioner LAFOUNT. Yes.

Senator DILL. That is, they check up all stations and their reports are turned in to the department, and then sent to the commission?

Commissioner LAFOUNT. Yes.

The CHAIRMAN. What authority or supervision have you over the operation in so far as the Department of Commerce men are concerned?

Commissioner LAFOUNT. None at all.

The CHAIRMAN. They are entirely independent of you and you independent of them?

Commissioner LAFOUNT. Yes. But we work well together.

The CHAIRMAN. Does that result in any confusion?

Commissioner LAFOUNT. No; not at all.

The CHAIRMAN. Who is the liaison officer that cooperates with or that communicates with both of you?

Commissioner LAFOUNT. Mr. Terrell for the Department of Commerce.

The CHAIRMAN. Mr. Terrell?

Commissioner LAFOUNT. Yes, sir. He is in constant communication with the commissioners, calls on us very frequently, and in respect of any matters pertaining to their part of the work, or even ours, we call on Mr. Terrell because of his experience before the creation of the commission, his knowledge of the whole situation. He is very helpful.

The CHAIRMAN. You feel that you have a good, systematic working organization, Mr. Lafount?

Commissioner LAFOUNT. As good as we can have—that is, as a temporary affair—Senator. It is a little hard for me to conscientiously say that it is as systematic as I wish it could be. But you will realize that to employ attorneys for 6 or 8 or 10 months is a difficult task. The kind of attorney that we need does not want to leave his profession or his own business for that length of time. And to employ experts for a few months is rather difficult. They do not want to leave their present occupation or their present employment and work for a commission when we say to them, "Now we go out of existence on the 15th of March, so that is as much as we can offer you." Therefore we are obliged to take men that we can get, but we have been very successful in getting experts lent us from the Bureau of Standards, from the Army, and from the Navy. That has helped us very materially, and we have had, as a matter of fact, as good experts, just as fine, capable men as there are in the world. There are none better.

The CHAIRMAN. You work right along side by side with the Navy Department?

Commissioner LAFOUNT. Yes, sir. That is, when I say with the Navy, Senators, understand, they detailed men who are doubtless in constant touch with them, but certainly in constant touch with us, devoting all of their time; such men have been very, very efficient and loyal.

The CHAIRMAN. Is there any duplication of work there between you and the Navy?

Commissioner LAFOUNT. No, sir.

The CHAIRMAN. Those are entirely distinct, separate units of operation?

Commissioner LAFOUNT. Yes, sir.

The CHAIRMAN. And of authority?

Commissioner LAFOUNT. Yes, sir.

The CHAIRMAN. Do they conflict with you in any wise?

Commissioner LAFOUNT. Not in any way.

The CHAIRMAN. They do not conflict with you in any wise in any operations?

Commissioner LAFOUNT. No, sir; they do not.

The CHAIRMAN. Nor does the Army?

Commissioner LAFOUNT. No, sir.

Senator COUZENS. How much of this staff that you now have would you require if you continued only as a commission on appeals?

Commissioner LAFOUNT. It would be reduced approximately 50 per cent.

Senator COUZENS. In other words, 50 per cent of your staff would continue to stay with you if you only remained as an appellate body?

Commissioner LAFOUNT. Yes.

Senator DILL. Do you think that there is any particular change in any of the allocations of power or station assignments that are already made that could be made by an official in the Department of Commerce if it would be turned over to him that would not be appealed?

Commissioner LAFOUNT. Very few, if any.

Senator DILL. Is it not a fact that any attempted change of any kind is going to arouse opposition somewhere?

Commissioner LAFOUNT. Yes, sir.

Senator DILL. So that practically any changes that might be made would immediately be appealed to the commission?

Commissioner LAFOUNT. I believe that is true.

Senator DILL. Because of the appellate power being so very broad appeals from the action of the Department of Commerce would be made to the commission with respect to practically any change that is made?

Commissioner LAFOUNT. That is correct, yes, sir.

The CHAIRMAN. Mr. Lafount, are you satisfied with the last allocation as made by the commission?

Commissioner LAFOUNT. Senator, may I explain that there is an allocation plan with which I am perfectly satisfied, and then an allocation—an allocation of stations. May I compare them and illustrate the situation in this way? The allocation plan may be compared with perhaps an electric sign that is all built and soldered and framed up and wired ready to go. That is the plan. And then the allocation of stations is the inserting of the electric globes in there that produce the effect that you want. Now we may have some of those globes in the wrong places, but they only have to be taken out here and put in there. They can be switched around. But the allocation plan itself, the system, the structure, the building, is, in my opinion, a very, very great improvement over what we have had. In fact, as far as our knowledge of the art is concerned at the present minute it is as good as we could expect unless we cleared a few more channels, which probably would not be wise to do at this time, but indications are that perhaps we would be able to reach more people with more cleared channels.

The CHAIRMAN. What is the specific objection to making say five—an arbitrary figure—five more cleared channels right now?

Commissioner LAFOUNT. Only on the part I think, of the stations using 500 to 1,000 watts power which realize that if that were done some of them would have to be crowded onto the other channels left for that class of service.

Senator DILL. In other words, these stations now on the regional channels, would be crowded down into channels which already are quite crowded?

Commissioner LAFOUNT. Senator, they are not crowded. They are not as crowded as they were previously. When I say that, understand, this is what I mean. Previously we had a 5,000 or a 50,000 watt station and a 1,000-watt and a 500 or three or four 500 watt stations all on one channel—eminently unfair to the smaller stations with that high power being transmitted on the same frequency. Eminently unfair. Now we have it all unified. A high-powered station is on the channel alone. The 500 and 1,000 watt stations are on channels on which they are only competing with each other. The difference in power between 1,000 and 500 watts is not so great, and they can compete on the same channel. And then we take a number of the 100-watt and smaller stations and put those on a channel, because one of those small stations only covers a small territory, so they really do not affect each other much. We can duplicate them many times. But in clearing up and taking these high-powered stations off the channel and leaving now, only say, two or three or four 500 or 1,000 watt stations, we find their efficiency has been increased so much that we have to separate them by a greater distance than we had anticipated, because where they used to reach out only 40 or 50 miles their programs are now traveling a few hundred miles. So that when we crowd them up, naturally enough, competing one against another, all of equal power, we must try to eliminate interference by a division of time. Too much duplication or the simultaneous operation of 500-watt stations and 1,000-watt stations can be, perhaps, eliminated by dividing the time.

The CHAIRMAN. How many stations have you operating all together?

Commissioner LAFOUNT. About 630.

The CHAIRMAN. How many 50,000-watt stations are operating?

Commissioner LAFOUNT. Three, I think, Senator.

The CHAIRMAN. Where are they?

Commissioner LAFOUNT. In New York.

The CHAIRMAN. All three of them in New York?

Commissioner LAFOUNT. We have one in Ohio. Two in New York and one in Ohio.

Senator DILL. Well, is not the Chicago station operating now, WENR, on 50,000 watts?

Commissioner LAFOUNT. Oh, yes; but it is only on a very short time. That is right; it is now permitted to use 50,000 watts for one-seventh time. That is right, Senator.

The CHAIRMAN. I thought there were four of them.

Commissioner LAFOUNT. Yes; that is right.

Senator BLACK. What is the one in Chicago?

Commissioner LAFOUNT. WENR.

Senator BLACK. Who is that?

Commissioner LAFOUNT. That is the Commonwealth Edison Co., known as the Great Lakes Broadcasting Co.

Senator DILL. Well, the list as I have it here, given me by the commission, is: WEAF, 50,000 watts; WJZ, 50,000 watts; WGY, Schenectady, 50,000 watts; KDKA, Pittsburgh, 50,000 watts; and WLW, 50,000 watts. That makes five stations.

Commissioner LAFOUNT. I thought WJZ was 30,000 watts. That is my recollection, Senator.

Senator DILL. Yes; I am wrong.

The CHAIRMAN. Yes; that is 30,000; the way it was given to me.

Senator DILL. That is right. I read it wrong. It is 30,000 watts.

The CHAIRMAN. Yes. Are those 50,000-watt stations desirable, in your opinion, or could that power be reduced without affecting them seriously or affecting their usefulness seriously for the general service?

Commissioner LAFOUNT. At the present state in the development of the art and our present knowledge of it may I say that my belief is, based upon the judgment of all radio experts that I have yet talked to, that they are desirable. I have never found one that disagreed. My judgment is contrary, I realize, to some opinions, but my personal judgment is that they are rendering a greater service at 50,000 watts than they would if they were reduced, and that there is no greater interference resulting from their operation than if they were operating as 5,000 or 10,000 watt stations. Another thing, Senator; we only have four. We are watching them carefully to-day, and if course it may in actual practice not work out as we have anticipated. In that event we shall have to change our minds. But basing it upon the experience and knowledge of the engineers at the present time, we say that it is our firm conviction—I mean now a majority of the commission, four out of five; I believe our chairman does not agree with that—but my personal opinion is that they are rendering a greater service with the increased power.

The CHAIRMAN. Is that power essential to this broadcasting with the chain? It hasn't anything to do with that, has it?

Commissioner LAFOUNT. With broadcasting?

The CHAIRMAN. Yes.

Senator DILL. With the general broadcasting?

The CHAIRMAN. Yes, with the general broadcasting; you do not have to have a 50,000-watter for chain broadcasting?

Commissioner LAFOUNT. It has nothing to do with chain broadcasting.

The CHAIRMAN. Then what is their particular field that could not be occupied by a broadcasting station with less power?

Commissioner LAFOUNT. It can be. You can with less power serve a great many localities. But of course you will serve only a small area around each broadcasting station. Senator, may I explain——

The CHAIRMAN. How far does the impulse carry from a 50,000-watt station under ordinary conditions?

Commissioner LAFOUNT. The audibility?

The CHAIRMAN. The audibility.

Commissioner LAFOUNT. Under ordinary conditions probably 250 miles.

The CHAIRMAN. Not farther than that?

Commissioner LAFOUNT. Not to be consistent every day in the year and every hour of the day and under all circumstances. At some times, Senator, probably 50 per cent of the time, it will be

heard at a much greater distance, and 30 per cent of the time it may be heard clear across the continent. But that was what I was going to suggest; it depends upon the character of service that you want.

Senator DILL. But there is not any need for a lot of 50,000 watt stations broadcasting chain programs?

Commissioner LAFOUNT. No, sir.

Senator SMITH. If the audibility is 250 miles how far does the interference go?

Commissioner LAFOUNT. Across the continent.

Senator SMITH. Well, that is rather a poor percentage.

Commissioner LAFOUNT. Yes, it is. The most wasteful thing that we know of is radio. We are trying——

Senator SMITH. I mean, that is a particularly wasteful percentage of the air.

Commissioner LAFOUNT. Yes; it is.

Senator SMITH. When the audibility is only 250 miles average and the interference is 3,000 miles.

Commissioner LAFOUNT. But the unfortunate part is, Senator, that a 50,000-watt station in New York City operating on a clear channel, or alone on that one channel, will serve 250 miles all the time consistently, but if you put a 500-watt station, just a small station, on the same channel in San Francisco, then the efficiency of that high-powered station would be reduced to about 25 or 35 miles from its transmitter.

Senator DILL. How is that? Do you mean that a 500-watt station in San Francisco will affect the hearing in New York?

Commissioner LAFOUNT. Well, not right there, it will not carry to New York, but it will carry to within 35 miles of a high-powered station on the same channel.

Senator DILL. On what kind of sets?

Commissioner LAFOUNT. It will cause a heterodyne.

Senator DILL. What percentage of radio sets east of the Alleghenies will hear a 500-watt station on the Pacific coast.

Commissioner LAFOUNT. They will not hear the station at all, but they will hear its heterodyne; they hear its whistle caused by the carrier wave.

Senator DILL. Do I understand you to say that a 500-watt station on the Pacific coast would cause interference 25 or 50 miles from a 50,000-watt station in New York?

Commissioner LAFOUNT. There would be a whistle; yes, sir.

Senator DILL. I do not think experience will bear that out.

Commissioner LAFOUNT. May I say to the Senator from Washington that a cleared channel has been allocated to the use of the State of Washington, it is assigned to station KJR at Seattle. On a clear channel they are heard certain nights of the winter as far east as the Mississippi River.

Senator DILL. Yes.

Commissioner LAFOUNT. A few nights ago—I think to be exact, the 21st of January—we permitted a station in Chicago, the Labor station, to operate simultaneously with that station for the reason that they had a special program and wanted to operate until 8 o'clock p. m. only. KJR in Seattle reports that their program was absolutely ruined throughout the State of Oregon, throughout the entire

eastern part of Oregon, and that it was only satisfactory for a very short distance around Seattle.

Senator DILL. Well, of course, the fact of the matter is that eastern Oregon can not hear Seattle with near the ease that they can hear Los Angeles and San Francisco. I live in Spokane, and I know. And I know that 90 per cent of the sets in eastern Washington will pick up Los Angeles and San Francisco far easier than they will pick up Seattle. Now, that is a fact that exists in the radio ether, and the engineers do not know why that is. I do not attempt to say why it is, but I know it is a fact.

The CHAIRMAN. They know it is a fact, but do not understand it.

Senator DILL. The radio engineer sits down and measures the distance and says: "This will go so and so." But when you get down to the fact of the matter, in eastern Washington you do not hear Seattle unless you have a big set. That is true of eastern Washington and it is also true of other parts of the country. It seems to me that one of the greatest needs and one of the most important things for the Radio Commission is to have a radio map made from experience and not from theory. You can not tell anything about what a station is going to do by sitting down here and looking at a map. You have got to go out in the field.

Senator SMITH. Is that a continuous condition in the radio ether or does it change from time to time?

Senator DILL. I do not know.

Senator SMITH. Exactly.

Senator SACKETT. Is it not true, however, with that particular station which can not be heard in eastern Oregon that it can be heard over in Idaho and Montana, farther away?

Senator DILL. Possibly so.

Senator SACKETT. Can it not be heard over in Idaho and Montana very much better than in eastern Washington?

Senator DILL. That I do not know. If so, that is one of the freaks of radio.

Senator SACKETT. Well, it is not a freak. You have the mountains close by there, and the waves go high over the mountains, and therefore, following that high curve, the reception at a greater distance is better. You do not get the sharp curves over the mountain, but you do get the long curve over a greater distance.

Senator DILL. Of course KJR is a 5,000-watt station.

Senator COUZENS. What was the power of the Chicago station that you permitted to go on until 8 o'clock?

Commissioner LAFOUNT. 5,000 watts.

Senator SMITH. It interfered with the station in Washington, interfered to such an extent that it practically destroyed their program?

Commissioner LAFOUNT. Over a large area, Senator, yes. That is the trouble. By putting two stations on the same frequency we are ruining radio for the rural listener. We make a heterodyne for him on a radius of perhaps 50 miles from the broadcasting station. May I say the result is a whistle and not a program. And that is the unfortunate thing about putting two stations on one frequency at this time.

Senator COUZENS. We started the discussion a while ago about your statement that a 500-watt station on the Pacific coast interfered with a 50,000-watt station in New York up to within 35 miles

of New York. Have you had that experience actually, or is that theoretically so?

Commissioner LAFOUNT. I am not sure that we have had an actual experience, but we have had experiences with different powered stations which would indicate that, and the results of such experiences are available. We can figure out very easily approximately the service area that a 50,000-watt station would have. And it certainly will vary, Senator. But may I say again, the 500-watt station, WRC in Washington, prior to November the 11th destroyed reception from KFI in Los Angeles when they were operating simultaneously during darkness. KFI only got out without a heterodyne a very short distance. We are having the same trouble now. We can note it on all of these channels where we have two stations. You can go up into Seattle or into Spokane to-day any time after 2 o'clock this afternoon and hear Salt Lake City, a thousand miles away. We did not know that we could do that before we cleared up the air as much as it is cleared up now. And the efficiency of these stations has been materially increased, materially increased.

Senator DILL. Mr. Lafount, how many 50,000-watt stations have been authorized in addition to those now operating, do you know?

Commissioner LAFOUNT. I am sorry I do not know exactly. I think four others.

Senator DILL. For instance, I know KFI and WENR. What others?

The CHAIRMAN. Can you answer that, Mr. Caldwell?

Commissioner CALDWELL. There are four or five more.

Commissioner LAFOUNT. Yes.

The CHAIRMAN. Where are they?

Commissioner CALDWELL. One in the South, and KMOX, at St. Louis.

Commissioner LAFOUNT. KFI, Los Angeles.

Senator DILL. Yes.

Commissioner LAFOUNT. And the new station in Los Angeles KPWF.

Commissioner CALDWELL. A construction permit for a station in Dallas, Tex.

The CHAIRMAN. Do you mean two 50,000-watt power stations in Los Angeles?

Commissioner LAFOUNT. Yes, sir. List of 50-kilowatt stations operating, WEAF, WENR, WGY, WLW, KDKA. List of construction permits for 50-kilowatt stations authorized: WBAP, KFI, KMOX, KPWF.

Senator DILL. I notice in looking over this allocation that every 50,000-watt station is separated from every other 50,000-watt station by at least 20 kilocycles. Yet the engineers tell you that there will not be interference. Has the commission ever tried two 50,000-watt stations on adjoining channels?

Commissioner LAFOUNT. No, sir; we have not. Senator, we have to separate them not only by kilocycle separation but geographically. We try to separate them as far as we can.

Senator DILL. Which would rather indicate that the engineers' theory does not work?

Commissioner LAFOUNT. No, sir; we have not felt that we should move powerful stations at a tremendous cost just to test that out.

Senator DILL. Well, I notice that they never have allowed two 50,000-watt stations on adjoining channels.

Commissioner LAFOUNT. Well, of course, we have only had three or four.

Senator DILL. Let me ask you this: If you give one cleared channel a 50,000-watt station, what reason have you to refuse every other cleared channel a station of 50,000-watt power?

Commissioner LAFOUNT. Not any.

Senator DILL. Thus we are destined to get forty 50,000-watt stations?

Commissioner LAFOUNT. Except that the commission's order limits the power to 25,000 watts, with an additional 25,000 watts experimentally, which would mean a total of 50,000 watts.

Senator DILL. Well, I come back to the question: Why should one station on a cleared channel be given 50,000 watts and not every other station on a cleared channel if they do not interfere outside?

Commissioner LAFOUNT. No reason at all if they are rendering satisfactory service.

Senator DILL. Well, there is nothing then to stop having forty 50,000-watt stations, is there?

Commissioner LAFOUNT. No, sir.

Senator DILL. I do not not see any defense the commission has for giving one station 50,000 watts on the theory that it does not interfere 10 kilocycles on each side, and not give it to everybody else.

Commissioner LAFOUNT. Except, Senator, that of course there is a lot of difference in the character of programs and the service that is being rendered.

Senator DILL. But if a station is so good as to give it a cleared channel, it is good enough to be heard everywhere that 50-kilowatts will carry it, is it not?

Commissioner LAFOUNT. It should be.

Senator DILL. So that I do not see how the commission has any reason or defense against allowing on the cleared channels forty 50,000-watt stations.

Commissioner LAFOUNT. As I explained to you, Senator, we are watching developments now. We are working on the theory of the engineers, and we believe possibly they are correct, and certainly before we permit such a condition to exist we are going to know definitely that interference will not result, and that is why we have not done that yet; why we are not permitting it.

The CHAIRMAN. What will be the effect if you have forty 50,000-watt stations in the United States?

Commissioner LAFOUNT. Well, as far as we know, they would not interfere with each other. If they were adjoining Canadian-shared channels occupied by 500-watt stations they may interfere with them, and because of that fact we have been slow to permit increased power on those channels that are adjoining Canadian-shared channels. And we are checking up carefully to see whether or not in actual practice the theories of the engineers are correct. They are carefully worked out theories, because we have been operating for a number of years, and we have some very definite information.

Senator SACKETT. Would it not interfere with American 500-watt stations just as well as Canadian?

Commissioner LAFOUNT. Yes, sir; it is those that we are afraid it would interfere with, sir.

Senator SACKETT. If we had forty 50,000-watt stations that would be about all that we could have in the country; would there not then be interference from the 50,000-watt stations if all of the forty were in operation?

Commissioner LAFOUNT. There may be some interference from the high-powered station with the station of low power if they were on an adjoining frequency.

Senator SACKETT. How close?

Commissioner LAFOUNT. Well, the next frequency adjoining.

Senator SACKETT. But not beyond that?

Commissioner LAFOUNT. No.

Senator DILL. That is, if you get far enough away from your broadcasting station. Everybody knows that within an area or zone close to the high-powered station it blankets the dial. Everybody knows that.

Commissioner LAFOUNT. Yes.

Senator SACKETT. You can not get very much more than the 50,000-watt station.

Senator DILL. Within a certain radius.

Senator SACKETT. Within what radius. How far?

Commissioner LAFOUNT. Blanketing?

Senator SACKETT. Yes.

Commissioner LAFOUNT. No; bad blanketing will not occur on an average set over a radius of more than 3 miles. In the case of powerful stations, if they are built out of the city where there are no residences, they interfere with no one. That is, if they are built out in the section where there are practically no residences.

Senator DILL. Well, of course that is again the engineers' theory.

Commissioner LAFOUNT. Well, we are checking that up, Senator.

Senator DILL. Anybody who lives anywhere near a high-powered station and has anything less than an 8-tube set knows that he can not get anything within at least 25 kilocycles on either side of his channel.

Commissioner LAFOUNT. We believe that with the modern equipment, Senator, they are eliminating that to a great extent.

Senator DILL. Well, is it fair for the commission to try to compel everybody to buy a high-priced set in order that you may have 40 high-powered stations in the United States?

Commissioner LAFOUNT. No, sir. I believe that the man with a cheaper set would be benefited more than the high priced.

Senator DILL. He would not if he lived near the station.

Commissioner LAFOUNT. If he was right under the antenna of the high-powered station with a crystal set, that is all he can hear.

Senator DILL. I may say that I introduced a bill to compel the commission to limit stations to 10,000 watts, because I wanted to get this subject up for discussion, but immediately the manufacturers of big radio sets started a propaganda, and I have here some propaganda letters sent out, because they wanted high-powered stations, so as to compel everybody to buy the big sets. They can not hear anything else but those high-powered stations unless they have a high-priced set, if they are within a reasonable distance of the high-powered station. For which I do not blame them, but it shows that the

people will be driven to buy high-priced sets. I think the commission ought to give the little man with the two or three tube set a chance, as well as the big man.

The CHAIRMAN. You think a man ought to be permitted to buy a Ford as well as a Rolls-Royce?

Senator DILL. He ought to be able to get something on his little set. I think that to say that there ought not to be any 50,000-watt stations, as my bill provides, would be too radical.

The CHAIRMAN. Yes; that is too radical.

Senator DILL. But you have to consider the question of the possibility of having forty 50,000-watt stations.

Senator BLACK. I wrote an expert radio man in Alabama to get an idea as to your bill, Senator, and here is what he said [reading]:

> My main reason for objecting to unusually large stations is because they make it very difficult for smaller stations and local stations to perform as they should and as they would like to perform. Furthermore—

And here is the important part—

> increase in power beyond 10,000 watts does not extend materially the service area of a station, but it does add to the burden of the smaller stations, as I have just said.

How far does it extend the service area? Do you know?

Commissioner LAFOUNT. It will not extend its range a great deal, but it extends or improves the signal a great deal. You will get a much clearer and better and more consistent program. That is the object of it.

Senator BLACK. That is all I had.

Senator DILL. Mr. Lafount, what I wanted to get to was this: The commission has made this allocation, and it is clearly not entirely completed or saisfactory. If the commission is allowed to die and become purely an appellate body what will be the situation that will face the Department of Commerce officials?

Commissioner LAFOUNT. They will naturally have to start almost in the dark trying to make the improvements that are necessary, and while we can turn over our records, it will take them several months to acquaint themselves with the situation that we now know. And we find, Senator, in answer to a former question, and along this line, that almost every station is a study and a problem. You may be interested to know that a station in this locality, WRC for instance, does not get out as well on its present frequency, they say, as it did on its former frequency. We find that the characteristics of the station and the service area will change often with the frequency. If they change the location of the station's transmitter from one part of the town to another it changes its characteristics. We find that everything that is done is likely to make some changes, and therefore there is the necessity of checking on absolutely every individual case. There are some things that are fundamentally safe and sound and generally acknowledged as guiding principles, but as a matter of fact we find that practically all others are variable. We have a real study to take up on every station.

Senator DILL. There is one field of work that the commission, as I understand, has not yet finally acted upon, and that is the chain program situation?

Commissioner LAFOUNT. Yes, sir.

Senator DILL. What is the status of the chain program situation?

Commissioner LAFOUNT. From what standpoint, Senator?

Senator DILL. Well, from the standpoint of regulating it so that people will have a chance to hear something besides chain programs.

Commissioner LAFOUNT. We passed an order which would regulate chain programs. It prohibited the duplicating of programs on cleared channels by stations closer than 300 miles, and then immediately we found that that would mean that the people in Philadelphia could not hear New York, because the New York station is not heard well in Philadelphia. And that deprived millions of people of the opportunity of hearing a New York program. And we found that that condition existed in other places. We found that it would work splendidly, perhaps, in the West and the Middle West, but here in the Eastern States it would not, and that in some parts of the Middle West it would not. People protested and said that they wanted the New York programs. They objected to listening to Sallie Jones sing the same song every night in the local station, and they wanted to get something different. We found that the protest was greater from people who were afraid we were going to limit chain broadcasting than it was or has been because of duplication of chain broadcasting.

Senator DILL. You have this problem; you have forty cleared channels and on nearly all of them you have chain programs.

Commissioner LAFOUNT. On a number of them we have. But of course, Senator, only for a few hours a day.

Senator DILL. Well, those are the choice hours, however, are they not?

Commissioner LAFOUNT. They are generally conceded to be the choice hours, although each year we find that the daylight hours are becoming almost as valuable. And may I say this, that in my opinion it is the fault of the broadcaster himself. The stations are all owned by companies or individuals, that is, with the exception of the three stations that belong to or are operated by the National Broadcasting Company. All the other stations are owned by independent individuals or by individual companies. Now if a broadcasting company or station at any time wants to buy the New York program that is their business. If they find that the people do not want it, if they are duplicating the program rendered by a station in a near-by town, that is their fault. They certainly then are not operating in the public interest if they do that. That is something that the chain can not regulate. That is up to the purchaser. The chain, broadcasting in New York, is the wholesaler. It offers for sale these programs, and the retailer comes and buys such programs as he may choose, when he wants them, at any hour. He does not have to take them during the night. He can take them during the day. He can have them between 6 and 7, or 7 and 8, or he can present local programs then, and if he does not, that is his fault.

The CHAIRMAN. May I ask a question? Is there or is there not an ever-increasing desire throughout the whole country to hear the chain program?

Commissioner LAFOUNT. My information is that there is. I know the cities that were not on the chain have been urging the commission to encourage the National Broadcasting Co. or the Columbia Broadcasting System, which, of course we can not do, but they write

and ask us if that can be done. Very recently Senator Borah asked what help the commission could render and we told him none, and I am told that he immediately went to the broadcasting companies and is now urging them to provide a wire for Boise, Idaho, so that New York programs may be rendered there also.

Senator DILL. Now, Mr. Lafount, is that not the best proof that could be given of the fact that the high-powered cleared-channel station does not reach the great mass of listeners all over the country because your chain programs are on the high-powered station and the little towns all over the country are demanding the chain coming into their town so they can hear it, too? If the theory of the engineers were good practice you would not need to bring these New York programs into the small towns on the local stations, because the high-powered station would carry them there. But in practice we find that the high-powered station does not get to the mass of listeners. Every man at this table who has run for office knows in the campaign—the politicians may be foolish in some things, but they are practical in getting votes—knows that if he wants the people to hear him speak in the campaign he must get the local station to broadcast his speech. And so the people in these various communities, when they want to hear your New York program, want their local station to broadcast it because then they know that they can hear it.

Commissioner LAFOUNT. But, Senator, it is my belief that they want it to come to them through their local station because they want to receive the program with the same volume and the same quality that the resident in the large city gets and is entitled to. Certainly, as I explained, the high-powered station has only a service area of 250 miles. It's program will gradually grow less audible from that point on and the farther away it gets the weaker the signal that you receive. If you have to force your set to pick it up then you do not like it. You wish then that some local station would pick the program up and increase its strength or rebroadcast it.

Senator DILL. Yes.

Commissioner LAFOUNT. But if you put that local station on the same channel as the distant station then you will disappoint people in a large area who would like to hear the distant station.

Senator DILL. Yes; but my point is that that proves that in order to serve the mass of the people you must have regional broadcasting and not the high-powered long-distance broadcasting.

Commissioner LAFOUNT. Well, we did not do it for long distance, not for that purpose, and not with that idea in mind at all, Senator.

Senator DILL. I received a letter this morning from which I want to read a complaint and ask you whether or not it is true, and the justice of it. It is on this very line. [Reading:]

> At the present time New York City has been alloted three cleared channels with full operating time. All of them are chain stations. Two of them are owned by the National Broadcasting Corporation, WEAF, 50,000 watts, and WJZ, 30,000 watts, and the Columbia Broadcasting System, WABC, 5,000 watts. There is no independent station that has either a clear channel or full operating time with power over a thousand watts to compete with the above high-powered stations.

Is that true?

Commissioner LAFOUNT. I believe that is true.

Senator DILL. Well, is that not a rather unjust situation to the listener in New York, that he can not hear anything but chain programs in competition with these high-powered stations?

Commissioner LAFOUNT. Senator, if we took from any one of those 5,000-watt stations their power and reduced them to a thousand watts and gave to another station 5,000, 10,000, or 15,000 watts, before morning that other station would be on the chain.

Senator DILL. Is it not the duty of the commission to step in and control this chain situation? The law gives specific power to the commission on that very thing.

Commissioner LAFOUNT. Yes, sir, and as soon as we can determine how it can be done in the public interest we certainly will do it. We are extremely anxious to do it.

Senator DILL. That is one of the big jobs for the commission to perform.

Commissioner LAFOUNT. Yes, sir, it is a very difficult job, and we are giving it a lot of consideration, a lot of consideration.

Senator FESS. What is the determining factor? Is it from the standpoint of the listener or from the standpoint of the owner of the station?

Commissioner LAFOUNT. Wholly from the standpoint of the listener, Senator.

Senator FESS. That raises in my mind the question that Senator Dill has raised. Does the listener want to hear an independent station above the chain station? What is your reaction from the information you have?

Commissioner LAFOUNT. That is why the task is a difficult one. In some parts of Iowa we are told that direct advertising such as quoting the price of Ford automobile tires and prunes and everything of the kind is in the public interest, and the public wants it. The listeners make no objections, no complaints are registered, and they want that thing over the air. While if you do it in another community the people there will say, "We will not stand for such programs as that, and if this man is going to continue direct advertising, why do you not deny him his license and give it to some one who will give us good programs?" We find that we have to judge by the standards of the locality or service area of the station. And that complicates the matter a good bit.

Senator FESS. Take the little town of Yellow Springs. It is purely a local town. That town is located about 40 minutes from Dayton and 20 minutes from Springfield. The people of our town of Yellow Springs always want to hear certain programs that come from New York that seem to be duplicated from Cincinnati. And when the chain program was interfered with by the ruling on WSAI it was largely because WLW had 50,000 watts, and it seemed to be unfair to ask for that in Cincinnati and at the same time this other smaller station too. And the question then came whether WLW ought not to be cut down, and we found from the standpoint of the owner that there would be a louder howl if you cut down it than if you would deny WSAI. But our people were more concerned in hearing certain fine music from New York that we did not get from a local station. And so there was a conflict right at home.

Commissioner LAFOUNT. That is characteristic.

Senator DILL. Is there not more of a howl now over the cutting out of WSAI than anything else?

Senator FESS. So far as I know there is.

The CHAIRMAN. There is a great deal in my State, in the southern part of my State.

Senator SACKETT. How far have you gotten in synchronizing on on the one-wave-length chain broadcasting?

Commissioner LAFOUNT. That is something that we hope will be developed in the not far distant future, which will necessitate radical changes, but at this time it is practically a physical impossibility to successfully synchronize except a short distance with a wire. Now we assign two stations on a wave length and tell them that they must operate on that frequency. Now they do it practically, but even though they are off just a slight degree, 100 or 200 cycles, that causes a heterodyne or a whistle. If they could both operate exactly on the same frequency then both stations would be able to render a good service and there would only be a short distance between the two stations that would be interferred with through the cross-talk.

Senator SACKETT. Is the work of attempting that synchronization being pressed anywhere?

Commissioner LAFOUNT. Yes, we are encouraging it, and certainly a number of the larger companies are trying to perfect it. They have always been anxious to cooperate and help to develop the art, and have never shown any sign of wanting to monopolize all of the channels, but if possible to use a few for their chain broadcasting. But you will understand that this difficulty arises. If they could all be assigned to one channel, then they would all have to take that program continuously. And the fact is that these New York programs may only be used in some stations from one and a half to two or three hours a day. The average has been less than three hours a day, while the station itself is running maybe 10 or 12 hours.

Senator SACKETT. You suggested a moment ago that if turned over to the Department of Commerce they might not have the necessary experts that would be able to take this up without a long study. Suppose the Department of Commerce were to take out, for instance, the best men in your organization, would that not overcome the difficulty?

Commissioner LAFOUNT. They could take perhaps the experts now employed by the commission, who are largely Army, Navy and Bureau of Standards men. That would help them on the technical side of it.

Senator SACKETT. Well, could they not take you, for instance, along with the others, and just transfer to the Department of Commerce the complete organization necessary to continue this work right straight along?

Commissioner LAFOUNT. Yes, sir, they could do that. And the mechanics would work fairly well. But that is all that it would work.

Senator SACKETT. Why would it not work just as well as it would at the present time, that is what I was trying to get at?

Senator DILL. They could not transfer the commissioner for one thing.

The CHAIRMAN. You could not transfer him because he continues on the commission. The commission will sit there as a continuing body, as an appellate body.

Senator SACKETT. Yes, the commission will sit there as an appellate body, but if there is some member of the commission that stands out as a recognized expert, he could handle this thing alone, and he could be transferred to the Department of Commerce.

Commissioner LAFOUNT. It would result in a lot of duplication, although it seems that the contrary would be true. The fact is that with the hearings, which under the law would be necessarily before the commission, and taking into consideration the procedure that would be necessary, it would require and of necessity entail a lot of duplication.

Senator SACKETT. That is the point I wanted to get at. There is a great deal of complaint from the stations as to the action of the commission. Now would it not be better for those stations if they had an appellate body to go to from the beginning that actually made the assignments and regulations? Would not the stations be better satisfied if they could handle it through you, for instance, if you were the head of the Radio Section of the Department of Commerce; if they did not like what you did, then they could appeal?

Commissioner LAFOUNT. It would necessitate them trying the case twice.

Senator SACKETT. Yes, but if they lose it once they are glad to try it the second time in the appellate body. That is the way we do in the courts of law.

Commissioner LAFOUNT. Well, Senator, you will realize that in controversies there is always going to be one dissatisfied no matter what decision is rendered.

Senator SACKETT. Yes, absolutely.

Commissioner LAFOUNT. And therefore the number that will be dissatisfied will never be lessened. As long as there is a case being contested there is bound to be one party who is unhappy at the decision. Of course it may not be the fellow that you now think is complaining. It may be the other one. But certainly there would be one. In every decision there is going to be some one that will be dissatisfied.

Senator SACKETT. It just strikes me that your argument would come in in the same way with a lawsuit. That it would be better not to have any appellate court because the other fellow might not be as well satisfied with the result in the appellate court. But our whole system depends uopn the trial of a case and if it is not satisfactory the parties have a right of appeal.

Commissioner LAFOUNT. May I suggest, sir, that just a few days ago we had some cases set. Because of the work the commission was doing it was impossible to hear them. We wired and canceled the date of the hearing, but found that some of the men were already on their way from California. They arrived, and in an hour or two of discussion, having some knowledge of the situation, we satisfied both parties without a hearing and got the thing pretty well cleared up and in good shape. And they both went back satisfied. We often are able to do that.

Senator SACKETT. If you had been an appellate body you might have done the same thing.

Commissioner LAFOUNT. We might have done the same thing. Of course the Department of Commerce, if it had the knowledge, as I feel the local commissioners for the zones have it, they might be able to do that.

Senator FESS. How long could the head of the Department of Commerce survive if he had this control; physically, I mean, if he had to make these decisions.

Senator SACKETT. How long could the commission survive?

The CHAIRMAN. I want to ask a question, unless you want to answer that question of Senator Fess. Of course, that is a matter that we can all guess at. Commissioner Lafount, you have been on this commission 15 months?

Commissioner LAFOUNT. Yes.

The CHAIRMAN. Do you think that the situation to-day in regard to the broadcasting throughout the entire country is improved from what it was 15 months ago?

Commissioner LAFOUNT. Yes; I do.

Senator WAGNER. May I ask just a question or two, Mr. Chairman, on this chain-program matter?

The CHAIRMAN. Certainly.

Senator WAGNER. No local station, as you state, has to take the chain program, unless it wishes to.

Commissioner LAFOUNT. No, sir.

Senator WAGNER. And if it does not, may it not continue the broadcasting of its own local programs undisturbed?

Commissioner LAFOUNT. Yes; absolutely.

Senator WAGNER. So, after all, is it not the demand of the listener to the programs who prompts the owner of the local station to subscribe for the chain program?

Commissioner LAFOUNT. That is true, if the desires of the listener are respected, as they should be, by the broadcaster.

Senator WAGNER. Is it not usually true in the case of those programs?

Commissioner LAFOUNT. I think it is, usually.

Senator WAGNER. And is it not because of the superiority of those programs that the demand is made?

Commissioner LAFOUNT. Yes, sir.

The CHAIRMAN. I want to ask you a further question, Commissioner Lafount: How are you getting on with Canada in the contention with reference to the high-powered frequencies?

Commissioner LAFOUNT. That is still under discussion, Mr. Chairman.

The CHAIRMAN. What is the status of it?

Commissioner LAFOUNT. A proposition was made by Canada that was not satisfactory, and a counter one was made by the United States, which was satisfactory to some of the members of the delegation that went to Canada. Recently, I believe, Canada has expressed her desire to approve that, or willingness to approve that.

The CHAIRMAN. Tell us what the propositions were, if you are free to tell.

Commissioner LAFOUNT. Well, the only thing is, they have not been approved yet, Senator, and I do not know just whether you want to make that public at this time.

The CHAIRMAN. That is to say, when Canada made the first proposition she wanted one-half of all the frequencies?

Commissioner LAFOUNT. Yes, sir.

The CHAIRMAN. And, of course, you would not approve that?

Commissioner LAFOUT. No, sir.

The CHAIRMAN. And then your commission made a counter proposition?

Commissioner LAFOUNT. Yes, sir.

The CHAIRMAN. Are those who went up representing the United States up there yet?

Commissioner LAFOUNT. No, sir; they are here. Commissioner Caldwell was one.

The CHAIRMAN. Then you made a proposition to them?

Commissioner LAFOUNT. Yes, sir.

The CHAIRMAN. Can it, or not, be adjusted without a treaty?

Commissioner LAFOUNT. Yes; I think so.

The CHAIRMAN. You think it can be?

Commissioner LAFOUNT. Yes, sir.

Senator DILL. Do you think a treaty would be better?

Commissioner LAFOUNT. I think not, at this time.

The CHAIRMAN. Do you feel that our rights are going to be fully protected?

Commissioner LAFOUNT. I hope they will, Senator, and I think they will be, yes, sir.

Senator DILL. What is there to keep Canada from taking any wavelengtb that she sees fit?

Commissioner LAFOUNT. Nothing.

Senator DILL. Except the agreement?

Commissioner LAFOUNT. No, sir.

Senator DILL. I wondered whether the commission had considered the advisability of making a proposition through the Department of State with a view of having the proposition made to Canada to make this matter a matter of international agreement as they have the——

Commissioner LAFOUNT (interposing). This is all being handled through the Department of State.

Senator DILL. I understand.

Commissioner LAFOUNT. And they are handling it the best they can at this time, but not knowing what the results of our arrangement will be, we think that it would be better to undertake to operate under an agreement at this time, until we know definitely what the arrangement will be.

Senator COUZENS. A treaty would be much more inflexible than an agreement.

Commissioner LAFOUNT. Yes, sir.

Senator GOFF. Mr. Lafount, let me ask you, is it not true that one of your problems to-day is to harmonize the regional and local desires on the part of the public, more than it is an engineering or broadcasting problem?

Commissioner LAFOUNT. I would not say more. It is a difficult task. The engineering problems also are confronting the commission daily. We find out something new about radio——

Senator GOFF (Interposing). Well, will the engineering profession ever reach such a state in its art that you can treat it as a settled basic principle upon which you can act.

Commissioner LAFOUNT. Well, to a great extent that is done now, although many phases of the radio engineering are changing.

Senator GOFF. Well, when will the state of that art, if I may use that term, be so developed that you can eliminate uncertainties in the engineering questions?

Commissioner LAFOUNT. I am sorry, I could not venture a guess on that, Senator. I do not know.

Senator GOFF. Well, will it always remain as uncertain and variable as the wishes, emotionally speaking, of the different communities and regions of the country?

Commissioner LAFOUNT. I hope not. They would be never-ending if that were true. No; I think they will be worked out, and are being worked out satisfactorily now. I think that this nation is now in the lead in radio, and is presenting the best programs that are being presented anywhere in the world. We are doing a wonderful job and, of course, hope to continue along those lines with the desired result that every home will be made happier and every man, woman, and child will be made better by the character of the programs rendered.

Senator GOFF. Well, do you have on your staff as a commission a musical, and advertising, and an emotion or general desire expert?

Commissioner LAFOUNT. No, sir; we do not, because the law does not allow us the power of censorship of programs.

Senator GOFF. Do you feel the law should be amended to give you that power?

Commissioner LAFOUNT. I would say not.

Senator GOFF. Well, you exercise it, do you not?

Commissioner LAFOUNT. We exercise it to this extent, that we undertake to determine whether or not it is in the public interest, convenience, and necessity.

Senator GOFF. It is, in effect, exercising the same thing——

Commissioner LAFOUNT (interposing). In a way.

Senator GOFF (continuing). As if you had the expert advisers on those different divisions of human thought.

Commissioner LAFOUNT. But there are other problems involved also.

Senator GOFF. Now, what are they, so that I can get a concrete picture to-day of what the problems are? Can you not tell this committee in just a few words what the engineering problem is, and what the problems are that are presented in order to satisfy the regional and local communities of the country?

Commissioner LAFOUNT. The problems are that the stations are definitely located at this time; some localities are without stations. We hope at some time wherever they are needed they will be provided without increasing the number of stations. We are trying to determine the number of stations, if any, that can operate simultaneously on a channel. We are trying to determine whether or not high power is in the public interest. We think, from the information we have, that it may be, but we are trying to check that definitely. We are checking on the interference from one channel to another to determine whether there is any interference. We are checking to determine the amount of blanketing around each station. We find that the smaller stations blanket usually a larger area than the large or powerful station. That seems inconsistent, but it is true.

Senator GOFF. That is your engineering problem?

Commissioner LAFOUNT. That is one of them. We have the problem of the transmitting equipment they use. We can not require them to buy patented equipment or the finest or the highest type of equipment. So that we find ourselves concerned with all types of

transmitting apparatus; some that can keep on its assignment frequency and some that can not, or does not. And we find that the listener has a cheap set, a medium priced set, or an expensive set. We must try to find a way whereby all of them can hear what they want to, within reason, naturally; all of them.

And then you have only begun on the problems of the commission when you say that. We have our legal problems, which are numerous. We have another one, a new one, that came in to-day where some broadcasting station is owned by newspapers, and the newspapers make a rate for advertising; and the newspapers say, "If you advertise in the newspaper, we will cut our rate for programs put on the broadcasting station."

The CHAIRMAN. What do you do with a case of that kind?

Commissioner LAFOUNT. I just got it to-day, Senator. It has not been brought up to the commission yet. We have got different phases of the law to consider.

The CHAIRMAN. Are the newspapers getting more and more control of the cleared channels?

Commissioner LAFOUNT. There are quite a number of newspapers now broadcasting on the cleared channels.

The CHAIRMAN. Take, for instance, in Chicago; the Chicago Tribune has a cleared channel?

Commissioner LAFOUNT. Yes, sir.

The CHAIRMAN. And the Chicago News has a cleared channel?

Commissioner LAFOUNT. Yes, sir.

The CHAIRMAN. And the Hearst papers have a cleared channel?

Commissioner LAFOUNT. Yes, sir.

The CHAIRMAN. Is there any way to prevent that, if it is desirable?

Commissioner LAFOUNT. We do not know. We have not determined that. They are rendering good service.

The CHAIRMAN. Commonwealth Edison has a part of a cleared channel?

Commissioner LAFOUNT. Yes, sir.

The CHAIRMAN. And they are in a row with Sears, Roebuck & Co., are they not?

Commissioner LAFOUNT. Yes, sir.

The CHAIRMAN. And then down at Mooseheart, Secretary Davis is trying to break in?

Commissioner LAFOUNT. Yes, sir.

The CHAIRMAN. And have somewhat a cleared channel?

Commissioner LAFOUNT. Yes, sir.

Senator GLENN. And Voliva, at Zion City, in Lake County, claims he is a pioneer, and that he has been cut completely out?

Commissioner LAFOUNT. Yes; and he is rendering a splendid service and doing good work, but with the limited number of channels, and with the law requiring us to divide them between the zones equally, we find that we have given away all that can be assigned. Anything that he, or others, gets must be taken away from someone else.

Senator GLENN. But he feels that he was a pioneer, he had been there for many years, I do not know how many years, but the first one in the field, practically, and that you gave away something that he was entitled to, and took him clear off. He has been there for 15 years.

Commissioner LAFOUNT. That is true.

The CHAIRMAN. Is there any way in which you can prevent these great, powerful newspapers from having a cleared channel?

Senator DILL. The commission can order it.

The CHAIRMAN. I understand.

Senator DILL. This new question that has come up may alter the matter, if they are going to use the station to get advertising for the newspaper.

Senator GLENN. Another thing, while we are on this question, another thing that I want to bring up that has been brought to my attention is this: How many cleared channels are there in Chicago? Four of them?

Commissioner LAFOUNT. Yes, sir.

Senator GLENN. And three of them have all the day and all the night absoluetly. Now the American Federation of Labor has a station there which they say is the only station in the country owned by organized labor, or devoted to the interests of organized labor; and they are not allowed to operate at all, as I understand, after 6 o'clock in the evening. They contend that their people are working people; that they can not hear them during the day, and it means that they are precluded from reaching their people who do not come home until 6 o'clock or after 6 o'clock, and they are cut completely off from reaching them. Now I am not asking for an opinion. I think the case is pending, but it does seem to me there is a lot of argument in their contention, that this great organized body of labor is entitled to some time on the air when they can be heard.

Commissioner LAFOUNT. Senator, may I point out that if we divide time among these high-powered stations on cleared channels, that we are then, perhaps, making such broadcasting a financial loss. Whether they will continue to operate and lose is a question. The stations now operating are rendering a real public service. Whether they would continue on the same program and take half time is a problem we have to take into consideration. And then if we cut that time, we might take the time that they must have. You will find it is some problem. The station you refer to only wants a few hours a day; and so with Mr. Voliva. But how to fit them in is the question. We admit some of these cleared channel stations are in the wrong place, and we want to move them.

Senator DILL. But this Federation of Labor station, they want the right to send their programs to the smaller towns on short waves, that will pick up their programs and send them from those stations. The commission has not granted them the sort of a permit to allow them to do that?

Commissioner LAFOUNT. No, sir.

Senator DILL. Is there any reason why the commission does not want that experiment tried?

Commissioner LAFOUNT. Only that we have not any short waves for that purpose.

Senator DILL. There are some that are not being used.

Commissioner LAFOUNT. There are applications for all of them many times, and the question is whether they are in the public service.

Senator DILL. But what could be more in the public service than for them to transmit to the 100-watt stations, the local stations, and they picking it up and broadcasting it?

Commissioner LAFOUNT. Senator, we are checking up on that; and may I say that there are gentlemen sitting in this room that have applications and have had for three weeks trying to get a grant along that same line.

Senator DILL. My question is if a man is to get some station on some channel——

Commissioner LAFOUNT (interposing). Yes.

Senator DILL (continuing). And here comes one and says: "We will put it on and try it."

Senator GLENN. Yes; and they are the only organized labor station in the United States.

Senator DILL. It seems to me they should be given an opportunity.

Commissioner LAFOUNT. We have given several experimentally, but not a definite license.

The CHAIRMAN. To different cities?

Commissioner LAFOUNT. To different cities. But we can only use those channels that are cleared for that purpose.

Senator Dill. Only last Friday they picked by the short waves a program from London, and sent it all over the country.

Commissioner LAFOUNT. That is the reason we are trying to conserve them, for long distance programs.

Senator SMITH. Has organized labor any facilities for broadcasting their program?

Commissioner LAFOUNT. Until 6 o'clock at night.

Senator SMITH. That is the time they want? Is there any real facility they have? There is no need of putting feed in the top of a tree and telling a mule to help himself to it, when he can not reach it. I want to know whether they have any facilities, taking the real meaning of the word.

Commissioner LAFOUNT. I know they have practically all they have asked for. They want another hour or two, and we are trying to arrange it for them.

Senator DILL. Those are the vital hours.

Senator SMITH. That is it. Have they any that will accommodate themselves to their conditions?

Commissioner LAFOUNT. I do not know just their condition. I understand their day hours are very vital. But they do want additional hours, I am sure of that.

Senator GLENN. They represent to me that their men and women are at work until 6 o'clock, and they want some time when they are at home and not at work when they can present their views to their people.

Senator SMITH. And those hearing it would be in the same condition.

Senator GLENN. Absolutely. I think they will be satisfied if they have some evening time, and being a large body of people, that they should have it. Of course, in this last campaign, if they had had it, it would have been used against me, because they were largely against me. But that makes no difference. They should have some of that time. I think they should have it right away. There are millions of them, and they have no other station in the United States. We have three great newspapers in Chicago that have 24 hours a day, each of them. I understand their views, but if nothing better can be done,

I think an hour should be taken off of each of them and give organized labor a chance.

Senator DILL. Commissioner Lafount, you said a while ago that you are up against this situation, that if you divide time you endanger the revenues of a station.

Commissioner LAFOUNT. Yes, sir.

Senator DILL. Is the commission under obligation to protect the revenues of the stations?

Commissioner LAFOUNT. No, sir; but we are, I believe, under obligations to make possible the presenting of the best possible programs, Senator; and if the entire income is used to pay the bookkeepers, and the telephone girls, and not the artists, then we should be presenting throughout this country very poor programs. The fact is that very few stations are profitable; very few. We have stations in California that lose $20,000 a month each, I mean; from the operation of the station.

Senator DILL. Yes.

Commissioner LAFOUNT. Of course, I appreciate the fact they are deriving an income from other sources, but not from the quality of programs that are going out from such stations.

Senator DILL. But the minute that one should quit business there are fifty others that will take over the wave length immediately.

Commissioner LAFOUNT. Yes; but not present that character of program, Senator, at that loss.

Senator DILL. The great feeling about radio in this country is that it will be monopolized by the few wealthy interests. Now when you give a station a high power and a cleared channel, you give it a monopoly as against a station that you give small time and not a cleared channel. It seems to me the commission should keep that in mind, because of the fact that nobody, the commission included, I am sure, wants any small set men to have dominion on the air.

I want to ask you this question on another part of this bill: Maybe you are not the man to ask it of, but I want to get some statement from some member of the commission or someone connected with it, about the need of paying salaries to attorneys. There is a provision in the bill which allows the commission to appoint counsel and pay $10,000 a year; and three assistants at not to exceed $3,000 each. What is the status of the legal business of the commission? If you are not prepared to answer it, I will ask someone else.

Commissioner LAFOUNT. I am. We have this situation confronting us, Senator. We have many legal problems of the utmost importance, coming up. We have appropriations made which contemplate engaging attorneys. But, first of all, we must find some one temporarily. And then we must find some one who will work for the salary that we can pay.

Commissioner DILL. What is that now?

Commissioner LAFOUNT. That is determined by the Personnel Classification Board. We go to the Civil Service and then the Personnel Classification Board and ask for an attorney and tell something of his qualifications, and the board determines just how he shall be rated from the standard that governs their different appointments along those lines. Then that rating determines the salary. We are allowed now to pay approximately $6,500 to the chief counsel, and his assisants from $2,300 to $4,000.

Senator GOFF. Does the law require you to do that?

Commissioner LAFOUNT. We must do it, according to the law governing classification.

Senator DILL. I may say, Senator, when we wrote the law we wrote it in a way that we thought would free them from the operation of the classification board. But it was held that it does not do that, and that is the reason that this provision is here.

Senator GOFF. It seems to me the commission should be in a position just as the Department of Justice is, that when it wants to employ an attorney it can select its own attorney.

The CHAIRMAN. I think we had better adjourn, Senator.

Senator GOFF. May I ask one question before we adjourn, Mr. Chairman?

The CHAIRMAN. If you wish.

Senator GOFF. I want to ask a question on a subject that was brought out by Senator Glenn. I understand you have issued licenses to certain individual newspapers to use the air continuously, or at certain times? Is that true?

Commissioner LAFOUNT. Yes; I believe the newspapers own the corporations.

Senator GOFF. Why should they be preferred over the general community? Would it not be better for the community as a whole, if you are serving the public, as you are, to grant to the news agencies, that are flashing the news all over the United States, the right to use these air channels, rather than the individual newspapers?

Commissioner LAFOUNT. They are rendering the programs, Senator. Naturally we have to grant to those who apply. We can not create or originate applications for stations.

Senator GOFF. I was thinking largely of the Associated Press, by way of illustration. Would it not be better if the Associated Press had the right that is given to the Chicago Tribune, for example?

Commissioner LAFOUNT. You see, when we are talking about the Chicago Tribune, we are talking about broadcasting and that is the programs that go out over the air, and not necessarily any news.

Perhaps you have in mind the question of short waves for communication purposes.

Senator GOFF. They are not granted to any newspapers at the present time?

Commissioner LAFOUNT. Those short waves have been granted for communication purposes; for all press purposes in America.

Senator GOFF. What news agencies have those privileges?

Commissioner LAFOUNT. All of them.

Senator GOFF. How long have they had them?

Commissioner LAFOUNT. They were granted just a few weeks ago, but are not in use yet.

Senator GOFF. And do they have them at all hours of the day or night?

Commissioner LAFOUNT. Yes, sir, they will eventually.

Senator GOFF. Or just for limited purposes?

Commissioner LAFOUNT. Oh, no, sir; those are quite different. They are not limited at all.

Senator DILL. There is a claim that the New York Times and the Chicago Tribune, and others, are going to dominate this situation of

the use of short waves for communication purposes. What about that?

Commissioner LAFOUNT. We have allocated 20 waves to the press, as you know, on the understanding that they would between themselves, satisfactory to each other, divide the use of those 20 waves.

Senator DILL. And satisfactory to the commission also.

Commissioner LAFOUNT. And satisfactory to the commission also.

Senator DILL. The commission will pass on who they will go to.

Commissioner LAFOUNT. Yes; they have not as yet agreed, Senator. They claim one or two papers are seeking to dominate it. The commission has not yet determined it. It is to come before the commission.

The CHAIRMAN. That is all. I think we will continue these hearings to-morrow morning.

Senator BLACK. I have an amendment, Mr. Chairman, that I will propose, and I would like to ask the commissioner some questions about that.

The CHAIRMAN. Very well. Commissioner Lafount, if you can, you may return to-morrow, and perhaps Commissioner Caldwell, or the chairman, Judge Robinson, or any others of you who can come.

We will stand adjourned until to-morrow at 10.30 o'clock.

(Whereupon, at 12 o'clock noon, Monday, February 4, 1929, the committee adjourned to meet on the following day, Tuesday, February 5, 1929, at 10.30 a. m.)

CONTINUING FEDERAL RADIO COMMISSION TO MARCH 16, 1930

TUESDAY, FEBRUARY 5, 1929

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE COMMERCE,
Washington, D. C.

The committee met, pursuant to adjournment on yesterday, at 10.30 o'clock a. m., Tuesday February 5, 1929, in the committee room, Capitol, Senator James E. Watson, chairman, presiding.

Present: Senators Watson (chairman), Couzens, Fess, Goff, Pine, Sackett, Glenn, Smith, Dill, Wheeler, Hawes, Black, and Wagner.

Also present: Commissioners Ira E. Robinson, E. O. Sykes, O. H. Caldwell, and Harold L. Lafount, members of the Federal Radio Commission.

The CHAIRMAN. The committee will come to order. Commissioner Lafount will resume his testimony. The other commissioners are all present this morning.

STATEMENT OF HON. HAROLD A. LAFOUNT, COMMISSIONER, FEDERAL RADIO COMMISSION—Continued

Senator WHEELER. There are one or two questions I would like to ask. I do not want to cover the same territory that was covered yesterday by Mr. Lafount, but just now I would like to inquire concerning one thing. I understand that there has been some opposition to this board being continued, and I wanted to get just briefly your view as to whether or not you thought it should be continued.

Commissioner LAFOUNT. Senator, there are some reasons why——

The CHAIRMAN. If you will pardon me, Mr. Lafount. Senator Wheeler, that is the first question that I asked Mr. Lafount yesterday and he elaborated on that somewhat and gave his reasons. There are other commissioners here and it might be that we can get their reasons quite as well as Mr. Lafount's, he having already given his reasons, if that is agreeable to you?

Senator WHEELER. Yes; perfectly agreeable.

Senator GOFF. Mr. Chairman, when we adjourned yesterday I had just asked the commissioner if he had concluded whether or not the board should be continued, and he said that he had a short written statement embodying the reasons why it should be, which he had intended either to read or to present for the record, and I told him that that would be one of the first questions that I would propound to him this morning. Now, have you a written statement relative to that matter, which you desire to place in the record?

Commissioner LAFOUNT. Senator, since I had made an oral statement covering rather briefly the subject, I suggested perhaps it would be wise for one of the other commissioners to prepare the written statement, and have suggested that Judge Sykes read that statement.

Senator GOFF. That answers the question.

Commissioner LAFOUNT. And he has one prepared, and I believe he is more enthusiastic over the continuance of the commission as an administrative body than I have been. And may I say for your benefit that I think each of us is expressing his own personal views. Mr. Caldwell, I believe, does not concur in our views at all; I want to do justice to him by saying that.

Senator WHEELER. Well, he is not on the commission now?

Commissioner LAFOUNT. He is now; yes.

The CHAIRMAN. He will be on the board for 20 days yet.

Commissioner LAFOUNT. Until February 23 he is; yes, sir. So Judge Sykes will go into that statement thoroughly.

Senator GOFF. Do you indorse the statement of Judge Sykes?

Commissioner LAFOUNT. Yes, sir.

The CHAIRMAN. Now, are there any other original suggestions of your own, Mr. Lafount, that you want to make further than you have already made?

Commissioner LAFOUNT. Well, Senator, it is such a big subject, and there is so much that could be said that it would certainly take a long while and possibly you would not care to take that time, but I do not want you to feel that I have said all that I know. There is a great deal that could be said, and it is a matter of growing interest, of course. But I believe perhaps it would be wise to divide the time with the other commissioners and let them express themselves on this subject.

The CHAIRMAN. Very well. Is that satisfactory to the committee?

Senator GOFF. I would suggest, Mr. Chairman, that you call Judge Sykes if he is here.

Commissioner LAFOUNT. He is here.

The CHAIRMAN. Is that the order in which you want to take it? Do you want Judge Sykes now, or Chairman Robinson?

Commissioner LAFOUNT. I would appreciate it if you call Judge Sykes.

The CHAIRMAN. All right, Judge.

STATEMENT OF HON. EUGENE O. SYKES, VICE CHAIRMAN, FEDERAL RADIO COMMISSION

Commissioner SYKES. Mr. Chairman and gentlemen of the committee.

Senator HAWES. Mr. Chairman, is Mr. Caldwell going to testify?

The CHAIRMAN. Yes; I understand that he will be asked to testify. He certainly will if you want him to, Senator.

Senator HAWES. There are just a few questions that I wanted to ask Mr. Caldwell or Mr. Lafount, one of the two.

The CHAIRMAN. Senator Goff, did you have any particular questions of Judge Sykes?

Senator GOFF. The question, Judge Sykes, that I propounded yesterday, and repeated in substance this morning, is this, that speaking

for myself and not the other members of the committee, unless they concur, I desire to know whether it is necessary to continue the Radio Commission for another year, and if you have any views upon that subject which can be shortly and concisely stated I would appreciate hearing them.

Commissioner SYKES. I will be very glad to do so, Senator. Yesterday afternoon I understood that possibly you gentlemen would like a short, concise statement as to what we had done under the act, and what remains to be done. And I will read that statement, with your permission.

WHAT HAS BEEN DONE DURING THE PAST YEAR

I will first discuss broadcasting. The commission adopted a plan and made an allocation thereunder effective November 11. This plan and allocation put into effect the Davis amendment.

Before the plan was finally adopted we had recommendations from the Institute of Radio Engineers, the National Association of Broadcasters, and possibly others relating to plans and the best way to put them into effect.

I might say that we devoted a great deal of time and study—many months—to the plan that was finally adopted. In the meantime, the commission had in its service engineers and lawyers. The broadcasting committee of the Radio Commission tried out in actual practice making set-ups under various plans suggested by others and also certain plans evolved by them. The plan adopted under General Order No. 40, is to a certain extent a compromise between the plan suggested by the engineers and others, especially so far as so-called cleared channels are concerned. Likewise, the question of the amount of power to be used by stations occupying these cleared channels is a compromise between those who claim that these channels are capable of carrying unlimited power without undue interference and those who believe that the only way the question of power can properly be determined is by actual practice.

I am making copies of certain orders passed by the commission as exhibits to this short statement, which I will not take time to read.

(Various orders and memoranda presented by Commissioner Sykes for the record are printed in full at the end of to-day's hearing.)

Commissioner SYKES. Before the adoption of this plan, the commission held a number of hearings with a view of seeing how many stations now operating in the crowded zones in the public interest could be eliminated. There were 124 hearings held on this question which resulted in the denial of licenses to 26 stations.

Under the plan the radio facilities are equalized among zones and there is also substantial equalization in regard to power and other matters. The number of licenses has not yet been equalized, but the time of operation on the air on each of the three classes of channels is equalized under the plan.

Broadcasting stations, which are dissatisfied with their allocations, which went into effect on November 11, are being given hearings before the commission. Of these there yet remain to be heard 71.

The CHAIRMAN. Do you want to be questioned as you go along, or would you prefer to finish your statement first?

Commissioner SYKES. Just any way, Senator, that suits you gentlemen.

Senator WHEELER. You say there remain yet to be heard 71. Then you reallocated how many stations, the time of how many stations?

Commissioner SYKES. Roughly speaking, Senator, there are a little over 600 stations.

Senator WHEELER. That were readjusted or reallocated?

Commissioner SYKES. Yes, sir.

Senator WHEELER. And you have given them hearings, have you?

Commissioner SYKES. All but 71. There yet remain to be heard 71 broadcasting stations who are dissatisfied.

Senator WHEELER. And what kind of stations are they? Are they large stations or small stations?

Commissioner SYKES. All kinds, sir. Both large and small.

Senator WHEELER. How long do these hearings generally last, or how much time do they take?

Commissioner SYKES. They vary, Senator. Sometimes we can hear two or three a day, and I remember one hearing that lasted three and a half days, held not long ago. And we were running at night also, sir. So they vary.

Senator WHEELER. How many commissioners sit at these hearings?

Commissioner SYKES. Always a majority. During the past summer we ran in two divisions, so we could not do that, but we had two commissioners sitting in one hearing and three in the other. There were a lot of stations that we were hearing on the question as to whether or not they should be relicensed.

Senator WHEELER. Suppose that this commission is done away with or is not renewed, what becomes of those hearings then?

Commissioner SYKES. Under the law the Radio Commission continues to try these controverted matters. The commission would still sit and hear these that are already set, and any that are set are triable or heard by the commission. Controversial questions are referred to the commission for hearings by the Secretary of Commerce should these original duties go back to that department.

Senator WHEELER. I see.

The CHAIRMAN. Is it your understanding that the commission would have original jurisdiction over these controversies?

Commissioner SYKES. No, sir.

The CHAIRMAN. Only appellate?

Commissioner SYKES. No, sir. In certain instances if a station asks that the commission decide the proposition it is referred to them. And if they are dissatisfied with the allocations by the Department of Commerce then there is an appeal and it is referred to the commission.

Senator WHEELER. So the procedure then is that if they are dissatisfied with the disposition of the case they would appeal from the decision?

Commissioner SYKES. Yes, sir. These 71 that I spoke of are already set for hearing. They are dissatisfied with the allocations made by the commission, and those cases are set for hearing.

Senator GOFF. Do you mean to convey the opinion that if the commission is not continued in existence that its life will continue until it hears and disposes of all of the cases now before it?

Commissioner SYKES. Yes, sir.

Senator COUZENS. The commission continues anyway, Senator, as an appellate body.

The CHAIRMAN. Under the law the commission continues.

Senator COUZENS. Yes.

The CHAIRMAN. But largely as an appellate body.

Senator GOFF. But it would not continue as an appellate body in hearing these 71 cases now before it?

Commissioner SYKES. I think, Senator, it would. You see they have already been set for hearing.

The CHAIRMAN. Yes; I think so, Senator Goff.

Commissioner SYKES. The controversy has already arisen, and in my opinion, sir, the commission would still hear all matters that are set for hearing before them.

Senator GOFF. Well, possibly I was drawing or attempting to draw too fine a distinction. The commission, as it is now existing, is not existing as an appellate body. It is existing as a commission to determine and settle questions pending before it. And if it should continue on to hear the 70 cases now before it not of an appellate character, then its life would continue as a commission of original and not appellate jurisdiction?

Commissioner SYKES. No; I can not agree with you there, if I understand what you mean.

Senator GOFF. Well, where have these 70 cases that are now before you been heard in a preliminary tribunal?

Commissioner SYKES. In the first instance the allocations of these stations were made by the commission. Then certain stations applied for hearings, being dissatisfied with those allocations. Therefore it becomes a controversial question.

Senator GOFF. Very well. I do not want to go into any fine distinctions. Just leave it that way.

Commissioner SYKES. Well, that is the way I interpret the law, sir.

Senator GOFF. Yes.

Senator BLACK. Let me ask you this about those allocations, and so forth: How many of them are of public-utility companies?

Commissioner SYKES. Do you mean how many stations?

Senator BLACK. How many stations are owned and controlled by public-utility companies, directly?

Commissioner SYKES. Senator, I do not believe I have that data, sir. I will be very glad to furnish it to you a little later.

(This list is printed at end of the day's hearing.)

Senator BLACK. You do not have it here?

Commissioner SYKES. No. I think it was furnished to the House committee.

Senator BLACK. You had one controversy over it two or three weeks ago, did you not?

Commissioner SYKES. Yes, sir.

Senator BLACK. And the commission voted in that case, two and two; two voting for the public-utility company and the other two for the private company, is that right?

Commissioner SYKES. We had an application from a proposed station for an extension of time within which to construct, the time having expired.

Senator BLACK. Where was that?

Commissioner SYKES. In Virginia; Roanoke, Va.

Senator BLACK. Do the stockholders of the public-utility company live in Virginia or New York?

Commissioner SYKES. My recollection is, sir, that most of them are in New York.

Senator BLACK. And this other station had been there for a long time, owned by Virginia citizens?

Commissioner SYKES. Yes.

Senator BLACK. Which two commissioners voted for the public utility company and which two voted for the private company?

Commissioner SYKES. My recollection is that Commissioners Caldwell and Lafount voted to give them the extension permit.

Senator BLACK. The public utility company.

Commissioner SYKES. And Commissioners Robinson and Sykes voted against granting this extension.

Senator BLACK. Do you care to tell me now how many public utility companies have those stations?

Commissioner SYKES. No, sir; I can not.

Senator BLACK. All right, just go ahead.

Commissioner SYKES. I do not recall.

I will next take up the transoceanic point-to-point service between 6,000 and 23,000 kilocycles.

The CHAIRMAN. Let me ask this question: Was any station finally allocated or placed in any system, or any arrangement made with reference to it without a hearing?

Commissioner SYKES. The November 11 allocation, Senator, was a complete reallocation by the commission to make effective the Davis amendment to the law. That was put into effect without hearings, stations being notified at the time that if they were dissatisfied they would have hearings before the commission. And we have had quite a number of hearings since that time, and 71 of the broadcasting stations have not yet been heard.

Senator WHEELER. Were the stations of the Radio Corporation of America reallocated?

Commissioner SYKES. Oh, nearly every station in the United States was changed some. Some of those were, and maybe all of them.

Senator WHEELER. Well, I heard some complaint—and I do not know anything about it; it was just based upon rumor—to the effect that when you did reallocate these stations, that you gave the decided benefit to the Radio Corporation of America.

Commissioner SYKES. Well, sir, if we did I assure you that it was unintentional, because we were trying to be very fair. You see, it was quite a problem. After deciding the classes of stations with respect to power, then we allocated the eight channels for the higher powered stations to each zone, each zone, of course, wanting its part of the best, medium, and not so desirable channels.

Senator WHEELER. Well, Judge Sykes, can you tell me this: How much does the Radio Corporation of America control at the present time? How many of the wave lengths?

Commissioner SYKES. The Radio Corporation of America proper controls three stations, as I understand it, WJZ and WEAF in New York——

Senator WHEELER. Are those both in New York?

Commissioner SYKES. Both in New York. And WRC, the Washington station. Now, the group that owns the Radio Corporation of America——

Senator WHEELER. What is the group that owns the Radio Corporation of America? Is that the A. T. & T.?

Commissioner SYKES. They have some stock in it, I think, and the General Electric, and probably the Westinghouse. I get it confused. That group has probably 11 or 12 stations in all; maybe more. I am not sure.

Senator WHEELER. They have 11 or 12 besides the three that you have enumerated?

Commissioner SYKES. Yes, speaking of the General Electric and the Westinghouse and those different groups.

Senator WAGNER. Out of how many? Out of 600?

Commissioner SYKES. Out of 600; a little over 600 at the present time, Senator.

Senator WHEELER. And then the balance of these 600, how are they tied up to the Radio Corporation of America, or how are they tied up to the National Broadcasting group?

Commissioner SYKES. Well, the National Broadcasting Co. has its chain over the country.

Senator WHEELER. Let me ask you this. Is not the National Broadcasting Co. owned by the Radio Corporation of America, or controlled by it?

Commissioner SYKES. Yes, it is controlled by the Radio Corporation of America.

Senator WHEELER. So that the same group that controls the Radio Corporation of America, that is, the General Electric, controls practically, does it not, the Radio Corporation of America?

Commissioner SYKES. Well, with its allied companies, yes.

Senator WHEELER. With its allied companies?

Commissioner SYKES. Yes; that is true.

Senator WHEELER. And that company in turn controls the National Broadcasting Co.?

Commissioner SYKES. Yes, sir.

Senator WHEELER. And the National Broadcasting Co. in turn has this tie-up of all the stations, practically all over the country, does it not?

Commissioner SYKES. The chain; yes, sir.

Senator WHEELER. Now can you tell me who owns the General Electric? Who are the chief people—the House of Morgan—that control the General Electric?

Commissioner SYKES. Senator, I do not know.

The CHAIRMAN. We will have representatives of the National Broadcasting Co. and the Radio Corporation of America on here to ask them all these questions.

Senator DILL. In your answer to the question a moment ago about the number of stations, the answer does not really reveal the real situation. The Radio Corporation and its affiliated companies in this great combine which they have built up have not so many stations in number, but they have the stations of great power on cleared channels. And that, of course, is far more important from the standpoint of broadcasting. They have WEAF in New York, the National Broadcasting Co., with 50,000 watts; they have WJZ in New York, that is the Radio Corporation of America, with 30,000 watts; they have KGO in Oakland, Calif., the General Electric Co., with 7½ kilowatts; they have WGY, the General Electric Co., in Schenectady, N. Y., with 50 Kilowatts; they have KOA, the General Electric Co., in Denver, Colo., with 12½ kilowatts; KDKA in Pittsburgh, the Westinghouse, which is another member of this organization, with 50 kilowatts; that is 50,000 watts. You understand a kilowatt is 1,000 watts.

Senator WAGNER. Yes.

Senator DILL. WBZ, the Westinghouse Electric & Manufacturing Co., East Springfield, Mass., with 15,000 watts, and WBZA, the Westinghouse Electric & Manufacturing Co., Boston, Mass., with 500 watts. KYW, in Chicago, the Westinghouse Electric & Manufacturing Co., 5,000 watts, and WRC, in Washington, with 500 watts. So that it is not quite a fair view of the picture to simply say they have a few stations, because the stations which they have are stations with such great power and on cleared channels that they dominate a tremendous amount of the broadcasting on long distances.

Senator BLACK. I want to ask a question along that line. As I understand it, the commission has not and does not claim to have any authority to fix rates?

Commissioner SYKES. Not at all, sir, under the law.

Senator BLACK. I also understand that when the Congress originally passed this law some of the Members intended—I think probably it was the common intent, although I am not sure—to give to your board the right to provide that if, for instance, in a political campaign a man should be attacked over the radio that he should have the right to answer that attack on the radio. Does the board construe itself to have those powers?

Commissioner SYKES. The law provides that if any qualified candidate for office was given any privilege to speak over a station other candidates for that same office must be accorded under like conditions a like privilege.

Senator BLACK. Must pay the same amount, however?

Commissioner SYKES. Well, that means for the same time.

Senator BLACK. And you have no right to fix the rates?

Commissioner SYKES. No, sir.

Senator BLACK. They have the absolute right to fix the rates for the two candidates as they see fit?

Commissioner SYKES. Yes.

Senator BLACK. Then if a man is attacked he has to pay the same rate that the other man paid, whether that is reasonable or unreasonable?

Commissioner SYKES. I presume he would.

Senator BLACK. There have been no regulations prescribed by the commission other than those that you mentioned?

Commissioner SYKES. No. We have a regulation which practically recites the law as it is in the act relating to qualified candidates speaking over radio stations. We have no right to regulate the rates.

Senator WHEELER. How could you enforce that regulation? What would be your method of enforcing it?

Commissioner SYKES. I presume, Senator, if complaints were made to the commission that there had been a discrimination in that respect we would cite that station before us to show cause why their license should not be revoked.

The CHAIRMAN. Well, is that hypothetical or real? Did any such case ever occur?

Commissioner SYKES. No, sir.

Senator BLACK. Let us assume this case: Let us assume two candidates are running, and one of them is favorable to the public utility company that owns the station and the other is unfavorable. Is there anything to prevent their fixing a very high rate for the man who is unfavorable to them?

Commissioner SYKES. There is nothing at all in the radio act, sir, that prevents them from fixing the rate as they see fit.

Senator BLACK. If they continue to extend their ownership until—as it looks like they are attempting to do with that one town in Virginia—until they own lines all over the country, do you not think as a member of the commission that the commission should have power or that the law should provide that if a man is attacked by them he should have a right to use an equal amount of time free of cost?

Commissioner SYKES. Well, Senator, I had not thought about that, sir, and I would really rather think about it before I express an opinion.

Senator BLACK. All right.

Senator FESS. Has there ever been any effort on the part of the commission to censor anything that goes over the radio?

Commissioner SYKES. Not at all, sir. We have no power of censorship under the radio act.

Senator FESS. I know. It was not intended that the Radio Commission should be given that power.

Commissioner SYKES. So I understand.

Senator DILL. In fact, it is expressly forbidden.

Senator BLACK. Yes; I would not be for that.

Commissioner SYKES. Yes; it is expressly forbidden.

Senator FESS. We thought when the subject was being discussed that there might be some abuse along that line where some person would use latitude that ought not to be used. And yet we could not see how we could give the commission any authority to limit it. There is a possibility of abuse along that line that Senator Black mentioned, where they have such control over radio communications, that it might be necessary to give the commission some authority. I do not know of any incident that would call for any such authority, but I can imagine that there might be abuse along that line.

Commissioner SYKES. Well, we have had some complaints, Senator, of where a station owner would probably criticize rather severely, to put it mildly, some one over the radio; we have had lots of appeals to the commission, "Why can't you stop it? Why don't you stop this?" Of course, the answer is, as you say, we have no censorship.

Senator FESS. It is along the line of freedom of the press; that the evil that would come out of attempting to stop it might be even worse than the evil itself.

Commissioner SYKES. That is true, sir.

Senator BLACK. Let me get myself clear. I do not want to stop it. I believe in absolute freedom of speech. They ought to have a right to attack any man running for political office on any reasonable ground, but I know of experiences outside of the radio which lead me to believe that if they had the power and the control of it the rates could be fixed in such a way that the man who did not have the money to buy it would have no chance to answer. And my point is not directed to the question as a matter of censorship but giving the man, whether he had the money or not, the equal right to reach the people with his message.

Senator WHEELER. Providing he is attacked.

Senator BLACK. Yes; providing he is attacked.

Senator FESS. Well, is it the policy of the Radio Commission to treat the station like a common carrier so that if anybody would want to use it, he could demand his right to use it, although the owner might say, "No, you can not"?

Commissioner SYKES. No, sir; I do not think the radio law itself construes broadcasting stations as common carriers. I had been informed that there was quite a debate when the radio act was up for consideration, as to whether or not broadcasting stations should be made public carriers. And they are not under the act public carriers. They have a right, as I understand, to take whatever programs are offered them and refuse whatever they desire. The only exception under the act is that relating to qualified candidates for public office. If one has the facilities the other may have it upon his request on like terms.

Senator HAWES. Suppose a man uses obscene or profane language; have you any way of stopping that?

Commissioner SYKES. There are some provisions, Senator, in the law, relating to obscenity or profanity. That man might be cited for that before the commission on proper complaint and have a hearing as to whether his license should not be revoked.

Senator HAWES. Have you ever had a case like that presented?

Commissioner SYKES. No, sir; we never have had. In fact, we have never had any question of the revocation of a license before the commission.

The CHAIRMAN. Did you not undertake in a way to censor or limit or restrict the station at Shreveport, La.?

Commissioner SYKES. No, sir; we never have.

Senator FESS. That is the one I had in mind.

The CHAIRMAN. Well, you ought to.

Senator BLACK. You have had complaints about it; have you not?

Commissioner SYKES. Lots of them.

Senator DILL. I want to call Senator Hawes's attention to the provision of the law about the question of obscenity that he raised:

> No person within the jurisdiction of the United States shall utter any obscene, indecent, or profane language by means of radio communication.

That appears in section 29. So that it leaves the law of slander still free to act just the same?

Senator HAWES. What is the penalty?

Senator DILL. There is none. The law of the State or the country generally with regard to slander would apply.

Senator HAWES. Well, would not a revocation of a license or suspension of a license be the proper remedy?

Senator DILL. That would apply to the owner of the station, but not to the speaker who was uttering the language.

Senator HAWES. Well, could not the owner control it?

Senator DILL. He could by shutting him off.

Senator PINE. What would be the result if the owner uttered the obscene language over the radio? That is the case at Shreveport.

Senator DILL. Well, the commission could take action against him, and I should think the laws with regard to slander would still apply to him.

The CHAIRMAN. Yes.

Senator WAGNER. We have penal laws in nearly every State covering that anyway.

Senator DILL. Yes.

The CHAIRMAN. Proceed, Judge.

Commissioner SYKES. I was just about to take up the question of transoceanic point-to-point service between 6,000 and 23,000 kilocycles.

In January last year the commission was ready to take up the question of issuing of commercial licenses, point-to-point licenses, relating to the short waves. The transoceanic point-to-point waves between 6,000 and 23,000 kilocycles. The commission had an open hearing relating to the transoceanic point-to-point waves to be allocated. Individual hearings were later given to applications for this service which resulted in allocations being made of these frequencies by the commission in accordance with the list hereto attached.

(This list appears at the end of to-day's hearing.)

CONTINENTAL FREQUENCIES BETWEEN 1,500 AND 6,000 KILOCYCLES

After the allocation of transoceanic waves, which the commission deemed of more immediate importance because all foreign countries were interested therein, the commission then took up the question of the continental frequencies. I might say there that why we were so anxious to allocate transcontinental frequencies was this: Nations file with the Berne Bureau what they have allocated under that. All nations have a right to file, and we felt it of importance to dispose of those transoceanic frequencies, for that reason, as soon as possible.

Senator WHEELER. These short-wave lengths have become extremely important, have they not?

Commissioner SYKES. Yes; very important, Senator, for both transoceanic use and for continental use.

On December 22 the commission made a few partial allocations in the continental band. We were somewhat delayed in this band because other North American nations are interested in them, and use by all of these nations of the same band would interfere, and we thought it of importance to have some sort of an agreement with Canada, Cuba, and Mexico, nations on the North American Continent, with reference to the use of this band.

Senator WHEELER. Do you mind if I interrupt you just a moment? I do not know whether the rest of the members of the committee would like to know about this, but I would like to know for myself—perhaps the rest of you all know it, but I do not—the difference between the short wave lengths and the long wave lengths.

Commissioner SYKES. Well, the transoceanic point-to-point waves between 6,000 and 23,000 are those that carry the long distances, practically all over the world, creat interference if they were being used by more than one concern all over the world.

Senator DILL. But, Judge, his question is a technical question. He wants to know the difference between the long wave lengths and the short wave lengths. What the difference is, is what he is asking for.

The CHAIRMAN. I think the members of this committee will understand that that question ought not to be asked of a lawyer but of the technician when he comes on.

Senator WHEELER. I thought perhaps he would know.

The CHAIRMAN. Well, I would hate to have the lawyers on this committee questioned on that proposition.

Commissioner SYKES. Senator, I could not tell you the technical difference. I do not know.

Senator DILL. I suggest Mr. Caldwell answer the question as it is a very important question.

The CHAIRMAN. Yes; it is an important question.

Commissioner SYKES. Yes; Mr. Caldwell may be able to tell you more about that than I can.

The CHAIRMAN. Yes.

Commissioner SYKES. I do not think I could tell you.

Senator DILL. Well, I think it would be well to have this question answered now because it bothers the Senator.

The CHAIRMAN. Very well, Mr. Caldwell, will you give us the distinction between the long and short waves.

Commissioner CALDWELL. Senator, of course you are familiar with the broadcasting waves which are right on your dial; you have become accustomed to those?

Senator WHEELER. No; I am not familiar with those.

Commissioner CALDWELL. You know that up at one end of the dial is WEAF.

Senator DILL. No; he wants to know what is the difference between the short wave and the long wave.

Commissioner CALDWELL. The difference between the short and the long wave is in the length of the wave from crest to crest. The wave is purely a conception. Perhaps I am getting too technical. Perhaps we can think of it better in frequencies. We have broadcasting frequencies which are relatively slower frequencies. Then there are other frequencies which are higher frequencies, and those frequencies travel long distances, around the world. Perhaps I am getting too technical.

Senator DILL. I would like to take the liberty of trying to explain it myself.

Commissioner CALDWELL. Yes; I would be glad if you would do so, Senator.

Senator DILL. Because I have done it quite often in public.

The CHAIRMAN. I have too, but I have never made the public understand it.

Senator DILL. The theory of this whole thing is that radio travels 300,000,000 meters a second, and that these tubes used for broadcasting purposes send out impulses of electric energy at a certain rate of speed. If they send out 100 electrical impulses in a second they will travel at the rate of 300,000,000 meters—186,000 miles, the same as light—in a second. And in the ether they will be 3,000,000 meters apart. One hundred times a second into 300,000,000 meters gives you 3,000,000 meters, and there will be a distance of 3,000,000 meters in the ether between these waves, and you have a long wave, just as in the ocean, of 3,000,000 meters.

Now, if your vibration in sending out these waves is 100,000 times a second, you divide that into 300,000,000 and you have 3,000-meter wave lengths, which are shorter than 3,000,000. If your vibration is 1,000,000 times a second, you divide that into 300,000,000 meters and you have a 300-meter wave length. And you can go on down. The point is that the short-wave lengths are due to extremely rapid vibration of the instrument; the long-wave length to the comparatively slow vibration of the instrument. And the wave length is an opposite name for frequency. The faster the impulses go out the closer they are going to be in this ether. Now, I do not know whether that explains it or not. But I have tried to put it in terms that will be understandable.

Senator WAGNER. You mean wave length from one crest to another?

Senator DILL. From one crest to another. And the oftener they go out into the ether the closer they are going to be together.

Senator WAGNER. Everybody understands it now.

Senator DILL. I know the scientists will not like my terms, but I have tried to put it as clearly as I could.

Senator HAWES. I would like to ask the witness a legal question—returning to the use of indecent or obscene or profane language. You have no control over that now? It is prohibited, but there is no penalty?

Commissioner SYKES. Yes; that is true.

Senator HAWES. Would it not improve the law, without giving you a right of censorship, to give you the right to revoke or suspend a license where this kind of language was used?

Commissioner SYKES. I think, Senator, it would clarify that part of the law very much if it were provided that the commission would have the right to revoke licenses for those reasons.

Senator HAWES. Well, it is only censorship of——

Commissioner SYKES. Profane or obscene language.

Senator HAWES. That is all.

Senator WAGNER. Does not the penal law of every State take care of that?

Commissioner SYKES. Yes; we have both the common law and the statutory regulations of all States on slanderous libel.

Senator HAWES. But it would be a long, tedious process to invoke the law of the State in a case of that kind?

Commissioner SYKES. Well, yes.

Senator HAWES. And the communications cross the State lines frequently.

The CHAIRMAN. My recollection is that the very law itself contains a penal statute on that.

Senator BLACK. It gives them authority to revoke; does it not?

The CHAIRMAN. I think it adds—the use of obscene, profane, and indecent language.

Senator DILL. It simply forbids it.

Senator HAWES. That is all.

Senator COUZENS. I think the commission has the power to cancel the license.

Senator DILL. Would not the very terms of the commission's power under public interest, convenience, and necessity authorize them to refuse to issue a license because the station has violated the law? I will say, Senator, we had a very long discussion of that when we had the bill up and we decided to leave it in general terms. However, it may be advisable to amend it.

Senator HAWES. Senator, I have in my mind some language that I heard come over the radio one night that you would not use in a barrom, and it just occurred to me it ought to stopped. If the private citizens have to go into court to procure a remedy they will not do it. But if the commission has the power to revoke or suspend a license upon proof of that sort of thing it will not occur again.

Senator FESS. We had the idea that if you made the license of short duration that it might be reached by just giving power to refuse to reissue the license but not to go to the extent of revoking.

Senator DILL. Of course section 33 covers this, Senator, in a way:

SEC. 33. Any person, firm, company, or coropration who shall violate any provision of this act, or shall knowingly make any false oath or affirmation in any affidavit required or authorized by this act, or shall knowingly swear falsely to a material matter in any hearing authorized by this act, upon conviction thereof in any court of competent jurisdiction shall be punished by a fine of not more than $5,000 or by imprisonment for a term of not more than five years or both for each and every such offense.

So that that is one of the provisions of the act that they would be violating.

Senator HAWES. Well, if obscene or profane language came over the radio and it was called to your attention would you proceed criminally, as this act provides for, for a fine and punishment?

Commissioner SYKES. I do not understand that that act provides that the commission must proceed.

Senator HAWES. Well, who does it then? You have no remedy? That would be a remedy to be applied by the individual citizen?

Commissioner SYKES. That is my information and understanding.

Senator HAWES. What I am trying to bring out is that it ought to rest with the commission.

Commissioner SYKES. Well, that law could be clarified, Senator.

Senator SACKETT. Could not the commission file that statement with the District Attorney locally and have him indict under that act just the same as you would under any other criminal act?

Senator HAWES. I think they could, Senator, but it is a cumbersome method.

Senator SACKETT. That is what you have to do in all cases.

Senator WAGNER. Have you not the power to revoke the license that you grant?

Commissioner SYKES. Yes.

Senator WAGNER. Would not that be a ground for revocation if they violated the provisions of the law itself?

Commissioner SYKES. I am strongly inclined to think, Senator, that it might be. That we might have the power under the law to revoke for those reasons, after a hearing, of course, and a trial.

Senator DILL. Well, the bill specifically says "for the violation of any provisions of this act."

Senator WAGNER. That is what I had in mind.

Senator PINE. It would be the duty of the commission to revoke the license.

The CHAIRMAN. You may proceed, Judge.

Commissioner SYKES. I have attempted to state in a general way what we have done during the last year. I will now attempt to state what remains to be done. While it is my belief that the allocation, which became effective on November 11, is a great improvement over the former one, there yet remains to be done under it a great many things to improve radio reception. We already know of interference on certain channels which must result in many individual changes being made by the commission.

I might say there that, while the general plan in my opinion is a good one, this interference has developed and there remains to be done a great deal to improve radio reception under that plan by individual changes and things of that kind. That is being very carefully studied at the present time by the engineering department of the commission. And a great deal yet remains to be done there.

In addition to the hearings already scheduled to be heard, there will be a great many others in order to improve the present set-up. These changes, as a general rule, are made after stations have been heard. There are a lot of applications for construction permits pending before the commission from States which, because of their population, are not using their quota of radio facilities. Positions must be found for such stations which show that it would be in the public interest to have these permits granted. This means that facilities must be reduced in States which are now enjoying more than their proper portion.

Certain technical requirements must be worked out and adopted by the commission, especially relating to stations maintaining their exact frequencies.

There yet remains to be determined some regulation relating to chain broadcasting.

I might say in passing that some time ago the commission adopted a regulation providing that stations on cleared channels located within 300 miles could not broadcast the same program. That regulation was postponed. And the commission is now studying that problem. It realizes that duplication of chain programs is a problem, and that something should be done along that line.

Senator SMITH. Let me get that. You say within a radius of 300 miles that no station shall duplicate the chain program that is being used by another station. That is, that no two stations within that radius shall——

Commissioner SYKES. Within a distance of 300 miles are permitted to broadcast a certain program. That was the regulation, practically speaking.

Senator SMITH. When this chain program goes out from a given point, then it has a monopoly of that 300-mile radius as to that chain program?

Commissioner SYKES. The theory, Senator, or the reason for the passage of this order was that the so-called dependable service—this was on cleared channels, high-powered stations—that the so-called dependable service of stations covered a radius of 150 miles, according to engineers. Therefore, if you placed stations 300 miles apart you would have, if you would take it as a circle, which it is not, of course, but, taking it theoretically as a circle, you would have them just touching. That was the theory upon which that was passed. Of course, there are so many exceptions to the general rule, I know, that would not have such duplication, but I thought it was a step in the right direction.

Senator WHEELER. What use do the newspapers make of the short-wave lengths?

Commissioner SYKES. They are allocated for news service all over the country. They send their press dispatches or news dispatches, Senator, to and from all over the world.

Senator WHEELER. That is, it takes the place, really, of the telegraph and telephone, does it?

Commissioner SYKES. Yes. A number of channels have been allocated for news services.

Senator WHEELER. What has been allocated to the Chicago Tribune?

Commissioner SYKES. There are 20 channels in the continental band that have been allocated to the press services of the country.

Senator DILL. That was the American Publishers' Committee, was it not?

Commissioner SYKES. Yes.

Senator DILL. Yes.

Commissioner SYKES. The first idea was that all of the newspapers should form one company to handle these press messages. Then several suggestions were made. They wanted to form more companies. And the commission finally agreed to allow them to form 10 or 12—I have forgotten whether it is 10 or 12—companies to handle this service; and each one of those companies will probably be allocated two waves.

Senator WHEELER. How many of those 20 channels have been allocated to the Chicago Tribune?

Commissioner SYKES. They have not been specified yet. The individual allocations have not been made, but merely the number—20 to go to the press.

Senator DILL. Well, is this not a fact: That you allocated 20 wave lengths to the American Publishers' Committee, expecting them to get together and divide them up satisfactorily among themselves?

Commissioner SYKES. That is the idea.

Senator DILL. And is it not a fact that when they got together they did not get together at all, and they began to try to divide them up among the newspapers, and now there is a falling out among the members of this committee as to what they are going to do with them?

Commissioner SYKES. Yes. Senator, I might say there that the original idea of the Radio Commission was that they have one company to do all of this work for all of the papers. They said that was not feasible, and they wanted to have those 10 or 12. My position was then that that was wrong. They had to have one. That the very thing was apt to occur that now has occurred, namely, that they would not bring all of the papers into this thing.

Senator DILL. Absolutely.

Commissioner SYKES. And some papers would be complaining. And my insistence and my vote was—giving my individual views—that we should permit the one corporation in preference to these 10 or 12.

Senator SMITH. Did you propose that this one newspaper corporation that would look after the interests of the press should allocate these wave lengths or these broadcasting stations using that frequency at different places throughout the country that suited them?

Commissioner SYKES. Yes; with one corporation, Senator, they could use the 20 as they saw fit, provided they gave this to the entire press; it was to be for the benefit of the entire press of the United States.

Senator SMITH. And they could locate these broadcasting stations where it was most convenient for the use of the press?

Commissioner SYKES. The location of the stations is specified in their applications.

The CHAIRMAN. Well, did you grant plenary power to this body before it was created? Is there no reference whatever to the commission after they shall have made their allocation? Do you not supervise it?

Commissioner SYKES. Oh, yes.

Senator DILL. Well, you have not really issued the license to anybody yet?

Commissioner SYKES. No. No; there is a controversy, may I say, before the commission right now. Certain newspapers contend that they are not being taken care of.

Senator DILL. Yes; and the whole matter is being held up pending hearing on the subject?

Commissioner SYKES. Yes; that will probably result in a hearing.

Senator DILL. Has this proposal been made, that instead of allowing newspapers to attempt to divide up the use of these wave lengths, that the wave lengths be granted to the press associations like the Associated Press, International News, United Press, and Universal Service?

Commissioner SYKES. Yes; these corporations were to be formed, under the idea, against which I voted, of having 10 or 12 of them, but they are press associations.

Senator DILL. Yes; but what is happening now, I understand, is that a few of the big papers are dominating this publishers' committee and other papers are being shut out, where, if this service was granted to the Associated Press, the United Press, the International News, the Universal Service, all newspapers would get a service by radio because all of them get the service of some of these news services.

Commissioner SYKES. Yes; that is exactly what I was afraid of and what seems to be happening now.

Senator DILL. And at the present time the commission has not issued a license, so that the whole thing is still in the hands of the commission, without revoking any license, to issue as it sees fit.

Commissioner SYKES. Yes.

Senator DILL. So the whole matter is still unsettled.

Commissioner SYKES. The commissioners who voted for this plan were very careful to say that all of the press must be taken care of before the allocation was finally made.

Senator WHEELER. But when they got together they could not agree because some of them felt that the Chicago Tribune and some of the large papers dominated the association; is that it?

Commissioner SYKES. That would be my guess, Senator.

Senator WHEELER. Well, I mean that was the complaint that some of them made, was it not?

Commissioner SYKES. Yes. We had quite a lengthy letter from one the other day.

Senator FESS. You hit upon the number 10 or 12, you were not sure which, because there are that many associations that are asking for it?

Commissioner SYKES. Yes. They wanted to have 10 or 12. They thought that those groups would take care of everybody. That was the idea we had.

Senator FESS. It would appear that the commission would doubtless want to recognize the associations now in existence like the Associated Press and the United Press. I wondered whether there were 10 newspaper associations. I have never heard of more than five or six.

Commissioner SYKES. Well, they formed separate corporations for the handling of this work, either 10 or 12. The details of it I have never examined; I have never examined their charters.

Senator WHEELER. Well, there is the Associated Press and the United Press and the International News, and then the Chicago Tribune and the New York Times have some kind of a press association of their own, do they not?

Commissioner SYKES. I think, Senator, a number of the papers formed their own corporations. And that was just what I was afraid of.

Senator DILL. Well, the good thing about it is that nothing has been finally determined and it is all open for reallocation when the hearings have been had.

Commissioner SYKES. Yes; absolutely.

Senator HAWES. Well, it is a little unfair to mention the Chicago Tribune alone. There are other papers that are giving trouble besides that.

Commissioner SYKES. Yes.

Senator HAWES. I mean, since one newspaper is dragged into the controversy it is not quite fair not to mention the fact that there are others; that it should not be mentioned alone, but let the public know that there are others trying to get too much. Not that paper alone.

Commissioner SYKES. Yes; there are a number of these corporations both in New York City and Chicago, and possibly other places, Senator.

Senator WAGNER. Judge, just in order to have something clear that I am not so sure is clear: These short wave lengths are used for code transmission, not for sound transmission?

Commissioner SYKES. No; point-to-point. Not for broadcasting.

Senator WAGNER. Not sound transmission?

Commissioner SYKES. No. It is dot and dash. Telegraphy, as a rule.

Senator WAGNER. Yes; that is right. I wanted that made clear.

The legal questions involved in the three cases enumerated above are similar. The following contentions are made: First, that private property has been taken for public use without just compensation; second, that the owners of the stations have been deprived of property without due process of law; third, that the standard provided by the act, namely, that of "public interest, convenience, or necessity," is so vague and indefinite as to amount to an unlawful delegation of legislative power; fourth, that Congress has delegated all its power to legislate with respect to radio communication and such delegation is unconstitutional; fifth, that broadcasting is not interstate commerce and, therefore, not subject to regulation by Congress; sixth, the question of validity of the waiver required by the joint resolution of Congress of December 7, 1926, and the validity of a similar waiver required by the radio act is also raised.

(C) Appeals from decisions of the commission to Court of Appeals of the District of Columbia:

In the following cases the statutory appeal provided for in section 16 of the act has been taken from decisions of the commission:

(1) In re the application of the General Electric Co., operating station WGY. I think that is the most important case we have pending in the courts.

This is an appeal from a regulation of the commission which resulted in the reduction of the number of hours of operation of station WGY. The station refused to be heard under the regulations prescribed by the commission, though we offered them a hearing; that they make application for one of the channels assigned to that zone. The commission's motion to dismiss the appeal was argued and briefs submitted. The court, however, reserved its decision until the case could be heard on its merits. This case involves, first, the validity of certain rules and regulations of the commission; second, the construction of the provisions of the act concerning the holding of hearings; third, the right of a licensee to a renewal of license; fourth, the validity of the commission's General Order, No. 40, said order being the basis of the allocation and assignment of all broadcasting stations; fifth, constitutional questions arising by virtue of the fifth amendment; sixth, various questions with reference to the construction of the statute with respect to procedure on appeal.

Senator DILL. This is the case here in the District in which former Chief Justice Hughes appears on the other side?

Commissioner SYKES. Yes; that is the case.

Then we have the application of the city of New York, operating station WNYC, in the court.

In this case the commission denied an application for modification of the broadcasting license. The following are the major issues raised: First, the deprivation of property without due process of law; second, the validity of an order of the commission preventing the city of New York from exercising municipal functions; third, matters pertaining to the exercise of discretion on the part of the commission and the application by the commission of the standard of public interest, convenience, or necessity.

Senator WHEELER. Was that where the city of New York itself applied for a station?

Commissioner SYKES. It had a station and it wanted more time. It was dividing time. And it had a hearing before the commission and has appealed from the decision of the commission.

Senator WAGNER. Well, it was not that they wanted more time, but they wanted to retain the time that was originally assigned to them. Did you not take some of the time off?

Commissioner SYKES. Yes; under the allocation their time was reduced.

Senator WAGNER. Yes.

Commissioner SYKES. And they were contending that they wanted the condition to remain as it had been.

Senator WAGNER. So it was not a question of wanting more time but a question of retaining what had originally been granted?

Commissioner SYKES. Yes; to retain what had originally been granted, which was more than granted under the November 11 allocation.

Senator DILL. I want to call attention to the fact that in both of these cases, particularly the case of WGY, if their contentions are maintained in the Supreme Court of the United States, it means that it is impossible once you give a station power or wave length to ever take it away from from them unless you can show they have violated a law.

The CHAIRMAN. A vested right.

Senator DILL. They are claiming that they have a vested right in time and wave length and power.

The CHAIRMAN. Yes.

Senator DILL. And that once it has been granted, and they have invested money on the grant, they have a vested right, the thing that the law specifically says we do not grant. And they are attempting to override the law to that extent, and it goes to the very heart of the whole radio law.

The CHAIRMAN. Of course it does, and to the final jurisdiction of the commission.

Senator BLACK. Do you not think for that reason it ought to be handled by the Attorney General?

Senator DILL. The Attorney General does not understand radio.

The CHAIRMAN. Is not after all the great vital problem in the courts now as to whether or not it is interstate commerce, thereby giving Congress jurisdiction? If it is not interstate commerce what jurisdiction has Congress?

Senator BLACK. You know, Senator Dill, very well, that if you are are going to get a lawyer for $10,000 a year, when he may only stay a year, to say the least of it he is not likely to be in the same class with Judge Hughes, and personally if we have got to have special lawyers, I prefer to hire a good lawyer and pay him a good fee in that particularly important case. I may be wrong, but I think we have too many lawyers in the bureaus now.

Senator DILL. The briefs in this WGY case present two theories. One is the theory that in granting the license to WGY we simply gave them a temporary right to occupy the air at the will of Congress, or rather, the commission as a representative of the Congress.

The other is that we gave them a right, and because we gave them the right they have secured a vested right that can not be

taken away from them unless they violate a law. And it goes to the whole heart of radio regulation and the radio law.

Senator BLACK. It is a question of which is the best way to get the best lawyer.

Commissioner SYKES. The other appeals pending are probably ordinary. I think I have read enough of that to give you gentlemen an idea of what is pending. I want to say this——

Senator SMITH. Before you continue: What is at present the situation with reference to the lawyers representing you? You just have your general counsel engaged in this case?

Commissioner SYKES. And some assistants, yes, sir. We had the idea that we could pay him $7,500. The bureau that seems to fix these matters—I am not familiar with it—said we could only——

Chairman ROBINSON. The Classification Bureau.

Commissioner SYKES. The Personnel Classification Board, I am told, said we could only fix his salary at $6,500 a year. And we feel, Senator, that with these important matters pending, involving as they do a study and knowledge of the legal field of radio as well as other matters pertaining to radio, that it is quite important that the commission have the service of good lawyers.

The CHAIRMAN. Well, Caldwell is a very able radio lawyer, is he not?

Commissioner SYKES. Yes, he is a very able radio lawyer.

The CHAIRMAN. And he quit?

Commissioner SYKES. He leaves us the 23d of February.

The CHAIRMAN. Well, is he taking cases now on the other side for stations, or is he to represent your commission yet in individual cases?

Commissioner SYKES. Yes; he is still representing us.

The CHAIRMAN. I know he is still, but I mean after he quits?

Commissioner SYKES. So far as these pending cases are concerned, I hope, sir, that we will be able to make arrangements to have Mr. Caldwell appear as special counsel for the commission in these important pending suits. I have understood from him that he would do so.

Senator SMITH. Well, is your commission advised as to those lawyers who are thoroughly competent and equipped with technical knowledge sufficient to go into this matter other than those that you have already employed?

Commissioner SYKES. Yes, sir; I think we have a pretty good line on who are good radio lawyers, Senator. You see, they have been appearing before us for two years in these hearings, and we have a pretty good idea as to lawyers.

Senator SMITH. The reason I am asking this question is this: This is the beginning of a new order in our method of communication and advertising and news dissemination, and it is vitally important for us to get it right at the very beginning because it may cause untold difficulty in the future unless we get the matter settled right now.

Senator FESS. Judge, you are asking for authority to assign special counsel for this particular case along the same line that we authorized the employment of special counsel in the oil cases?

Commissioner SYKES. No, sir; there is nothing in this bill, as I understand it, referring to that, but rather, we understand from Mr.

Caldwell that he will be glad to appear and conclude the important litigation. Now, that has nothing to do with the pending bill, Senator, at all.

Senator FESS. I see.

Commissioner SYKES. That is merely to pay a general counsel $10,000 a year and three assistants $7,500 a year.

Senator FESS. Those counsel would then be in permanent employ?

Commissioner SYKES. All the time; yes. Now, I might add that we need these lawyers all the time. We are always working on some new regulation or some general order, and matters are coming up all the time of that nature.

Senator FESS. Well, you recognize the difficulty in making these permanent assignments. Congress is under the impression that we are overloading by the employment of too many people. I was assuming that you meant you wanted special counsel for this particular case.

Commissioner SYKES. No; I was addressing myself to the bill extending the present duties of the commission for another year and authorizing the employment of these lawyers.

Senator DILL. I may say, Senator, that when we passed the bill we thought we had left the commission free to select counsel and pay what salaries it saw fit, but the ruling of the Comptroller General was that we did not. That they came under the classification act. And so we are trying to free them by this amendment.

Senator FESS. Well, I am perfectly willing to go along with you on that. It impresses me that it is quite necessary.

Senator GOFF. Judge, have you ever applied to the Department of Justice for the appointment of a special assistant to the Attorney General to be assigned to this work?

Commissioner SYKES. Senator, if you recall when the radio act was first passed, due to the failure of the deficiency bill to pass, we had five commissioners and very little money. And I happened to be one of the original commissioners appointed. We went over to see the Attorney General and borrowed from him the services of two lawyers. He assigned two lawyers to help us. And they helped us all they could. They were with us quite a good deal. During that time, however, we had no litigation.

Senator GOFF. Well, I want to go specifically to the jurisdictional question of the Attorney General, if he is duly requested to appoint a special assistant and to assign him to you. Have you ever raised that question or made that request and been refused?

Commissioner SYKES. Not at all, sir. We asked him to lend us these lawyers, and he assigned them to us.

Senator GOFF. Now, why could you not do so? I want that in the record, to show that.

Commissioner SYKES. I do not know, Senator, very frankly.

Senator GOFF. Well, do you know of any reason why you could not?

Commissioner SYKES. No; I do not.

Senator GOFF. Do you know of any reason why you could not go to the Department of Justice and ask for the appointment of an eminent attorney as a special assistant attorney general to represent the Radio Commission in opposition to Judge Hughes of New York City?

The CHAIRMAN. Or any other lawyer.

Senator GOFF. Well, I am taking Judge Hughes because his name has been mentioned here.

Commissioner SYKES. No, sir; I do not.

Senator SACKETT. Judge, are you in favor of continuing this Radio Commission for another year?

Commissioner SYKES. I was trying to state, Senator, a few moments ago, what we had done and what remained to be done. I think I have stated it very briefly. Now to answer your question, after laying down those facts, in my opinion, we are very far from completing the work originally intended to be done by this body. If I correctly understand and interpret the law, you expected the Radio Commission to untangle all of this and get it in good shape to turn it back to the Department of Commerce for that department merely to perform ministerial duties relating thereto. We have not got it to that point yet.

I do not regard the broadcasting problem by any means as settled. A great many difficult and controversial questions are coming up on that. Point-to-point communication has not been settled. And a great many controversial questions are coming up there. I do not feel like the work that was intended to be performed originally by the commission has yet been completed. In fact, very frankly, sir, I doubt if it will be completed in one or more years from this time. It rather seems to me to be growing in importance all the time.

Senator SACKETT. You feel, then, that the Radio Commission ought to be a permanent body?

Commissioner SYKES. Well, I would hesitate, Senator, to express my views. I rather do, but since you have asked me——

Senator SACKETT. Well, we are trying to get your views.

Commissioner SYKES. Certainly. I am very frankly inclined, sir, after two years of study and work on the commission, to believe that if there is any reason for having any permanent commissions at all, certainly those reasons exist for having a permanent commission to handle radio. I think it very important and growing more important all the time.

The CHAIRMAN. Judge, you will suspend at this time.

Senator HAWES. Mr. Chairman, in order to economize time, I wanted to ask a series of questions on the subject of radio.

The CHAIRMAN. We will have to do that to-morrow.

Senator HAWES. A series of questions on the subject of radiotelegraphy, and if it is agreeable to the chairman——

The CHAIRMAN. Certainly.

Senator HAWES. I will give these 10 or 12 questions to the witness.

The CHAIRMAN. Certainly.

Senator HAWES. Asking him to answer them and insert the questions and answers in the record.

The CHAIRMAN. That is all right. He can do it to-morrow if you like.

Senator HAWES. I do that merely to save time.

Commissioner SYKES. Yes; I will be glad to do it.

The CHAIRMAN. This room is too stuffy and unsatisfactory, and we will meet in our larger room to-morrow; Room 335, at 10.30.

I have a telegram here from the National Association of Broadcasters representing, they say, 125 American stations that desire the opportunity to present their views on radio legislation. We are not considering radio legislation. The only question here is whether or not the commission shall be continued for a year.

Senator WHEELER. Well, it may be that they have reference to that.

The CHAIRMAN. No; I do not think so.

Senator DILL. No; they have certain recommendations. They want the law amended.

The CHAIRMAN. They want the law amended. It throws no light on this question.

Senator FESS. How long are you going to continue the hearings?

The CHAIRMAN. Well, the way we are going now we will be here to the end of the session.

Senator DILL. I think we ought to limit these hearings.

The CHAIRMAN. We have to limit them. I have just received this telegram:

Your telegram just received at 5.30. Have two very important board meetings to-morrow, at one of which I am to make special report. Have been scheduled for two months to speak here Wednesday night before an important organization too late to recall. Very anxious to serve your committee. Will do anything you say, but would like very much to come on the last day of committee hearings if possible. Please let me know when last day of hearings will be held, and will do my best to be there.

That is from M. H. Aylesworth, the president of the National Broadcasting Co.

There are gentlemen here representing the Radio Corporation of America. Some members of the committee asked that they might be heard. At just how great a length depends, of course, on the will of the committee at the time. But at present it looks as though we might be compelled to run these hearings a day or two yet.

Senator SMITH. They want to be heard on the question before us?

Senator DILL. I think we ought to ask them to confine themselves to the legislation.

The CHAIRMAN. Well, of course, we can do that, but when a Senator gets to asking questions we have no way of stopping him. We will meet to-morrow morning at 10.30 promptly, in Room 335. I hope you can all be there.

(Commissioner Sykes presented for the record in connection with his statement a number of exhibits, which are here printed in the record in full, as follows:)

FEDERAL RADIO COMMISSION,
Washington D. C., August 30, 1928.

GENERAL ORDER NO. 40

At a session of the Federal Radio Commission, held at its office in Washington, D. C., on August 30, 1928, the commission has determined that the definite assignment of a band of frequencies for broadcasting, the maintenance of a separation of 10 kilocycles between frequencies used in broadcasting, the reservation of certain frequencies for exclusive use by stations in the Dominion of Canada, and the setting aside of a certain number of other frequencies for shared use by the United States and the Dominion of Canada, all as hereinafter specified in this order, will serve public interest, convenience, or necessity.

The commission has further determined, after careful consideration, that the allocation of frequencies, of time for operation, and of station power, for use by broadcasting stations, to the respective zones, as hereinbelow specified in this order:

(*a*) Is necessary in order to comply in part with the requirements of section 9 of the radio act of 1927 as amended by section 5 of the act of Congress, March 28, 1928, in so far as it requires that the licensing authority shall as nearly as possible make and maintain an equal allocation of bands of frequency or wavelengths, of periods of time for operation, and of station power, to each of the zones when and in so far as there are applications therefor; and

(*b*) Will promote public interest and convenience and will serve public necessity in so far as this can be done in a manner consistent with the requirements of said section 9 of the radio act of 1927 as amended by section 5 of the act of Congress, March 28, 1928, and will greatly improve reception conditions in the broadcast band by the elimination of a large portion of the interference which now exists. It is therefore ordered:

Paragraph 1.—That a band of frequencies extending from 550 to 1,500 kilocycles, both inclusive, be, and the same is hereby, assigned to and for the use of broadcasting stations, said band of frequencies being hereinafter referred to as the broadcast band. This order is not to be construed as prohibiting the licensing of maritime mobile services on the frequency of 1,365 kilocycles, as provided by the International Radiotelegraph Convention of 1927.

Paragraph 2.—That within said broadcast band a separation of 10 kilocycles be maintained between the frequencies assigned for use by broadcasting stations.

Paragraph 3.—That, of the frequencies within said broadcast band, (*a*) the frequencies of 690, 730, 840, 910, 960, and 1,030 kilocycles be, and the same are, hereby reserved for use by broadcasting stations located in the Dominion of Canada, and shall not be assigned to any broadcasting station licensed by this commission; (*b*) the frequencies of 580, 600, 630, 780, 880, 890, 930, 1,010, 1,120, 1,200, and 1,210 kilocycles be, and the same are hereby, set aside for simultaneous use by broadcasting stations located both in the Dominion of Canada and in the United States, its Territories and possessions, and no station will be authorized by this commission on any of these frequencies with an authorized power which will cause interference at the boundary line between the Dominion of Canada and the United States of America, or in excess of 500 watts at any place within the United States of America or the Territories of Alaska and Porto Rico.

Paragraph 4.—That the frequencies within said broadcast band (subject to the foregoing), and periods of time for operation and station power to be used by broadcasting stations on said frequencies be, and the same are hereby, allocated equally to the zones as follows:

A. The following frequencies are allocated to the first, second, third, fourth, and fifth zones, respectively, as below indicated for use by broadcasting stations, the amount of power to be used by such stations to be determined by further order of the commission:

First zone: 660, 710, 760, 860, 990, 1,060, 1,100, and 1,150 kilocycles.
Second zone: 700, 750, 820, 980, 1,020, 1,070, 1,110, and 1,170 kilocycles.
Third zone: 650, 740, 800, 850, 1,040, 1,080, 1,140 and 1,190 kilocycles.
Fourth zone: 670, 720, 770, 810, 870, 1,000, 1,090, and 1,160 kilocycles.
Fifth zone: 640, 680, 790, 830, 970, 1,050, 1,130, and 1,180 kilocycles.

B. The following frequencies are allocated each for use by not less than two zones, with broadcasting stations in those zones being permitted to operate simultaneously, each station to have an authorized power not to exceed 5 kilowatts, the particular zone entitled to share in the allocation of any particular frequency to be determined by further order of the commission: 1,460, 1,470, 1,480, and 1,490 kilocycles.

C. The following frequencies are allocated for use by not less than two nor more than three zones, the broadcasting stations in these zones being permitted to operate simultaneously, and to have an authorized power not to exceed 1,000 watts, the particular zones entitled to share in the allocation of any particular frequency to be determined by further order of the commission: 580, 590, 600, 610, 620, 630, 780, 880, 890, 900, 920, 930, 940, 950, 1,010, 1,120, 1,220, 1,230, 1,240, 1,250, 1,260, 1,270, 1,280, 1,290, 1,300, 1,320, 1,330, 1,340, 1,350, 1,360, 1,380, 1,390, 1,400, 1,410, and 1,430 kilocycles.

(Except that in those cases where the station locations and powers are such that interference will not be caused, four or five zones instead of three zones may share one or more of the foregoing frequencies where practicable.)

D. The following frequencies are allocated for use in all five zones with broadcasting stations permitted to operate simultaneously, each station to have an authorized power not to exceed 1,000 watts: 550, 560, 570, 1,440, and 1,450 kilocycles.

E. The following frequencies are allocated for use in all five zones by broadcasting stations in simultaneous operation with an authorized power not to exceed 100 watts, the number of such stations to be permitted to operate simultaneously in each zone on each of said frequencies to be determined by further order of the commission: 1,200, 1,210, 1,310, 1,370, 1.420, and 1,500 kilocycles.

F. Whenever the word "frequency" is used in the preceding subparagraphs A, B, C, D, and E of this paragraph, it is to be understood as connoting periods of full-time operation, that is to say, 24 hours daily, and every allocation herein of a frequency to a particular zone is to be considered as carrying with it an assignment of full-time operation on that frequency to that zone.

Paragraph 5.—That the allocation hereinbefore ordered in paragraph 4 of this order be, and the same is hereby, declared to be, effective on October 1, 1928, at the hour of 3 o'clock a. m., eastern standard time; and that the provisions of paragraphs 1, 2, and 3 be, and the same are hereby declared to be, effective as of the date of the issuance of this order.

FEDERAL RADIO COMMISSION,
By E. O. SYKES, *Acting Chairman.*

STATEMENT TO ACCOMPANY GENERAL ORDER NO. 40

General Order No. 40, issued yesterday by the Federal Radio Commission, supplies the official basis for an adjustment in the assignment of the country's broadcasting facilities, under a plan which it is believed will provide an improved standard of radio reception generally, and also distribute the broadcasting channels, power, and periods of time on the air equally among the five radio zones, as directed by the last Congress.

The plan provides for full-time assignments for 100-watt stations equaling in number the total of all other classes of broadcasters put together.

Of the 74 channels made available for high-grade reception, 34 will be assigned for regional service, permitting 125 full-time positions for this type of station, and 40 channels will be assigned to stations with minimum power of 5,000 watts and a maximum to be determined by the commission and announced with the allocation. On these 40 channels only 1 station will be permitted to operate at any time during night hours, thus insuring clear reception of the station's program up to the extreme limit of its service range. These 40 channels will be assigned 8 to each of the 5 zones, thus insuring wide geographical distribution of the country's higher-power broadcasting facilities to all sections.

On the 34 channels shared by regional stations, ranging in power from 250 to 1,000 watts and assigned 2, 3, or 4 per channel, spacings generally of 1,000 to 1,500 miles have been observed.

Throughout the whole allocation wide geographical spacings have been observed between stations on adjoining channels in order to eliminate objectionable "cross talk."

Summarizing, for "local" stations of 50 to 100 watt ratings, 150 full-time positions have been provided, or 30 per zone; 125 regional positions have been provided for 250 to 1,000 watt stations, and 40 positions for stations of 5,000 watts and above. Each full-time assignment available for night use, in many instances, is shared by two or more stations or transmitters, depending upon the number of licensed stations to be accommodated in the zone or locality.

Recapitulating by zones, the equal division of the foregoing facilities among the five zones, will provide each zone with a 8 full-time assignments for stations of 5,000 watts and above; 24 positions for 500 and 1,000 watt stations, and 30 positions for 50 and 100 watt stations.

In announcing this plan the commission does so realizing that it may have imperfections, but believes it an approach to an ideal situation which may be reached in the future.

FEDERAL RADIO COMMISSION,
Washington, D. C.

GENERAL ORDER NO. 42

At a session of the Federal Radio Commission held at its office in Washington, D. C., on September 7, 1928, It is ordered:

1. That, except as hereinafter stated, no broadcasting station assigned to any of the frequencies set forth in subparagraph A of paragraph 4 of General Order No. 40 be authorized to use in excess of 25 kilowatts until further order of the commission.

2. That, for the purpose of determining by experiment whether interference will result from the use of a greater amount of power, the commission may authorize the use of not more than 50 kilowatts power by any of such broadcasting stations for the next license period beginning after the date of this order.

3. That, for experimental purposes, the commission may authorize the use of any amount of power in excess of 50 kilowatts, in equal amounts for each zone, by such broadcasting stations at such hours between midnight and morning as may be determined by the commission.

4. That the commission may authorize the use of an amount of power not in excess of twice that above set forth in paragraphs 1 and 2, by the broadcasting stations therein referred to respectively, for daytime operation only, the exact hours to be determined by the commission.

5. That nothing stated in this order shall be construed as giving any broadcasting station any right or claim to any of the maximum amounts of power hereinabove set forth, or to any amount of power in excess of the amount which the commission shall from time to time in each case find best calculated to serve public interest, convenience, or necessity.

FEDERAL RADIO COMMISSION,
By E. O. SYKES, *Acting Chairman.*

[SEAL.]

Attest:
CARL H. BUTMAN.

FEDERAL RADIO COMMISSION,
Washington, D. C.

GENERAL ORDER NO. 43

At a session of the Federal Radio Commission held at its office in Washington, D. C., on September 8, 1928, It is ordered:

That, until further order of the commission, no two or more of the broadcasting stations assigned to the frequencies allocated under subparagraph A of paragraph 4 of General Order No. 40, shall, during the period beginning with November 11, 1928, broadcast simultaneously the same identical program for more than one hour daily during the hours between 7 o'clock p. m. and 12 o'clock midnight, local standard time at the location of the station farthest east, unless—

(*a*) The transmitters of such stations are separated by a distance in excess of 300 miles; or

(*b*) Such stations are operating on the same frequency; or

(*c*) Such stations receive special permission from the commission. This permission will be granted only in the case of programs of extraordinary national interest or of a nature such that public interest, convenience, or necessity would clearly be served by their duplication to a greater extent than is permitted by the foregoing provisions of this order.

All stations participating in a duplication of programs in violation of this order will be held responsible for such violation, as will also any key station from which such duplication of programs proceeds.

FEDERAL RADIO COMMISSION,
By O. E. SYKES, *Acting Chairman.*

[SEAL.]

Attest:
CARL H. BUTMAN,
Secretary.

FEDERAL RADIO COMMISSION,
Washington, D. C., September 11, 1928.

To all persons holding licenses to broadcast:

The commission has found that certain changes in the frequencies, authorized power, and time of operation of existing broadcasting stations will promote public convenience and interest and will serve public necessity. It has further found that these changes are necessary in order to comply in part with the requirements of section 9 of the radio act of 1927 as amended by section 5 of the act of Congress of March 28, 1928, and with the requirements of General Order No. 40 heretofore issued by the commission on August 30, 1928. These changes are all indicated on the attached list of broadcasting stations.

The list includes certain new stations which have heretofore filed applications for construction permits or for licenses. It also includes increased power assignments to certain existing stations which have applied therefor. In both cases, each application has been from a zone, or from a State within a zone, which is below its quota in number of broadcasting licenses, in number of frequencies, in the amount of station power, or in periods of time for operation, and the commission has granted such applications, after first examining them and determining in each case, that public interest, convenience, or necessity would be served thereby.

The new allocation is to become effective on November 11, 1928, at the hour of 3 o'clock a. m., eastern standard time. This announcement is not to be construed as a renewal of any existing station license; it is to apply solely to those stations which shall be in existence at the time it goes into effect, whether by reason of renewals of existing licenses or by reason of further extensions of existing licenses or otherwise.

It is the intention of the commission to issue renewal licenses to most of the existing broadcasting stations listed in the attached list on or shortly after October 12, 1928, said licenses to be for a period of 90 days commencing on November 11, 1928. These licenses will correspond to the data on the attached list with respect to the frequency, the authorized power, and the hours of operation to be assigned to the respective stations. They can not be issued prior to that date because of a provision in the radio act of 1927 forbidding the granting of a renewal of an existing station license more than 30 days prior to the expiration of the original license. The existing licenses are being extended by order of the commission for 42 days from October 1, 1928, to terminate on November 11, 1928, at the hour of 3 o'clock a. m., eastern standard time. This extension of time prior to the effective date of the reallocation will give all broadcasting stations an opportunity to take such steps as may be necessary to enable them to conform to their new assignment, and also to ask for and obtain from the commission hearings in cases where the assignments are not satisfactory. In a limited number of cases where the commission is not satisfied that public interest, convenience, or necessity would be served by the granting of renewal licenses to existing broadcasting stations, the commission will so notify the licensees and hearings will be held before renewals will be granted.

It is the desire of the commission that any broadcasting station which is dissatisfied with its assignment under the reallocation should have an opportunity to be heard and to demonstrate that public interest, convenience, or necessity would be served by a better assignment. In fairness to the stations affected the commission believes that these hearings should, so far as possible, take place prior to November 11, 1928, the effective date of the reallocation. The commission will therefore entertain and accord a hearing on all applications asking for a modification of the renewal licenses which will be issued on or shortly after October 12, 1928. In order to save time, the commission will permit such applications to be filed prior to that date, and will set them for hearing as soon after that date as possible.

All such applications must specify what frequency, power, and hours of operation are desired by the applicant; no application will be entertained which fails to comply with this requirement. As soon as the date for hearing is set, the commission will notify all broadcasting stations which are directly interested and will give them an opportunity to be heard as well as the applicant. Where the application is for a change in frequency, all broadcasting stations assigned to the requested frequency will be so notified. Where the application is for an increase in power all broadcasting stations assigned to the frequency on which the proposed increased power is to be used, as well as all stations assigned to adjacent channels that are likely to be affected by the

increase, will be so notified. Where the application is for an increase or change in hours of operation all stations, the hours of operation of which would be reduced or changed thereby, will be so notified.

Applications should be made on forms to be provided by the commission. It is expected that such forms will be in the hands of the radio supervisors in the near future, but in the meantime they may be obtained by application to the secretary of the commission.

FEDERAL RADIO COMMISSION,
By E. O. SYKES, *Acting Chairman.*

FEDERAL RADIO COMMISSION,
Washington, D. C.

GENERAL ORDER NO. 46

At a session of the Federal Radio Commission held at its office in Washington, D. C., on October 5, 1928.

In order to determine the actual extent of duplication of chain programs on cleared channels, under the reallocation of broadcasting stations, effective November 11, 1928; and

In order that practical experience obtained may indicate the most practical regulatory measures to reduce such duplication:

The Federal Radio Commission hereby postpones the effective date of General Order No. 43, limiting duplicated operation on cleared channels to stations more than 300 miles apart, until the end of the next broadcasting-license period, January 31, 1929.

FEDERAL RADIO COMMISSION.
By E. O. SYKES, *Acting Chairman.*

[SEAL.]
Attest:
CARL H. BUTMAN, *Secretary.*

FEDERAL RADIO COMMISSION,
Washington, D. C.

GENERAL ORDER NO. 55

At a session of the Federal Radio Commission held at its offices in Washington, D. C., on December 22, 1928, the commission, in order to carry out the provisions of the radio act of 1927, having determined that public interest, convenience, or necessity requires the allocation of certain frequencies, within the band of frequencies between 1,500 and 6,000 kilocycles, to those services and classes of stations hereinafter enumerated, hereby enters the following order.

It is ordered:

Paragraph I.—That of those frequencies between 1,500 and 6,000 kilocycles the following are hereby allocated to those services and classes of stations enumerated herein for assignment to individual stations in conformity with this order.

(*a*) *Mobile services.*—1. Ship stations and coastal stations: The frequencies 1,504, 1,508, 1,512, 1,516, 1,520, 1,524, 1,528, 1,532, 1,536, 1,540, 1,544, 1,548, 1,552, 1,556, 1,560, 1,564, 1,568, 1,572, 1,576, 1,580, 1,584, 1,588, 1,592, 1,596, 1,660, 1,672, 1,684, 1,708, 2,320, 2,332, 2,350, 2,368, 2,380, 2,416, 2,428, 2,446, 2,452, 2,476, 2,482, 2,554, 2,566, 2,584, 2,596, 2,614, 2,626, 2,632, 2,638, 2,644, 2,668, 2,692, 2,728, 2,740, 3,076, 3,106, 3,118, 3,130, 3,142, 3,420, 3,428, 3,436, 4,116, 4,148, 4,172, 4,188, 4,196, 4,755, 4,775, 5,525, 5,555, 5,585, 5,615, 5,645, and 5,675.

2. Aircraft and aeronautical stations: The frequencies 1,608, 1,612, 1,616, 1,620, 1,624, 1,628, 1,632, 1,636, 1,640, 1,644, 1,648, 1,656, 1,668, 1,676, 1,688, 2,302, 2,326, 2,344, 2,362, 2,374, 2,392, 2,506, 2,518, 2,524, 2,530, 2,536, 2,542, 2,560, 2,578, 2,590, 2,608, 2,620, 2,650, 2,662, 2,680, 2,698, 2,722, 2,734, 3,070, 3,082, 3,100, 3,112, 3,124, 3,136, 3,148, 3,452, 3,460, 3,468, 3,484, 3,492, 4,108, 4,124, 4,140, 4,164, 4,180, 4,765, 4,785, 5,510, 5,540, 5,570, 5,600, 5,630, 5,660, and 5,690.

3. Portable stations: The frequencies 1,600, 1,652, 1,664, 1,680, 1,704, and 1,712.

4. Railroad rolling stock stations and railroad harbor and tug stations: The frequencies 2,410, 2,422, 2,440, 2,458, and 2,470.

(*b*) *Fixed services.*—1. Point to point: The frequencies 3,202, 3,208, 3,214, 3,220. 3,226, 3,238, 3,244, 3,250, 4,212, 4,220, 4,228, 4,244, 4,268, 4,276, 4,284, 4,396, 4,405, 4,415, 4,455, 4,465, 4,475, 4,485, 4,495, 4,505, 4,515, 4,535, 4,545, 4,865, 4,875, 4.885, 4,895. 4,905, 5,115, 5,125, 5,135, 5.145, 5,155, 5,165, 5,175, 5,185, 5,195, 5,205, 5,215 5,225, 5,235, 5,245, 5,255, 5,265, 5 275, 5,285, 5,295, 5,305, 5,405, 5,415, 5,425, 5,435, 5,445, 5,455, 5,465, 5,475, 5,485, 5,720, 5,735, 5,750, 5,765, 5,780, 5,795, 5,900, 5,975, and 5,990.

2. Amateur: The band of frequencies between 1,715 and 2,000 kilocycles, inclusive, and that band of frequencies between 3,500 and 4,000 kilocycles, inclusive.

3. Experimental visual broadcasting: The frequencies 2,002 to 2,300, inclusive, and 2.750 to 2,950, inclusive.

4. Experimental: The frequencies 1.604, 2,398, 3,088, and 4,795.

The following frequencies allocated to fixed services, point-to-point stations, are to be assigned exclusively to stations devoted to promoting the interests of agriculture in addition to such assignments as may hereafter be made above 6,000 kilocycles: 3,202, 4,244, and 5,485.

The following frequencies are reserved for assignment to stations rendering emergency services: 3,208, 3,214, 3,220, 3,226, 3,238, 3,244, and 3,250.

Paragraph II.—No license shall be granted to any applicant for a fixed station, coastal station, or aeronautical station who is unable to satisfy the commission that he can maintain the assigned station frequency with an accuracy of 0.05 per cent or better at all time.

Paragraph III.—Licensees of fixed, coastal, or aeronautical stations shall obtain and use for tuning and checking the tuning of their transmitters suitable frequency-measuring equipment which shall be accurate with 0.025 per cent on the frequencies on which the transmitter is licensed to operate. Furthermore, such licensees shall, at frequent intervals, take steps to have the frequency-measuring instruments calibrated or compared with the standards made available by the Department of Commerce.

Paragraph IV.—Licensees must use radio transmitters, the emissions of which, by reason of actual decrement high-speed signaling modulation, spacing waves, harmonics, frequency modulation, key clicks, and mush, do not cause interference detrimental to traffic and programs being carried out on other authorized channels of communications.

FEDERAL RADIO COMMISSION,
By IRA E. ROBINSON, *Chairman.*

FEDERAL RADIO COMMISSION,
Washington, D. C.

In re applications of Universal Wireless Communication Co. (Inc.) for construction permits, point-to-point. Docket No. 185. File No. 120–225, inclusive; 650–657, inclusive; 661–670, inclusive; 681–708, inclusive.

ORDER

The commission having considered the evidence and the arguments presented to it in the above-entitled case, heretofore heard and taken under advisement, and having found that public interest, convenience, or necessity would be served by granting said applications, subject to the following terms, conditions, and provisions:

1. The applicant shall construct transmitting stations in or near the towns or cities described in the applications and further described in the construction permits after the exact locations have been approved by the commission or the Government department administering radio.

2. At least 10 transmitting stations situated in 10 of the cities to be served shall be constructed and ready for use by the public not later than December 31, 1929, and at least three additional stations shall be similarly placed in operation on or before the last day of each and every month thereafter: *Provided,* That all stations constructed under construction permits herein authorized to be issued shall be completed on or before December 31, 1931.

3. The applicant shall install equipment of character and speed satisfactory to the commission.

4. The applicant, when licensed, shall accept, transmit, and deliver, at reasonable rates, all messages filed with it by the general public destined to points with which the applicant is authorized to communicate.

5. All of said stations shall connect and cooperate whenever necessity demands with wireless stations operating on frequencies allocated to special uses, including fire, police, power (emergency), agriculture, etc., and shall cooperate to the fullest extent with stations operating in connection with aviation.

It is ordered, effective this date, that construction permits be issued in accordance with said findings.

FEDERAL RADIO COMMISSION,
By IRA E. ROBINSON, *Chairman.*

Dated December 22, 1928.
Attest:
CARL H. BUTMAN, *Secretary.*

FEDERAL RADIO COMMISSION,
Washington, D. C., June 2, 1928.

The following allocation of high-frequency channels for commercial interests was approved to-day by the Federal Radio Commission in accordance with its action on May 24, 1928.

This includes the assignment of new channels and the reassignments of channels to all existing licensed stations:

1. Tropical Radio Telegraph Co.—7 frequencies: 6,770, 6,785, 10,450, 10,470, 12,940, 12,970, 17,580.
2. American publisher's committee—20 frequencies: 7,340, 7,355, 7,370, 7,625, 7,640, 7,820, 7,835, 7,850, 7,925, 7,955, 15,580, 15,610, 15,640, 15,670, 15,700, 15,730, 15,760, 15,850, 15,880, 15,910.
3. Robert Dollar Steamship Co.—8 frequencies: 7,430, 7,445, 9,410, 10,930, 14,860, 14,890, 18,820, 22,670.
4. American Telephone & Telegraph Co.—14 frequencies: 6,755, 9,170, 9,750, 9,870, 10,550, 13,390, 14,470, 14,590, 16,270, 19,220, 19,820, 18,340, 21,060, 21,420.
5. Radio Corporation of America—65 frequencies: 6,710, 6,725, 6,740, 6,845, 6,860, 6,890, 6,920, 6,935, 6,950, 6,965, 7,400, 7,415, 7,520, 7,715, 8,930, 8,950, 9,010, 9,450, 9,470, 9,490, 10,390, 10,410, 10,610, 10,630, 11,680, 13,420, 13,450, 13,480, 13,690, 13,720, 13,780, 13,840, 11,950, 13,870, 13,900, 13,930, 14,800, 14,830, 14,920, 15,040, 15,430, 15,460, 15,490, 15,970, 16,000, 16,030, 17,860, 17,900, 17,940, 17,980, 18,020, 18,060, 18,860, 18,900, 18,940, 18,980, 19,020, 20,100, 20,180, 20,260, 20,780, 20,820, 21,220, 21,260, 21,300.
6. Mackay Radio & Telegraph Co.—37 frequencies: 6,815, 6,875, 7,670, 7,655, 7,730, 7,745, 7,760, 8,075, 8,720, 8,850, 8,970, 8,990, 9,070, 9,280, 10,490, 10,810, 10,830, 13,000, 13,030, 13,750, 13,960, 14,680, 14,710, 14,740, 14,770, 17,420, 17,660, 17,700, 18,260, 18,780, 19,540, 19,580, 19,620, 19,740, 20,300, 20,980, 21,380.

FEDERAL RADIO COMMISSION,
Washington, February 1, 1929.

MEMORANDUM FOR THE COMMISSIONERS

(Attention of Judge Sykes.)

I am handing you herewith a list of the grants made by the Federal Radio Commission on December 22, 1928. Attached is a copy of General Order No. 55 which designates the frequencies assigned to different services as far as this has been done; but I understand the engineering division has not yet assigned specific frequencies in connection with the grants made. The situation seems to be as follows:

The commission granted the use of 60 channels in the fixed point-to-point high frequency bands, 40 to the Universal Wireless Communication Co. (Inc.), and 20 to the 13 press applicants representing large groups of individual newspapers with the understanding that stations authorized to operate on any of these frequencies shall be required to accept for transmission any news dispatches filed by any newspaper, press association, or group of newspapers of the United States.

A number of applicants were granted the right to use shared channels assigned the following special services: Portable for use of geophysical and police interests, 6 frequencies; emergency, including power company, 7 frequencies; agricultural service 3 frequencies; aircraft and aeronautical stations, 64 frequencies; and railroad and tug stations 5 frequencies; all assignments in these last groups are with the understanding that other applicants may be assigned joint use of these frequencies.

From the minutes and Commander Craven's report made on December 22, I am listing the applications granted.

The following press wireless associations were granted the use of 20 frequencies:

Press continental assignments

File No.	Applicant	Nature of application
5-P-C-781	Los Angeles Times Wireless (Inc.)	C. P.
5-P-C-780	San Francisco Chronicle Wireless Corporation (Ltd.)	Do.
1-P-C-777	American News Traffic Corporation (Inc.)	Do.
4-P-C-778	do	Do.
1-P-C-786	do	Do.
1-P-C-787	United Press Wireless (Inc.)	Do.
1-P-C-782	New York Herald-Tribune Wireless (Inc.)	Do.
1-P-C-767 [1]	Consolidated Wireless Corporation	Do.
1-P-C-784	Scripps-Howard Wireless (Inc.)	Do.
1-P-C-776	New York Times Wireless (Inc.)	Do.
1-P-C-779	Press Publishing Wireless (Inc.)	Do.
4-P-C-783	Chicago Tribune Wireless (Inc.)	Do.
1-P-C-785	Universal Service Wireless (Inc.)	Do.

[1] Application requests transoceanic as well as transcontinental frequencies.

General public assignments

The following organization was granted the use of 40 frequencies:

Docket No.	File No.	Applicant	Nature of application
185	P-C-120-225 P-C-650-657 P-C-661-670 P-C-681-708	Universal Wireless Communication Co. (Inc.).	Construction permits.

All subject to special conditions outlined in the order which you have filed.

The following point-to-point applications were granted:

Docket No.	File No.	Applicant	Nature of application
202	5-P-C-535 5-L-C-150	Hawaiian Pineapple Co., 2 stations. Frequency to be assigned.	Construction permit and renewal license.
	5-L-C-59 to 5-L-C-69.	Mutual Telephone Co. of Hawaii, 6 stations. Frequency.	Renewals of licenses and licenses.
254	5-P-C-569 to 5-P-C-576.	State Federal Joint Marketing Service, 7 stations (sharing 3 frequencies).	Construction permits.
		AERONAUTICAL STATIONS	
	5-P-L-3 5-P-L-4 3-P-L-5 5-P-L-1 5-P-L-2	Maddux Air Lines (Inc.) (shared channels)	Aeronautical construction permits.
	5-L-C-246 5-L-C-247 to 5-L-C-270 4-P-C-547 4-P-C-548 4-P-C-549	Western Air Express, 38 applications (shared frequencies).	Licenses and construction permits.
	5-L-C-347	Boeing Air Transport Co. (Inc.) (KQX) (shared frequency).	License.
	2-L-C-348	Ford Motor Co. (WCQ) (shared frequency)	Do.

File No.	Applicant	Nature of application
	LAND STATIONS ATLANTIC AND GULF COAST	
3-A-C-1 3-M-C-15 3-P-C-758 3-L-C-33 1-L-C-25 to 1-L-C-32	Radiomarine Corporation of America, 12 stations. Frequencies.	License, renewal license, and construction permits.
3-L-C-12	Gulf Refining Co. (WPA). Frequency	Renewal license.
3-L-C-18	Palm Beach Radio Co. (WOE). Frequency	Do.
2-L-C-38	Tidewater Wireless Telegraph Co. (WNW). Frequency.	Do.
3-L-C-39 to 3-L-C-44 1-L-C-45 3-L-C-226 to 3-L-C-330 3-L-C-333 3-L-C-334 1-L-C-231	Tropical Radio Telegraph Co., 8 stations. Frequency.	Renewal of licenses and license.
3-L-C-46	George Collins Warner, jr. (WPD). Frequency	Renewal of license.
1-L-C-96	Radio Corporation of America (WQN). Frequency	Do.
3-L-C-152	Humble Oil & Refining Co. (KDPS). Frequency	Do.
3-L-C-173	Magnolia Petroleum Co. (WOD). Frequency	Do.
3-P-C-518	Mackay Radio & Telegraph Co. Frequency	Construction permit.
1-L-C-329	Bethlehem Shipbuilding Corporation (WPC). Frequency.	License.
1-L-C-10 1-L-C-11	Department of Interior, Bureau of Insular Telegr aph (Porto Rico). (WKK-WGW). Frequencies.	Renewal of license.
	LAND STATIONS GREAT LAKES REGION	
4-L-C-118	Docket No. 343, Chicago Federation of Labor (WCFL). Frequency.	Renewal of license
2-L-C-16 2-L-C-58 2-L-C-176 2-L-C-57	Michigan Limestone and Chemical Co. (WLC). Frequency.	Renewal of license and license.
4-L-C-36 4-L-C-103	C. Reiss Coal Co. (WSK). Frequency	Renewal of license.
4-L-C-281 2-L-C-282 2-L-C-284 1-L-C-285 2-L-C-288 2-L-C-290	The Intercity Radiotelegraph Co., 6 stations. Frequency.	Renewal licenses.
2-L-C-47	Alpena Marine Radio Service (WGI). Frequency	License.
4-L-C-2 2-L-C-3 2-L-C-4 2-L-C-5 2-L-C-109 2-L-C-110 2-L-C-111 4-L-C-112	Ann Arbor Railway Co., 4 stations. Frequencies	Renewal of licenses.
2-L-C-145 2-R-C-16	Ford Motor Co. (WMD-WAV). Frequency	License. Renewal license.
4-L-C-13 4-L-C-14 4-L-C-162	Illinois Radio Corporation of America (WGO). Frequency.	Renewal of license and license.
2-L-C-19 2-L-C-192	Pere Marquette Railway (WLD). Frequency	Do.
4-L-C-20 4-L-C-21 1-L-C-22 2-M-C-19 4-L-C-100 1-L-C-102 2-P-C-755	Radio Corporation of America (Ohio, 3 stations. Frequency.	License, modification of license, and construction permit.
2-L-C-37 2-L-C-105	E. M. Tellefson (WHQ). Frequency	Renewal license.
2-L-C-169	W. W. Kathan (KUXM). Frequency	Do.
2-L-C-170	Kreetan Co. (KUVQ). Frequency	Do.
2-L-C-155	Huron Transportation Co. (WNO). Frequency	Do.
	INLAND LAND STATIONS	
3 L-C-164 3-L-C-165 3-L-C-167 4-L-C-166 4-P-C-326	Inland Waterways Corporation, 5 stations, Docket No. 268. Frequency.	License renewals and construction permit.
3-L-C-235	United States Shipping Board (KIVM). Frequency	License.

File No.	Applicant	Nature of application
	PUBLIC LAND STATIONS PACIFIC COAST	
5-L-C-52 5-L-C-7	City of Seattle Harbor Department (KPE). Frequency.	Renewal.
5-L-C-8 5-P-C-757	Coos Bay Wireless Telegraph Co. (KGN). Frequency.	Renewal license and construction permit.
5-M-C-14	American Tug Boat Co. (KFT). Frequency	Modification of license.
5-L-C-17	Mutual Telephone Co. (KHK). Frequency	Renewal of license.
5-L-C-342 5-P-C-520 5-P-C-519	Mackay Radio & Telegraph Co., 2 stations. Frequency.	License and construction permits.
5-L-C-34 5-L-C-35 5-L-C-265	Radiomarine Corporation of America. Frequency	Renewal license.
	POWER COMPANIES (EMERGENCY SERVICE)	
2-L-C-240 2-L-C-241 2-L-C-242	West Penn Power Co., 3 stations (shared frequencies)	Do.
2-L-C-135 to 2-L-C-137 2-P-C-312 to 314	Detroit Edison Co., 6 stations, docket No. 184 (shared frequencies).	Renewal license and construction permits
1-R-C-24	The Susquehannah Power Co. (WSY) (shared frequencies).	Renewal license.
5-L-C-120 5-L-C-121 5-L-C-122	City of Seattle Light Department, 3 stations (frequencies shared).	Do.
2-R-C-26	The Philadelphia Electric Co. (WJV) (frequency shared).	Renewal license.
4-L-C-125	Commonwealth Edison Co. (frequency shared)	License.
3-P-C-717 to 3-P-C-728	Florida Power & Light Co. (frequencies shared)	Construction permits.
1-L-C-204 1-L-C-205	Public Service Electric & Gas Co (frequencies shared)	Licenses.
1-L-C-198 1-L-C-199	The Potomac Edison Co., 2 stations (frequencies shared).	Do.
1-L-C-200 1-L-C-201	Potomac Electric Power Co., 2 stations (frequencies shared).	Renewal licenses.
2-L-C-182 to 2-L-C-186	Pennsylvania Power & Light Co., 5 stations (frequencies shared).	Do.
5-L-C-180 5-L-C-181	Northwestern Electric Co., 2 stations (frequencies shared).	Do.
4-L-C-178 4-L-C-179	Northern States Power Co., 2 stations (frequencies shared).	Do.
2-P-C-404 2-P-C-405	Docket No. 217, West Penn Power Co. (frequencies shared).	Construction permits.

Geophysical

Docket No.	File No.	Applicant	Nature of application
180	3-P-G-1 to 21 3-P-G-69 to 71 5-P-G-60 to 63 5-L-G-1 to 4	Geophysical Research Corporation (shared frequencies).	Construction permits and licenses.
245	3-P-C-583	Maryland Production Co. (frequencies shared).	Geophysical construction permits.
200 183	3-P-G-73 3-P-C-387 3-P-C-388 3-P-G-48 to 59	The Texas Co. (shared frequencies)	Do.
181	3-P-G-22 to 39	Humble Oil & Refining Co. (frequencies shared).	Do.
187	3-P-G-64 to 68	Geophysical Exploration Co. (shared frequency).	Do.
318	3-P-G-83 to 94	Interstate Geophysical Exploration Co. (frequencies shared).	Do.
	3-P-G-74 to 77	F. S. Chapman (shared frequencies)	Do.
		POLICE AND FIRE DEPARTMENTS	
	2-L-C-187 to 191	Pennsylvania State police, Commonwealth of Pennsylvania, 5 stations (shared frequencies).	Renewal licenses.
	1-P-C-739	Commonwealth of Massachusetts (shared frequencies).	Construction permit.
	1-L-C-113	Board of Fire Commissioners, City of Baltimore, Md. (WEQ) (shared frequency).	Renewal license.
269	1-P-C-580	Boston Fire Department (WEY) (frequency shared).	Construction permit.
	2-P-C-761 2-L-C-349	Pennsylvania Railroad (shared frequency)	Construction permit and license.
	3-R-C-1	Fire Signal Department, City of Dallas (KVP) (shared frequency).	Renewal license.

Geophysical—Continued

Docket No.	File No.	Applicant	Nature of application
		PRESS TRANSOCEANIC FREQUENCIES	
	5-P-C-763	San Francisco Chronicle Wireless Corporation (Ltd.).	Construction permits. To operate on 20 transoceanic frequencies previously allocated.
	1-P-C-764	United Press Wireless (Inc.)	
	1-P-C-765	Scripps Howard Wireless (Inc.)	
	4-P-C-766	Cnicago Tribune Wireless (Inc.)	
	1-P-C-767	Consolidated Wireless Corporation	
	5-P-C-768	Universal Service Wireless (Inc.)	
	1-P-C-769	Press Publishing Wireless (Inc.)	
	1-P-C-770	American News Traffic Corporation (Inc.)	
	1-P-C-771	do	
	1-P-C-772	Universal Service Wireless (Inc.)	
	1-P-C-773	New York Herald Tribune Wireless (Inc.)	
	1-P-C-774	New York Times Wireless (Inc.)	
	5-P-C-775	Los Angeles Times Wireless (Inc.)	

There follows the other action of the commission taken December 22, 1928, that is, applications denied and hearings designated.

APPLICATIONS DENIED

The commission denied the following applications:

File No.	Applicant	Call letters	Nature of application
3-P-C-355	Morris & Co		C. P.
4-P-C-676	Davis Industries (Inc.)		Do.
4-P-C-677	do		Do.
5-L-C-138	Division of fish and game, California	KMY	License.

In the following case heretofore designated for hearing:

Docket No.	File No.	Applicant	Call letters	Nature of application
219	5-L-C-156	Illinois Pipe Line Co	KVX	License.
	5-L-C-157	do	KVD	Do.
	2-L-C-158	do	WJAV	Do.
	2-L-C-159	do	WJC	Do.
	2-L-C-160	do	WBY	Do.
	4-L-C-161	do	WHY	Do.
198	3-P-C-537	Florida Public Service Co		Construction permit.
	3-P-C-538	do		Do.
	3-P-C-539	do		Do.

APPLICATIONS DESIGNATED FOR HEARING

The commission designated the following applications for hearing:

File No.	Applicant	Call letters	Nature of application
1-L-C-217	South Porto Rico Sugar Co	WPR	Renewal license.
3-P-C-712	Southern Radio Corporation (Standard Oil).		C. P.
3-P-C-713	do		Do.
3-P-C-714	do		Do.
1-P-C-582	do		Do.
3-L-C-70	Palm Beach Radio Telegraph Co	WOE	License.
3-P-C-736	Florida Radio Telegraph Co		C. P.
3-R-C-23	do		Renewal license.
2-L-C-278	Ford Motor Co	WBO	Do.
2-L-C-144	do	WBO	Do.
2-P-C-752	do		C. P.
2-L-C-140	do	WCT	Renewal license.
2-L-C-141	do	WCT	Do.
2-L-C-142	do	WCT	Do.

APPLICATIONS DESIGNATED FOR HEARING—continued

File No.	Applicant	Call letters	Nature of application
4-L-C-107	Wireless Telegraph & Commission Co	WHW	Renewal license.
1-P-C-590	do		C. P.
2-P-C-591	do		Do.
2-P-C-592	do		Do.
2-P-C-593	do		Do.
4-P-C-594	do		Do.
5-P-C-595	do		Do.
4-P-C-596	do		Do.
4-P-C-597	do		Do.
4-P-C-598	do		Do.
4-P-C-599	do		Do.
3-P-C-600	do		Do.
3-P-C-601	do		Do.
5-P-C-602	do		Do.
5-P-C-603	do		Do.
5-P-C-604	do		Do.
1-P-C-658	do		Do.
1-P-C-659	do		Do.
2-P-C-660	do		Do.
5-P-C-671	do		Do.
5-P-C-672	do		Do.
3-P-C-678	Wireless Telegraph & Commission Co		C. P.
3-P-C-679	do		Do.
3-P-C-680	do		Do.
2-P-C-113	Radio Telegraph Co		Do.
5-L-C-168	Lincoln L. Jackson	KPA	License.
2-L-C-131	Crosley Radio Corporation	WDJ	Renewal License.
5-L-C-146	General Electric Co	KEB	Do.
5-L-C-147	do	KFD	Do.
2-L-C-139	Frank D. Fallain	WGF	Do.
5-L-C-202	C. S. Pratt and L. C. Dutro	KYX	Do.
5-L-C-203	do	KZI	Do.
5-L-C-132	Cecil B. DeMille	KJU	Do.
5-L-C-193	Jay Peters	KZB	Do.
5-L-C-263	do	KZA	Do.
5-L-C-219	Southern California Edison Co	KDPU	Do.
5-L-C-220	do	KXU	Do.
5-L-C-221	do	KRY	Do.
5-M-C-13	American Tug Boat Co	KFT	Modification of license.
5-L-C-108	do	KFT	Renewal license.
5-L-C-114	Boulevard Express Co. (Inc.)	KVU	Do.
5-L-C-115	do	KVT	Do.
2-L-C-116	The J. P. Burton Coal Co	WLI	Do.
2-L-C-117	By Products Coal Co	WLG	Do.
2-L-C-119	City of Akron		License.
3-P-C-673	Straus-Frank Co		C. P.
3-P-C-674	do		Do.
5-P-C-741	American National Co		Do.
5-P-C-742	do		Do.
3-L-C-151	Houston Printing Co	KPRC	License.
5-L-C-211	Russell Reed	KFZ	Renewal license.
5-L-C-212	do	KGV	Do.
5-L-C-171	Mackay Radio & Telegraph Co	KKC	License.
1-L-C-172	do	WKI	Do.
3-L-C-225	George Cooper Tichenor	KHX	Renewal license.
2-L-C-236	John Wanamaker Co	WHE	Do.
1-L-C-237	do	WHI	Do.
3-L-C-238	E. G. Watts, jr	WRP	Do.
3-L-C-239	do	WRP	Do.
2-L-C-245	Wyandotte Transportation Co	WCV	Do.
5-L-C-124	City of Seattle Harbor Department	KPE	Do.
3-M-C-16	Radiomarine Corp. of America	WOE	Modification of license.
1-L-C-207	do	WCC	Renewal license.
1-L-C-208	do	WSC	License.
1-L-C-209	do	WNY	Do.
1-L-C-210	do	WSH	Renewal license.
5-L-C-148	Grays Harbor Stevedore Co	KZE	Do.
2-L-C-234	U. S. Shipping Board, Merchant Fleet Corporation.	WPF	Do.
1-L-C-6	Bethlehem Shipbuilding Corporation	KDGU	Do.
3-P-C-514	Stewart Hall Buchahan		Do.
1-P-C-759	City of New York Department of Plant and Structures.		C. P.
4-L-C-104	The C. Reiss Coal Co		License.
1-L-C-177	The New York Police Department, City of New York.	KUVS	Renewal license.
1-L-C-197	do	KUVS	Do.
1-L-C-261	New York Central Railroad Co		License.
1-L-C-262	do		Do.
4-L-C-340	Chicago Federation of Labor		Do.
2-P-C-512	Tidewater Wireless Telegraph Co		C. P.
2-P-C-536	do		Do.
2-P-C-736	do		Do.

CARL H. BUTMAN, *Secretary.*

Senator WHEELER. When I mentioned the Chicago Tribune, the information came to me that the Chicago Tribue dominated this publishers' association. At least that was the complaint that was made by some of the newspapers. And I wanted to ask you what you knew about that.

Commissioner SYKES. About that, Senator, I do not know. I could not testify.

Senator GLENN. You have no proof of that, have you?

Commissioner SYKES. Oh, no. This matter has not been threshed out before the commission. It will be on a hearing as to whether or not partiality is being shown in the matter.

I was going to state what yet remains to be done. In both the continental and oceanic point-to-point allocations time has been granted for the erection of stations. Upon their completion they will have to be licensed, provided they have complied with certain regulations and limitations adopted by the commission. In the continental field especially there yet remains to be granted a number of applications. We have just begun our work on that band.

I would now like to talk a little about the litigation that is pending. There is certain litigation now pending in courts, as shown by exhibits hereto attached, which when finally decided should determine a great many of the legal questions and the constitutionality of radio legislation. Some of these cases have been argued and some have not yet been argued before the courts. It is highly important that in this legal field the commission should have the services of good lawyers. It is expected that during the present year we will have other litigation. And I hope and believe that all the questions relating to the constitutionality of the radio act will be finally argued and determined during the present year.

Senator DILL. In the Supreme Court?

Commissioner SYKES. It is in the court of appeals, Senator, now. When it will finally reach the Supreme Court of the United States, of course, we can not say. I hope some time during the year.

Senator WHEELER. How many cases, would you say?

Commissioner SYKES. I will give you that in just a minute, Senator. I would imagine; Senator, that it would be a preference case when it gets there and would be advanced on the docket.

Senator GOFF. What court of appeals is it in?

Commissioner SYKES. In the Court of Appeals of the District of Columbia. That is where appeals from the commission go.

Senator HAWES. Judge, has this litigation been handled by your commission or by the Department of Commerce?

Commissioner SYKES. By the general counsel of the Radio Commission, Senator.

Senator HAWES. Of the commission?

Commissioner SYKES. Yes.

Senator HAWES. It would probably have to follow this litigation right through, having been initiated?

Commissioner SYKES. Yes. I mention that because this present bill under consideration provides for the payment to a general counsel of the Radio Commission of $10,000 a year, and three assistants to get $7,500 a year.

Senator SMITH. Are you going to set forth in your brief there or in your statement the points that you have raised in the courts?

Commissioner SYKES. Yes.

Senator SMITH. The specific things?

Commissioner SYKES. Yes, sir; I have an exhibit to this very short statement, Senator, on that point.

Senator DILL. Let us go ahead and read that.

Commissioner SYKES. A statement in brief of this litigation.

Senator SMITH. That is what I should like to know.

Commissioner SYKES. I just want to say in passing that of course opposing counsel are always very eminent counsel, and that in my judgment the commission should have the services of the best lawyers it can to try and sustain the constitutionality of the act and the legality of the orders of the commission. And I think the sums asked for in the bill are quite reasonable and quite modest for those reasons.

Senator WHEELER. We have very able counsel over in the Department of Justice. They ought to be able to represent you.

Commissioner SYKES. Senator, this radio law is so technical that it requires a lawyer to study this subject in order to know, for example, what is the difference between a kilocycle and a watt, as I heard some one ask.

Senator SMITH. Just refer all those questions to this committee.

Commissioner SYKES. All right, Senator. Now you ask me concerning this litigation, and I will turn to that statement about the cases pending.

At the present time three cases are pending in the United States District Court for the Northern District of Illinois, and nine cases in the Court of Appeals of the District of Columbia. They may be classified as follows:

(A) Suits to enjoin the institution of proceedings under the penal provisions of the radio act:

(1) Clinton R. White (station WCRW) *v.* Johnson, United States attorney, et al.

(2) Emil Denemark (Inc.) (station WEDC) *v.* Johnson, United States attorney, et al.

In the above cases after notice and hearing the commission issued licenses calling for a reduction in power of the stations involved. The licensees now seek to restrain the commission and the United States district attorney from enforcing the penal provisions of the act. Motions for temporary injunctions were denied. In the White case an appeal has been taken from the decision of the district court to the court of appeals of the seventh circuit.

(B) Suit to enjoin threatened violation of act by operation of station without license.

(1) United States *v.* American Bond & Mortgage Co. et al (station WOK–WMBB).

The commission denied the application of this station for renewal of license. The owner of the station thereafter openly announced its intention to broadcast without a license. Suit was brought by the Attorney General of the United States to restrain this operation. This case has been argued and brief submitted, but no decision has been rendered.

FEBRUARY 4, 1929.

Memorandum to Commissioner Sykes and members of the Federal Radio Commission.

Subject: Pending litigation.

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The legal questions involved in the three cases enumerated above are similar. The following contentions are made: First, that private property has been taken for public use without just compensation; second, that the owners of the stations have been deprived of property without due process of law; third, that the standard provided by the act, namely, that of "public interest, convenience, or necessity" is so vague and indefinite as to amount to an unlawful delegation of legislative power; fourth, that Congress has delegated all its power to legislate with respect to radio communication and such delegation is unconstitutional; fifth, that broadcasting is not interstate commerce and, therefore, not subject to regulation by Congress; sixth, the question of validity of the waiver required by the joint resolution of Congress of December 7, 1926, and the validity of a similar waiver required by the radio act is also raised.

(C) Appeals from decisions of the commission to Court of Appeals of the District of Columbia:

In the following cases the statutory appeal provided for in section 16 of the act has been taken from decisions of the commission:

(1) In re the application of the General Electric Co., operating station WGY:

This is an appeal from a regulation of the commission which resulted in the reduction of the number of hours of operation of station WGY. The station refused to be heard under the regulations prescribed by the commission. The commission's motion to dismiss the appeal was argued and brief submitted. The court, however, reserved its decision until the case could be heard on its merits. This case involves, first, the validity of certain rules and regulations of the commission; second, the construction of the provisions of the act concerning the holding of hearings; third, the right of a licensee to a renewal of license; fourth, the validity of the commission general order No. 40, said order being the basis of the allocation and assignment of all broadcasting stations; fifth, constitutional questions arising by virtue of the fifth amendment; sixth, various questions with reference to the construction of the statute with respect to procedure on appeal.

(2) In re application of the city of New York, operating station WNYC:

In this case the commission denied an application for modification of the broadcasting license. The following are the major issues raised: First, the deprivation of property without due process of law; second, the validity of an order of the commission preventing the city of New York from exercising municipal functions; third, matters pertaining to the exercise of discretion on the part of the commission and the application by the commission of the standard of public interest, convenience, or necessity.

(3) In re the application of Technical Radio Laboratory, operating station WTRL:

In this case the commission denied an application for a renewal of license. The applicant appeals on the ground that the action of the commission results in confiscation of its property in violation of the fifth amendment and on the further ground that the commission abused its discretion and failed to properly apply the standard of public interest, convenience, or necessity.

(4) In re the application of Bull Insular Lines (Inc.):

The commission denied applications for construction permits for stations designed to operate in the transoceanic field. No constitutional question is presented, the only question involved being the proper application of the standard of public interest, convenience, or necessity.

(5) In re application of International Quotations Co.:

Applications for construction permits were denied in this case, the same being for transoceanic operation, the grounds for appeal being the same as in the previous case.

(6) In re the application of C. L. Carrell for renewal of broadcasting licenses;

(7) In re application of Great Lakes Broadcasting Co., operating station WENR;

(8) In re application of Wilbur Glenn Voliva, operating station WCBD:

(9) Application of Agricultural Broadcasting Co., operating station WLS:

The three preceding cases are appeals from decisions of the commission denying applications for modification of licenses, the pleading in each case setting forth that the applicant has been deprived of property rights and the violation of the fifth amendment by the action of the commission, and further that the commission's action is unreasonable and arbitrary.

Number of hearings held March 1, 1928—February 4, 1929

Hearings involving broadcasting stations	246
Hearings involving point to point stations	83
Total	329

Number of pending hearings, February 4, 1929

Hearings involving broadcasting stations	71
Hearings involving point to point stations	114
Total	185

FEBRUARY 6, 1929.

In so far as the records of this commission show, the following is a list of broadcasting stations owned by public-utilities corporations:

Call letters	Location	Owner	Shares with	Power	Kilocycles	Time and pr. limitation
				Kilowatts		
WBAL	Glen Morris, Md.	Consolidated Gas, Electric Light & Power Co.	WTIC	5	1060	
WEEI	Boston, Mass.	Edison Electric Illumination Co. of Boston.		[1] 500	590	
WENR WBCN	Chicago, Ill.	Great Lakes Broadcasting Co.[2]	WLS	[3] 25	870	
WFBM	Indianapolis, Ind.	Indianapolis Power & Light Co.[4]		1 500	1,050 1,230	LT.
WTAM	Cleveland, Ohio	WTAM & WEAR (Inc.) [5]	WEAR	3½	1,070	
KFIU	Juneau, Alaska	Alaska Electric, Light & Power Co.		10	1,310	

[1] Watts.

[2] Stock distributed as follows: Commonwealth Edison Co., 60 per cent; Peoples Gas Light & Coke Co., 10 per cent; Middle West Utilities Co., 10 per cent; Public Service Co., of Northern, Ill., 5 per cent; Midland Utilities Co., 10 per cent; Chicago Rapid Transit Co., 4 per cent; Chicago North Shore & Milwaukee R. R. Co., 1 per cent.

[3] And 25 kilowatts Exp.

[4] On 1,230 kilocycles shares with WSBT-WGL; construction permit for 25 kilowatts; on 1,050 LP. Sub. of Utilities Power & Light Co., Chicago, Ill.

[5] Subsidiary of Vaness Co., and Cleveland Electric Illuminating Co.

In so far as the records of this commission show, the following is a list of broadcasting stations owned by corporations that might be classed as common carriers.

Call letters	Location	Owner	Shares with	Power	Kilocycles
				Kilowatts	
WKAQ	San Juan, P. R.	Radio Corporation of Porto Rico [1]		500	580
WLBW	Oil City, Pa.	Petroleum Telephone Co.		500	1,260
KGB	San Diego, Calif.	Pickwick broadcasting Corporation [2]	KSMR	250	1,360
KSMR	Santa Maria, Calif.	Santa Maria Valley R. R. Co.		100	1,200
KTM	do.	Pickwick Broadcasting Corporation [2]	KELW	500	780
WRC	Washington, D. C.	Radio Corporation of America		500	950

[1] Sub. of Porto Rico Telephone Co., which is a sub. of International Telephone & Telegraph Co.
[2] Sub. of Pickwick Corporation, Pickwick Stages System.

NEW YORK, N. Y., *February 5, 1929.*

Senator JAMES E. WATSON,
Senate Office Building, Washington, D. C.

The National Association of Broadcasters, representing 125 American stations, desires opportunity to present its views on radio legislation before your committee. Impossible to reach Washington until Wednesday. Please wire collect if appearance can be arranged that day. If impossible, please insert in record formal report being forwarded by mail to-night.

L. S. BABER, *Managing Director.*

NEW YORK, *February 4, 1929.*

DEAR SENATOR WATSON: Confirming our telegram of this date, there is inclosed herewith a copy of the formal recommendations of the National Association of Broadcasters in regard to radio legislation.

If the requested opportunity to be heard before your committee on Wednesday can not be arranged, we request that you insert this statement in the record.

Cordially yours,

L. S. BABER,
Managing Director, National Association of Broadcasters.

RECOMMENDATIONS TO CONGRESS BY THE BOARD OF DIRECTORS OF THE NATIONAL ASSOCIATION OF BROADCASTERS

The board of directors of the National Association of Broadcasters respectfully presents the following recommendations regarding legislation affecting radio broadcasting:

I. ADMINISTRATION OF THE RADIO LAW

The National Association of Broadcasters urges that as soon as possible the administration of the radio law be permanently vested in whatever Federal body the Congress may designate in order that such administration may proceed in an orderly, stable, and consecutive manner, which is impossible while the authority of the administering body is only temporary and of short duration.

The association recommends that, if the Congress is not at this time prepared to designate the Federal body to which it will entrust the permanent administration of the radio law, the authority now vested by law in the Federal Radio Commission be continued for a period of one year from and after March 15, 1929. This recommendation is not to be construed, however, as implying the association's approval of specific actions of the Federal Radio Commission.

The association urgently recommends that in the appropriations for the support of the body administering the radio law there be made adequate provision for the employment of the best available engineering and legal assistance, without which the law can neither be wisely and equitably administered nor be adequately enforced.

The association recommends that the terms of office of all members of the Federal Radio Commission be as set forth in the act of 1927 before amendment thereto.

II. DURATION OF LICENSES

The association points out that the basis for the entire industry of radio broadcasting is rendered perilously unstable by the limiting of broadcasting licenses to a period of 90 days, thus jeopardizing capital investments and necessary future commitments aggregating millions of dollars, and a service which the American people have learned to regard as essential and in which the public has invested more than a billion dollars.

The association, therefore, recommends that all broadcasting licenses hereafter issued be for a period of not less than one year, except in the case of such emergency licenses for special or experimental purposes as from time to time may be expedient.

III. DISTRIBUTION OF RADIO FACILITIES

The association believes that mathematically equal distribution of radio broadcasting facilities among the five zones created by the radio law must inevitably fail to produce an equitable distribution of good radio reception among the listeners of the entire country. The division of the country into five zones, unequal in number of inhabitants, in area, in availability of capital and suitable program material, and in density of population, provides no true basis for the equal distribution of broadcasting facilities. The zone system appears, indeed, to have proved injurious to the listening public both in the limitations it imposes on the choice of commissioners and in the administration of the law. Furthermore, the requirement of equal distribution of broadcasting facilities among the five zones necessarily disregards all previously existing conditions of capital investment and established service.

The association recommends that the law be so amended as to eliminate the requirement of equal distribution of radio broadcasting facilities among the five zones, and equitable distribution of such facilities among the States in proportion to population, and to substitute therefor a requirement that there shall be such an allocation of licenses, frequencies, power, and hours of operation as to provide an equitable distribution of good radio reception throughout the entire United States.

IV. POWER

It has been proposed that the Congress should by law limit the maximum power output of any broadcasting station to 10,000 watts. The association suggests that this is essentially a matter of administration, involving expert engineering counsel, and that, with the rapid development of the science of radio transmission such a limitation of power by act of Congress, might soon prove to be contrary to the public interest.

The association recommends, therefore, that regulation of the power output to be used in radio broadcasting be left to the determination of the administering body.

V. REBROADCASTING

The association recommends the enactment of an amendment to the radio law, providing, in substance, that no radio broadcast program shall be in any manner intercepted and transmitted to listeners without the consent of the station, person, or company originating such program.

VI. ADMINISTRATIVE PROVISIONS

The association has declared by resolution that in the administration of the radio law of 1927 various provisions are vague as to their application and meaning. Accordingly, the association recommends:

(1) That section 16 be amended so as to provide an appeal for a station which, as the result of the application of another station, suffers from com-

mission action by a change in its frequency, power, or hours of operation. As the statute now reads, and particularly sections 11 and 16, only the station which applies for a better assignment can appeal from an adverse decision.

(2) That section 10 be amended so as to make provision for emergency licenses, effective for a limited period, such as 10 or 30 days, without the necessity of complying with the formalities now required.

(3) That subsection (d) of section 12 be repealed, chiefly because it prevents the licensing of transmitters on many American vessels, but also because it presents a purely technical barrier to the licensing of certain broadcasting stations.

(4) That sections 11 and 16 be amended to make clear what are the rights of a person applying for a renewal of his license to broadcast, if the commission assigns him a different frequency, less power, or decreased hours of operation.

(Thereupon, at 12 o'clock noon, Tuesday, February 5, 1929, an adjournment was taken until 10.30 a. m. the next day, Wednesday, February 6, 1929, to meet in room 335, Senate Office Building.)

CONTINUING FEDERAL RADIO COMMISSION TO MARCH 16, 1930

WEDNESDAY, FEBRUARY 6, 1929

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE COMMERCE,
Washington, D. C.

The committee met, pursuant to adjournment on yesterday, at 10.30 o'clock a. m., Wednesday, February 6, 1929, in room 335 Senate Office Building, Senator James E. Watson, chairman, presiding.

Present: Senators Watson (chairman), Couzens, Fess, Goff, Pine, Sackett, Glenn, Smith, Dill, Wheeler, Hawes, Black, and Wagner.

Also present: Commissioners Ira E. Robinson, E. O. Sykes, O. H. Caldwell, and Harold A. Lafount, members of the Federal Radio Commission.

The CHAIRMAN. The committee will be in order. Senator Hawes asked certain questions of Judge Sykes. My understand is that he wanted the judge to put the answers in writing and put them in the record.

Commissioner SYKES. I have the answers, Mr. Chairman.

The CHAIRMAN. He has not arrived yet, so perhaps we had better wait until he comes.

Senator WHEELER. I understand that some member of the Radio Corporation of America is here this morning.

The CHAIRMAN. Yes.

Senator WHEELER. And Senator Dill is not going to be here to-morrow, as I understand; is that right, Senator?

Senator DILL. Yes; I can not be here to-morrow.

The CHAIRMAN. If it is entirely agreeable to you, Judge Sykes, you may suspend then for the present, and we will take up, as Senator Wheeler suggested, hearing some one representing the Radio Corporation of America. Colonel Davis, will you come forward, please.

STATEMENT OF MANTON DAVIS, VICE PRESIDENT AND GENERAL ATTORNEY OF THE RADIO CORPORATION OF AMERICA

The CHAIRMAN. Will you tell the committee your name.

Mr. DAVIS. My name is Manton Davis.

The CHAIRMAN. And what is your position?

Mr. DAVIS. I am vice president and general attorney of the Radio Corporation of America.

The CHAIRMAN. How many vice presidents are there?

Mr. DAVIS. There are now I think five.

The CHAIRMAN. And does each one have a specific sphere of activity?

Mr. DAVIS. Presumably, except that we have one executive vice president who in a general way represents the president of the company in administrative details.

The CHAIRMAN. Now, Senator Wheeler has certain questions that he wants to ask you, and I will turn you over to him.

Senator WHEELER. Mr. Davis, how much was the Radio Corporation of America incorporated for originally?

Mr. DAVIS. The capital stock of the company at this time, the authorized capital stock, is 500,000 shares of A preferred, and 1,500,000 shares of A common. The preferred stock at this time, though not originally, is $50 a share. The common stock has no par value.

Senator WHEELER. Is that the reason it is selling for so much on the stock market; has had such a rise?

Mr. DAVIS. I am sure that the number of shares outstanding of necessity must have something to do with the stock value.

Senator WHEELER. How many shares are outstanding?

Mr. DAVIS. There are presently outstanding—I speak of the latest of the company's printed statements, which is the last one I have—395,597$\frac{4}{10}$ of preferred and 1,155,400 of common.

Senator WHEELER. Do I understand, Mr. Davis, that you appeared before the committee of the House practically protesting against the Radio Commission? What I wanted to ask was this: Someone informed me that your company appeared before the House committee making some protest against the Radio Commission. Is that correct or not?

Mr. DAVIS. I do not think that is correct, Senator.

Senator WHEELER. That is not correct?

Mr. DAVIS. That is not correct.

Senator WHEELER. And what is your attitude at the present time with reference to extending the life of the commission?

Mr. DAVIS. With respect to the particular bill?

Senator WHEELER. Yes.

Mr. DAVIS. Speaking officially for my company?

Senator WHEELER. Yes.

Mr. DAVIS. We make no specific recommendation with respect to that. The company is of opinion that it reasonably can rely on any governmental agency to which the Government may intrust the regulation of radio to a fair treatment of the company. Now I have had a great deal of experience, national and international, and I have studied radio problems for somewhat more than five years intensely, and if you would like a personal statement from me of the problems I would be glad to give it to you.

Senator WHEELER. I would like to know first, Mr. Davis: Do you personally approve of this bill or do you personally feel that the bill should not be passed?

Mr. DAVIS. Senator, I would prefer to state the problem that I think is before the Senate and House, and perhaps you could draw conclusions—perhaps you would want me to draw conclusions after I had stated it.

Senator WHEELER. I would like to have you give me your conclusion and then give me the basis for your conclusion.

Mr. DAVIS. Well, I would much prefer to do it the other way, unless you insist, sir.

The CHAIRMAN. How long will it take you to make your statement?

Mr. DAVIS. Fifteen minutes.

The CHAIRMAN. Why not let him make his statement.

Senator WHEELER. All right.

Mr. DAVIS. I think any one would know and everyone should appreciate that the Federal Radio Commission has had one of the most difficult, one of the hardest jobs that anybody or any organization has ever been confronted with in the history of government. I think the Federal Radio Commission is entitled to the sympathy of everyone, that is, the legislature, and likewise those people who are interested in the art.

The situation with respect to the Federal Radio Commission is that it was put in charge of an art that is very new, that is very technical, and that is very, very swiftly changing, an art perhaps that has changed and is changing more swiftly than any other industrial or technical art that we have ever known in this country.

When we use the word "radio," Senators, we mean many things. And one of the confusions of our thinking results from the fact when we use the word "radio" that we mean any one of many things. For instance, radio comprises radio telegraphy, and under this there is the art of communications between ships, and communications between ship and shore. Under radio telegraphy further there is the art of communication between the United States and foreign countries and the foreign countries engaged in foreign telegraphy. This sort of communication is in competition with cables. There is domestic radio communication, just now being attempted to be discussed, and to be carried into effect, in which radio telegraphy will compete with the Western Union and the Postal Company.

Now, in addition to radio telegraphy there is broadcast transmission. Now, broadcast transmission is essentially showmanship and not public utility communication service. Then there is again the manufacture and sale——

Senator WHEELER. When you say "showmanship" you mean advertising?

Mr. DAVIS. No; I mean showmanship, sir. I mean entertainment, because——

Senator WHEELER. Well, most of the entertainment is for the purpose of advertising, is it not?

Mr. DAVIS. I think not, sir. I think nine-tenths of every broadcasting program that is sponsored as advertising is in entertainment.

Senator WHEELER. Well, it is in entertainment; but it is for the purpose of advertising the particular house?

Mr. DAVIS. Exactly, sir.

Senator WHEELER. Yes.

Mr. DAVIS. But more than half of the programs are not advertising programs at all.

Senator WHEELER. Oh, I understand that; but the real purpose in the putting on of this music is not because the station is an eleemosynary institution?

Mr. DAVIS. Make no mistake; there is no philanthropy in it at all.

Senator WHEELER. Not at all. It is for the purpose of getting the name of the firm before the people of the country so that they will buy their particular goods?

Mr. DAVIS. Senator, that is not the primary purpose, and I can only illustrate that by saying that very successful and very wonderful broadcasting was carried on a long time before there was any such thing as direct or indirect advertising over the radio. That was not eleemosynary.

Senator DILL. Yes; much of it is done to cause people to buy radio sets.

Mr. DAVIS. Exactly, Senator.

Senator DILL. Yes.

Mr. DAVIS. That is exactly what I am trying to get to you. That if there is no entertainment, if programs are not entertaining, then people who manufacture and sell and deal in radio sets would have nothing that they could sell. So this showmanship for the purpose of furnishing entertainment existed a long time before there was any advertising going on over radio.

Senator WHEELER. Well, that was a form of advertising, was it not, so that they would get them to buy radio sets?

Mr. DAVIS. Exactly, exactly. For if they were not interesting to listen to there would be no radio sets bought and no radio sets sold. Now the manufacture and sale of radio devices is included within the word "radio." Then, further, there is included orthophonic and panatrope devices which constitute radio's contribution to the talking-machine art. That is included in the word "radio." Then there have been recent developments in the talking-movie field, which were through radio. And then there is television, which is just breaking out of the laboratories. That is radio.

Sometimes we do not distinguish between facsimile communication and television. By facsimile generally we mean the transmission of an exact copy of the thing that is put in front of the transmitter. By television is generally meant the picturing of a living scene like this hearing, for instance, and its transmission and reproduction to a distant point without the interposition of a negative.

Now, although radio means all of those things, I am sure it would be mainfest to you gentlemen that the rules and regulations, the laws governing each one of those things, are and should be different. May I illustrate to you? There was recently introduced by some Member of the House, certainly by a Member of the Senate—there was introduced into the Senate a bill to provide that no license should be issued to any public-service organization. When I appeared before the House last week there was a strong position taken there that no frequency should be allocated for communication business to any organization for the use of that frequency in its private business, and that no frequency should be allocated to any organization except a public utility organization in the communication field which had the legal obligation to serve all the public equally and fairly and without discrimination.

Senator DILL. In other words, they were going to make it a public utility?

Mr. DAVIS. Exactly.

Senator DILL. Or common carrier.

Mr. DAVIS. So, in the House there was the sentiment to issue in the communication business no license except to public utilities. And there is the bill proposed by some Member of the Senate to the effect that no license should be issued to a public utility. I merely give that as an illustration to you that when you speak of radio you are speaking of many different things, the rules and regulations of which of necessity must be different.

Now in the allocation of frequencies——

Senator DILL. Just a moment, please. Is that a correct statement of the situation? A public utility corporation, in this Senate amendment—I did not introduce it.

Mr. DAVIS. Yes, sir.

Senator DILL (continuing). Referring undoubtedly to these power corporations.

Mr. DAVIS. I think probably that that did, but I think the law would call a public utility perhaps any organization engaged in public service.

Senator DILL. Yes. I think it was an unfortunate wording here. I think what he had in mind was these public service corporations in the use of power.

Mr. DAVIS. We all know exactly what the law was aimed at, but I was merely using it as an illustration to point out how different are the many things comprised within the word "radio."

Now in the allocation of frequencies the problems are all interrelated.

The CHAIRMAN. Pardon me just a moment, Mr. Davis. I will explain to the three Senators who just came in, that the witness is Colonel Davis, the vice president and general counsel of the Radio Corporation of America.

Mr. DAVIS. General attorney, if I may correct that, sir.

The CHAIRMAN. Well, what is the difference?

Mr. DAVIS. Well, the difference is there is another gentleman who has that title.

The CHAIRMAN. Well perhaps you get more money with the present title than if they would call you the other.

Mr. DAVIS. Well, then, I hope the Senator will be careful in seeing to it that the title is corrected.

Now, in making allocations, the allocations are necessarily interrelated. It is very difficult to make an allocation in the broadcasting field except that that has a relation to a great many other allocations made. And the repercussions and the interrelated results of those allocations are nation-wide, and, as to a great many of them, world-wide. For instance, in broadcasting, where the field is ordinarily considered—the American field at least—from 550 to 1,500 kilocycles, the allocations that we make may be, and some of them indeed have been, perhaps will be in conflict with the interests of Canada. In the so-called continental band or domestic field of radio—from 1,500 to 6,000 kilocycles—that ordinarily are supposed to be useful for domestic communication there is the possibility that any allocation made will be in conflict with those made by Canada, Mexico, by Cuba, or any of the West Indian countries, or by any of the countries in Central America.

Senator DILL. Mr. Davis, I do not want to assume that my colleagues do not know what you are talking about, but I just wonder

how many of them understand what you mean by kilocycles? I do not know whether they do or not, but I am afraid it is Greek to them.

Senator GOFF. Well, you can assume that your collegues know but that the others not on the committee in the Senate do not know.

Senator SMITH. Just reverse that.

Senator GOFF. All right, I will reverse that. I think the converse ought to be true.

Mr. DAVIS. May I remark parenthetically, Senator Dill—I believe you know yourself that I am not a radio technician, and the assumption that I know a great many of these things would be far afield of the fact.

Senator DILL. Well, I do not want to do anything except to make it clear.

Senator GOFF. I think Senator Dill is perfectly right in making this suggestion that your statement should be so clear that others who read what you are now saying will understand, without going to some technician, what you are stating.

Mr. DAVIS. I am going to try.

Senator DILL. Mr. Davis spoke of the band from 1,500 to 6,000 kilocycles. One thousand five hundred kilocycles means 1,500,000 vibrations per second. Six thousand kilocycles means 6,000,000 vibrations per second. So it goes from 1,500,000 vibrations up to 6,000,000 vibrations per second in that band. It is the radio tubes that are used that in theory vibrate at the rate of speed from 1,500-000 up to 6,000,000, and, to shorten it, they call it kilocycles.

Mr. DAVIS. Those are electrical oscillations and not physical oscillations.

Senator DILL. I understand.

Mr. DAVIS. Now, the spectrum that I was talking about, the division from 550 kilocycles up to 23,000 kilocycles, is about as follows: 550 to 1,500 is that part of what you may call the spectrum, the electrical spectrum, that is dedicated to the use of broadcasting as we know it.

From 1,500 to 6,000 kilocycles is that part that in a measure, with a good many exceptions, is dedicated to shorter long communication. Domestic communication in America or communication on this continent.

Six thousand to twenty-three thousand are the very short waves that have been found useful for world-wide communication. And any signal sent on 6,000 to 23,000 has the ability to interfere with any other signal sent anywhere in the earth on the same frequency or channel, or one too close.

So that we call the broadcasting band 550 to 1,500; the continental, 1,500 to 6,000; the international, 6,000 to 23,000.

Now the actions, the orders, the allocations in the broadcasting band made by the United States may interfere with similar allocations made by Canada, for the jurisdiction of every nation over frequency allocations, the jurisdiction of every nation in the world and its right to make allocation is just the same as is that of the United States. The chairman was a member of the Internation Radio Telegraph Conference that met here in August of 1927, and the chairman knows that while there were allocations of frequency bands for services, there was not any attempt whatsoever to make any allocations

or divisions between nations. For it was at once apparent when that was first discussed that if there had been the slightest attempt to do anything of that sort that there would have been chaos and confusion confounded, and that conference with all of its national rights and all of its nationalistic tendencies and insistencies would have been going on yet.

Senator SACKETT. Can you see the same relative number of frequencies in the international as you can in the broadcasting band?

Mr. DAVIS. No, sir; they are not the same. If you can fix the separation—by the way, there is no way—you have not said anything at all when you have said channel or frequency until you have known the width of the channel or frequency that you are talking about. In the international field the width practically is two-tenths of 1 per cent of the kilocycles in the channel itself; that is, the necessary separation to avoid interference. When you know the separation necessary or the width of channel necessary then the available number of channels becomes pure mathematics.

Senator WAGNER. May I ask you a question right there?

Mr. DAVIS. Yes, sir.

Senator WAGNER. If a communication is sent from this country, say from New York to London, and another communication is sent from Japan to London on the same frequency or the same wave at the same time there will be interference, will there?

Mr. DAVIS. It would be just exactly the same as if you were trying to carry on two telephone conversation on the same wire at the same time.

Senator WAGNER. So ultimately will there not have to be some international understanding?

Mr. DAVIS. There can not be any possibility of avoiding that, and I am getting to that proposition just in a moment, if I may. The point that I am trying to make to you now, gentlemen, is that when you have a hearing over allocations, whether it be in the broadcasting band or the continental band or the international band, when you have hearings and you take evidence with respect to allocations in America you still have not only the possibility in some but the probability in others, and almost the certainty in still others, that after you have had your hearing and while you are having your hearing the jurisdiction of your body exercising your control is not as broad as the problem that it is trying to solve. Now, my company carries on international communication with 30 different foreign countries in competition with the cables.

Senator SMITH. In competition with what?

Mr. DAVIS. The cables.

Senator SMITH. Oh, yes.

Senator WHEELER. To what company do the cables belong?

Mr. DAVIS. Oh, they are variously owned, sir. Some belong to the Western Union. Some belong to what may be commonly called the Postal System. There is a French cable that lands in the United States. There are some British cables that reach the United States via Canada. They are variously owned.

Senator WHEELER. Well, the Western Union is tied up with your concern, is it not?

Mr. DAVIS. None whatever.

Senator WHEELER. None whatever?

Mr. DAVIS. No relation whatever, except that our company lands at New York and San Francisco, and of necessity a great deal of its communications have to go to and from inland points. Therefore, we do business with the Western Union the same as any other person who sends communications. We have had a contract relation with the Postal which long since has expired. We have a contract with the Western Union concerning trans-Pacific and another concerning ships. But that is a traffic contract. We have no relation or control whatever.

Senator WHEELER. Well, the five companies which are commonly mentioned as being tied up—there may be others, but the five companies which are commonly mentioned as the Radio Trust, are the American Telephone & Telegraph Co., the General Electric Co., the Westinghouse Electric & Manufacturing Co., the United Fruit Co., and the Radio Corporation of America, is that correct?

Mr. DAVIS. Well, the conclusion, sir, is not correct. We have some contracts, patent-exchange contracts, with the American Telephone & Telegraph Co. We have no more control over them or their policies than you have or that anyone else has that they do business with.

Senator DILL. But nobody can talk over your long-distance connections with Europe except over American telephone lines?

Mr. DAVIS. They are their connections. We rent to them facilities the same as we may rent to anyone else.

Senator DILL. But you do not rent to anyone else?

Mr. DAVIS. No; no one else has applied to us for such facilities.

Senator DILL. Under the agreement you could not make any arrangement with any other telephone company in the United States to have this telephone conversation connected, could you?

Mr. DAVIS. We are not precluded from renting facilities to anybody for any purpose.

Senator DILL. But, in fact, nobody can talk over the long-distance telephone lines to Europe except over the American telephone lines?

Mr. DAVIS. That is correct. That results, however, from the fact that no one else has any facilities except that company.

The CHAIRMAN. Does the Radio Corporation of America have anything to do with that?

Mr. DAVIS. No, sir; except that we rented them the first facilities that they ever used for jumping the ocean gap, and we still have a contract with them renting them facilities for jumping the ocean gap. There is nothing in that contract to preclude us from renting those facilities to anyone else.

Senator WHEELER. You have an agreement, do you, to interchange patents?

Mr. DAVIS. Oh, yes, sir. I shall be very glad, indeed, to go into that. I think you want to talk to me about that, and I will be very glad indeed to talk to you about that.

Senator WHEELER. And what is your tie-up with the General Electric Co.?

Mr. DAVIS. Would the Senator permit me to finish this? I want to go into all the details that you want to about that matter.

Senator DILL. Yes; I would like to have him finish this.

Mr. DAVIS. As I said, we who handle a great deal of international business know that there are about to come a very large number of international controversies concerning interference, a great many allegations of interference, a great many insistencies that this, that, or the other nation is taking too much in this, that, and the other field. We know, as a matter of fact, that a great many of those problems are coming.

Now, the Federal Radio Commission, at the end of its first year when it was supposed to end its administrative functions and to become an appellate body, found out that much of its work was not performed, and it came to you asking for an extension of the period of its administrative function.

Senator DILL. I hardly think that is fair. I think that perhaps it would be more fair to say that we asked them to come down and set out the facts.

Mr. DAVIS. May I amend my statement, then, to accord to that made by the Senator?

Senator DILL. I think that is a fair statement to the commission.

Mr. DAVIS. Yes. I do not want to be unfair.

Senator DILL. I know you do not.

Mr. DAVIS. It is quite the other way around.

Senator DILL. Yes; I understand.

Mr. DAVIS. Now, at the conclusion of the second year I believe it is true that the commission finds itself just as far behind as it did at the end of the first. And now, speaking with prophecy and with some knowledge of the art, I think that the commission at the end of the third year will find itself still farther behind, and at the end of each succeeding year it will be farther and farther and farther behind. The international controversies that I am telling you are coming, and I know are coming perfectly inevitably, are going to be many, and they are going to be difficult.

Senator DILL. You make that statement in no sense as a criticism of the commission, but rather because of the nature of the art?

Mr. DAVIS. I am talking about the inevitable situation in this art.

Senator DILL. Yes.

Mr. DAVIS. Talking movies, facsimile communication, television, are things new in the art since the radio act of 1927 was passed, and since the commission came into being. And I want to make the point as strongly as I can that this is not any static art; this is no stable art. That the problems confronting the commission this year are not the problems that confronted it last year and in no wise will they be the problems that confront the commission next year.

Senator DILL. Do you not think that you should add also, Mr. Davis, that the development in the high frequencies has been very marked in the last few years?

Mr. DAVIS. Absolutely. My company has been engaged for years and years and years in trying to develop the short waves. I have heard it said that we were not interested in those, but to my certain knowledge, for more than five years the high-power long-wave devices have been paralleled in every one of our circuits with short-wave devices, and we have been engaged in connection with our international associates for all these years in attempting to develop the short-wave field.

Senator WHEELER. Who are your international associates that you speak of?

Mr. DAVIS. Many, many.

Senator WHEELER. Well, who?

Mr. DAVIS. The Japanese Government, the Telefunken of Germany, the British Marconi, the T. S. F. of France, the Italian Radio Co., the Government of Norway, the Government of Sweden, Holland, Belgium—many of them, in fact.

Senator DILL. In other words, the governments handle radio in practically all the other countries, or some corporation directly?

Mr. DAVIS. Very largely government controlled. Sometimes it is government owned, but sometimes it is just government controlled and privately owned.

Senator DILL. Yes.

Mr. DAVIS. But in practically every country except the United States the government exercises a very marked control not only over matters relating to government but even to matters relating to operation.

Senator FESS. Mr. Davis, your statement that we will continue to get farther behind as the years go, would that be an argument to make the commission permanent or would you get rid of it altogether?

Mr. DAVIS. Senator, I asked you to permit me to state your problem before I drew any conclusion. I wanted you to know that I was not talking in hostility or in criticism of any one, but I wanted to attempt to state the problem and perhaps you would save me drawing the conclusion. The thing that I wanted definitely to do was not to be put in the attitude of criticising anybody, least of all the Federal Radio Commission.

Senator WHEELER. Let me ask you this question: From your experience in dealing with radio and these international problems that are going to confront this country, do you not think that the Government of the United States ought to control the radio in this country?

Mr. DAVIS. To my certain knowledge, Senator, governmental regulation and control can not be avoided, should not be attempted to be avoided, but should be sought for their own protection by everybody who is engaged in the radio business.

Senator WHEELER. Now, Mr. Davis, I understood from the testimony of one of the commissioners here that your concern—perhaps I was mistaken, and if I am will you correct me—that your concern was employing Mr. Justice Hughes for the purpose of knocking out, to use that term, or to set aside this particular law that Congress has enacted with reference to what little regulation we have attempted and legislation?

Mr. DAVIS. I will answer that before I finish my statement. The Radio Corporation has no control whatsoever over the policies of the General Electric Co. And the General Electric Co.——

Senator WHEELER. Well, I was wrong then, was I? It was not the Radio Corporation?

Mr. DAVIS. No more to do with that litigation, sir, than you have.

Senator WHEELER. I see. All right; I misunderstood it then.

Mr. DAVIS. Yes.

Senator DILL. Colonel, before you leave that. Your statement of the case inevitably leads to this conclusion, that either the Radio Commission or some other body of men somewhere in the Government must continuously follow up this radio situation and meet the new problems that continuously arise if we are to have protection that we must have in the handling of radio.

Mr. DAVIS. If I may now draw the conclusion that is my own, a conclusion that I purposely have not discussed with my company or its board—I am speaking the very best I can as one who has studiously followed the radio art for a long time—my conclusion is this: That a committee or a commission of nontechnical men who are attempting not only to solve the controverted matters in a quasi judicial way, but likewise all the administrative matters that arise in hundreds and hundreds and hundreds of applications, that that body simply can never know fast enough the facts and the issues involved to give effective service in the art.

While we are having a debate and a discussion concerning the allocation of a frequency in America, deciding whether it should be allocated, and to whom it should be allocated, then Great Britain and France, Germany, Italy, Spain, Holland, and all the rest, having equal right as ourselves to allocate that frequency, will have allocated it, and the result of our quasi-judicial body having hearings to determine what should be done will be that the frequency allocated abroad will take precedence over ours, and that there will be nothing for us to discuss or debate at the end of the long hearing.

Senator DILL. You are speaking of the international band now?

Mr. DAVIS. Yes; but I tried to point out to you that even in broadcasting—even in broadcasting there is international conflict, and that in the continental band there is conflict with Canada, the West Indian countries, Mexico, and all the Central American countries.

Senator DILL. But they are trying to meet that, of course, by agreement.

Mr. DAVIS. Yes, but——

Senator SMITH. I thought in the International Radio Conference that we had reached an agreement, that an understanding had been reached as to the method by which these essential wave lengths would be used by the different countries, and the number of important waves that would be allocated to the different countries.

Mr. DAVIS. Senator, I am sure that your chairman will bear me out, for he knows about the conference.

Senator SMITH. I was a member myself.

The CHAIRMAN. Yes.

Senator SMITH. Senator Watson and I were the only two.

The CHAIRMAN. Yes; Senator Smith and I were the representatives that sat at the international gathering.

Senator WHEELER. Let me ask this: Was there any agreement ever entered into between the various countries with reference to dividing up the channels?

Mr. DAVIS. Between countries?

Senator WHEELER. Yes.

Mr. DAVIS. None whatever, Senator. Now, if I may make that situation clear——

Senator WHEELER. Let me ask you one other question about that. Your idea is that while this commission is sitting that other coun-

tries are allocating these different channels to some of their companies or to their own country; is that correct?

Mr. DAVIS. I am not guessing; I am not surmising; I am not presuming; I am telling you that it is happening.

Senator WHEELER. That is what I mean. When I asked that I assumed that you knew what you were talking about.

Mr. DAVIS. Yes. May I answer Senator Smith, and then finish up that other little statement I was making. Senator, the Governments of the 80 nations, I believe, who were represented at this conference allocated, as you will see from a chart which, perhaps, is too complicated to make a part of the record but which I will exhibit to you—they allocated the spectrum between services; that is, fixed service, mobile service, maritime mobile, air mobile, broadcasting, beacons, direction finding, amateur experimental, and so forth. They allocated the spectrum between services. I was present at conference after conference when there was a tentative discussion attempting to allocate between nations. It became immediately apparent that if there had been any effort to allocate as between nations, specific bands, and so forth, that there would have been chaos confounded, and everybody's nationalistic aspirations would have been so great that the spectrum would not have been a one-hundredth part broad enough to accommodate the national demands of each one of these nations. So there was no effort made to allocate the frequencies between any nations. As far as they got was a provision that they would do the best they could to avoid interference and that there would be international arbitration when interference could not be avoided by negotiation.

Senator SMITH. Well, that was my understanding even during the work that was going on, and finally when the result of the conference had been handed in for signature and agreement my understanding of it was that in these important radio features the different nations would from time to time have an understanding as to the interference of one nation with another in the use of the radio.

Mr. DAVIS. They promised each other that they would try to avoid interference and that they would arbitrate when interference existed.

Senator DILL. Well, is it your contention that because a nation proceeds to use a wave length in the high frequencies that a right vests in that nation under international amity?

Senator SMITH. That was the very crux of this meeting.

Mr. DAVIS. I would say that in any international arbitration with respect to a frequency occupied and used by one nation and then occupied and used by another, the board of arbitration must necessarily decide, and prior occupation and user will probably be the only basis of decision.

Senator DILL. Well, of course, we do not recognize that in our own legislation. It is the claim on the part of companies in the courts now that that rule shall apply, but we have not so recognized in the law, and the court, of course, has not passed upon it.

Mr. DAVIS. But when we come into the international field, Senator, we are coming into a field where no one has any jurisdiction over anyone else.

Senator DILL. But there is nothing in this agreement that says that the use of a frequency vests the right in the user.

Mr. DAVIS. Not in specific words. There is a hint in one article—there is a hint, and I can point it out to you probably a little later—there is a hint in one article that prior use will be, if not conclusive, at least very influential in the determination.

Senator WHEELER. Let me ask you this, following up the suggestion there. Your idea, as I gather it so far, is that the commission either ought to allocate all of these international frequencies immediately so that they will not be taken up by some other country, or that the commission ought to be abandoned and let the companies go out and simply take them up and file them, is that correct?

Mr. DAVIS. No, sir; I do not think so. The commission has, after a long, studious consideration of the international band, made a considerable number of allocations already.

Senator WHEELER. How many have they allocated to your company?

Mr. DAVIS. Sixty-five of the international frequencies.

Senator WHEELER. Sixty-five?

Mr. DAVIS. Yes.

Senator WHEELER. And they were allocated to you about a year ago, were they not?

Mr. DAVIS. June 1, 1928, thereabouts.

Senator WHEELER. And did you not appear yesterday before the board and ask for an extension of time of six months longer?

Mr. DAVIS. On some of the constructions; yes, sir.

Senator WHEELER. Yes, on the constructions.

Mr. DAVIS. Yes. Of course, as to a great many of those 65 we had the stations ready for operation at the time that we applied.

The CHAIRMAN. Colonel, the object of these hearings is to determine whether or not the commission shall be continued for another year.

Mr. DAVIS. Yes.

The CHAIRMAN. I am assuming that all of this testimony you are giving will finally come to that point.

Mr. DAVIS. May I draw it to a conclusion right now?

The CHAIRMAN. No; I want to ask you a question. A while ago you made two statements. One was that there must be governmental control of this great agency.

Mr. DAVIS. Yes, sir.

The CHAIRMAN. The second was that the commission is going to get in deeper with each succeeding year.

Mr. DAVIS. Yes, sir.

The CHAIRMAN. Meaning thereby evidently that the commission could not do the business?

Mr. DAVIS. I do not believe it.

The CHAIRMAN. Now, if there must be governmental control and the commission can not do it, who is to do it?

Senator FESS. That is my question.

Mr. DAVIS. Very well. In my judgment, Senator, radio decisions must of necessity divide themselves up into administrative decisions and quasi judicial decisions. You, in your wisdom, when you enacted the law, provided that the Radio Commission should, during the period of one year while there were some fundamental principles being laid down, exercise both administrative and the quasi judicial functions. Now, for the reasons that I have pointed out, in my mind

the administrative functions are coming along so fast that if you in your wisdom permit the brush to be cleared by the hundreds and hundreds of administrative decisions to be taken in the administrative way that your legislation first provided, and leave the commission free to handle the larger and the controversial, quasi judicial matters as you originally wrote the law, that we who are engaged in the radio business and are earnestly desirous that it shall move and not stand still, will find ourselves better served, that the people of the United States will be better served, and the Radio Commission will be able to do a job more satisfactory to itself.

Senator WHEELER. Let me ask you right there about that. What do you mean by that? Do you mean that nothing shall be taken up by the Radio Commission unless there is a dispute? And that the different companies should be permitted to go out and take up these frequencies, and unless there was a dispute it should not be taken up by the commission?

Mr. DAVIS. Not at all, Senator. The original provision of the law was that the Radio Department of the Department of Commerce should make the original and administrative decisions.

Senator DILL. Just a moment. I heard you say that awhile ago. There was not any original law about this at all. There was one bill introduced in the House and there was another bill introduced in the Senate. The House bill provided for the Department of Commerce to do this, and the Senate bill provided for the commission to do this. The House bill happended to pass first, and the Senate bill was entirely different from this. There was not any original law about this. The original law is the one now in operation.

Mr. DAVIS. I am making no distinction between the Senate and House bills. I am talking about the radio act of 1927 as it was enacted.

Senator DILL. As it was enacted it provided for the commission to do this work.

Mr. DAVIS. Yes.

Senator DILL. It was a compromise between the two bills.

Mr. DAVIS. Providing for the administrative function for one year.

Senator DILL. That was continued for a year.

Mr. DAVIS. Yes.

Senator DILL. There was no original law that did not give them that authority.

Mr. DAVIS. The original law—when I used that word I was talking about the radio act of 1927.

Senator DILL. What you meant was the law passed by the House, which your corporation favored, as against the Senate bill, which your corporation opposed.

Mr. DAVIS. No; I was talking about the radio act of 1927.

Senator WHEELER. That is the present law?

Mr. DAVIS. Yes.

Senator WHEELER. But you said the original law provided one thing and that the present law, as I understood you, provided another.

Mr. DAVIS. Then, Senator, I was very unhappy in making myself understood. If I may start again and state——

Senator GOFF. I want to ask you a question, Colonel Davis. Is not this what you have in mind, as you have been stating generally,

that the Congress of the United States should create two boards or two bureaus, one a strictly administrative bureau, the other a bureau exercising a quasi judicial function in an appellate character?

Mr. DAVIS. Not quite, Senator. I was trying to state the law of 1927 as it is.

Senator GOFF. Well, no; but the chairman asked you to state your view relative to the issue before this committee at the present time.

Mr. DAVIS. Yes, sir; and I am trying to state it.

Senator GOFF. And I understood you to make an attempt to state what I tried to formulate in the question just propounded to you.

Mr. DAVIS. Yes. I think it is not quite correct, Senator, if I may say it this way.

Senator GOFF. Well, I want your view of it.

Mr. DAVIS. I am going to try my level best to give it.

Senator GOFF. I am not trying to put words in your mouth. I want your view.

Mr. DAVIS. The radio act of 1927 as it now is provides that after the period of one year that administrative decisions shall be taken by the Department of Commerce. And that controversial matters shall be passed on by the Federal Radio Commission in a sort of a measure as an appellate body from the administrative decisions of the administrative official in the Department of Commerce. Now my point of view is that as we now see it perhaps that law was very wisely written, and that a man in the Department of Commerce, an official, an administrator, can make prelimiary decisions fast, and that it perhaps would be better that administrative decisions be left to him as is now provided in the law, and that the controversial matters that invite discussion and evidence and hearings shall go before the Federal Radio Commission as a quasi judicial or an appellate body.

Senator DILL. Mr. Davis, is there any important question coming up now before the Radio Commission that is not controversial?

Mr. DAVIS. Yes, sir; many of them. May I illustrate?

Senator DILL. Yes.

Mr. DAVIS. Licenses and allocations. I believe I am correct in saying there are hundreds of ships of the United States that are on the seas at this time——

Senator DILL. Oh, well, of course, that is done by clerks. The commission does not even pay any attention to it. The work of the commission now consists in hearings over contests. If you do not continue the original jurisdiction of the commission, the work of the members of the commission will be practically the same as it now is, for the reason that every application made to the Department of Commerce will be referred to the commission on the request of either party, or if anything the Department of Commerce official does is unsatisfactory to anybody it can be appealed. Now, if you want a law such as you are talking about that will confine the administrative duties to the Department of Commerce, then you must amend this law, because this law now makes it so that every controversial question of every kind goes automatically, practically, to the commission, and the department even has the power to refer everything to them.

Mr. DAVIS. But, Senator, I was trying to illustrate what I was saying about ship licenses. There are literally hundreds of American ships that are on the seas at this time bearing radio licenses which on their faces have expired. But those radio licenses have been continued in force by general orders of the Radio Commission, entered of record, but those general orders are not in the hands of the ships at sea, and to our certain knowledge dozens and dozens of times American ships have gotten into trouble in foreign ports by having an inspection made and they have radio licenses which on their faces have expired. Now, the application for a radio license for a ship and for many other stations is a pure administrative function.

Senator WHEELER. Well, they have clerks up there that do that thing, do they not?

Senator DILL. That is a mere routine work that can be done by the clerks in the commission.

Mr. DAVIS. Exactly what I am talking about, that routine administrative work that does not involve controversies might be done under the present law by an administrative body, and yet the Federal Radio Commission as such, with its five members sitting, and so forth, ought not to be called upon to do work of that sort.

Senator BLACK. Mr. Davis, why do you think that an employee of the Secretary of Commerce could do that any more satisfactorily than an employee of the Radio Commission? Why do you think he can do it any more satisfactorily or any more quickly?

Mr. DAVIS. For the simple reason that I think that the Federal Radio Commission acts not as an administrative officer would, but by a vote of its members.

Senator BLACK. They would have to do it by employees just the same as the Secretary of Commerce would.

Mr. DAVIS. Of course.

Senator BLACK. Well, why would you prefer to have it done by the employee of the Secretary of Commerce rather than an employee of the Radio Commission?

Mr. DAVIS. For the simple reason that with all the discussions arising with respect to that matter, that the normal function of receiving the application for the license and acting upon it in the hands and jurisdiction of one man is entirely different from the situation in the hands and jurisdiction of a body of men.

Senator WHEELER. But the trouble about that, Mr. Davis, is this. You must know that the Secretary of Commerce, for instance, coming in will probably be a man that is entirely unfamiliar with radio. That he has manifold duties and his time and attention are taken up with a thousand other subjects. But an administrative board, for instance, could be set up or an administrator could be set up to look after these details in the Radio Commission itself.

Mr. DAVIS. The point that I make, sir, is that in an executive department a delegation of duty is a simple thing; that by a quasi judicial body of five members the delegation of duty is not so simple. And I do not think that the Federal Radio Commission has found the delegation of administrative duties simple.

Senator WHEELER. Well, of course this does not have anything to do with the big international question that you were talking about a while ago. Any clerk can do these things that you are now talking

about. They ought to have experts to give information to the commission to act upon on appeal.

Mr. DAVIS. The point that I make is that nontechnical men, and five of them at that, will have a great deal of difficulty in passing the water under the mill. Whereas a technical administrative man performing, under delegation, administrative duties, can pass it under very quickly.

The CHAIRMAN. In other words, you think it is like a great corporation; it has to have one fellow at the head of it and let him organize these bureaus, rather than have a committee do it?

Mr. DAVIS. Yes.

The CHAIRMAN. That is the generally accepted situation in the business world. .

Senator SACKETT. And limits that to administrative duties.

The CHAIRMAN. To administrative duties. We have here an Interstate Commerce Commission which attends to a great many administrative duties and quasi administrative and quasi judicial right along by dividing up its powers with different boards and working through them as the agency of the general commission. And as a rule it works pretty satisfactorily. But it is a question for argument as to whether or not administrative duties should be cast upon a committee or upon one head. That is always a question for argument.

Senator WHEELER. In other words the question is whether or not it is better to have a dictator or——

The CHAIRMAN. Whether or not it is better to have what we call ordinarily a pure democracy or a benevolent despotism.

Senator WHEELER. Yes. The question is whether it is benevolent or not.

Senator GOFF. Now, Mr. Davis, I am trying to get light for myself and the committee. As I see your testimony as far as you have given it, you think that in matters of such conflict it makes for better administration to have individualized rather than composite opinion?

Mr. DAVIS. The first decision.

Senator GOFF. You have answered my question by simply stating it in a different way.

Mr. DAVIS. The first decision, sir, subject to an appeal to a quasi judicial body.

Senator GOFF. Well, it is the difference between individualized opinion which settles it, and composite opinion, which is the opinion of the commission.

Mr. DAVIS. Yes, sir.

Senator FESS. I see Mr. Davis's position, and there may be something in it. If everything goes to the commission, both the administrative and judicial will command its attention, while if you have it left to the Commerce Department, with the commission only an appellate body, then it necessarily comes to the commission if an appeal is made, and most of the work will be done under the administrative head and be done more expeditiously. I can see that.

Senator DILL. Let me suggest this, that if that sort of plan is to be worked out, then this law would have to be changed.

The CHAIRMAN. Yes; the law would have to be changed.

Senator DILL. Because under the present law everything except the merest administrative detail, to which nobody would object, can,

and under present conditions will go to the commission. And so, with everybody understanding that there is pending a series of bills to create a communications commission with larger judicial powers which would make it necessary to have a separate bureau in the Department of Commerce, probably a separate set of men, that argument would apply better when you came to take that up than with respect to this immediate situation upon which we should act in three weeks.

Senator BLACK. My understanding is that the first decision that is to be made is a judicial decision as to whether or not the act to be performed is in the public interest?

Mr. DAVIS. Yes; perhaps.

Senator BLACK. That is the first decision.

Mr. DAVIS. With respect to the present law, Senator Dill, you of course have studied it—certainly I have—with a very great deal of care. In my judgment the end that I have in mind can be accomplished by the law as you have written it and by the law as it is.

May I say with respect to the Interstate Commerce Commission sir, that the interstate commerce act was enacted 40 years after the railroads became rather well developed in America. I do not believe that if the interstate commerce act had been enacted and if railroads during the process of their building and during the process of the development of the railroad art had had to come before the Interstate Commerce Commission for hearings and discussions—I do not believe that then the railroad development in America would have been anything like it is.

The point that I try to make to you is that radio is the newest art that you have. The expansion of radio, gentlemen, is like nothing else in America ever has been before. It explodes. What is true one day is not true the next. Consequently the questions and the problems for decision constantly change. The art enlarges and the art grows. And I have tried to point out to you——

Senator WHEELER. That is the very reason why the Congress of the United States is very anxious to see to it that it does not get all in the hands of one concern and is not entirely in the hands of a trust. And if in my judgment we had done the same thing with radio that we did with the railroads, why, the Radio Corporation of America would have filed upon all of these frequencies and would have had everything, and there would not have been much for the Radio Commission to pass upon after that time.

Mr. DAVIS. Senator, the Radio Corporation was in existence long before any law was. It was the creator of this art, and it did not file on everything. It did not seize upon everything.

Senator WHEELER. Well, of course, it did not realize at the time just how important it was, and, as you say, it has developed from time to time.

Mr. DAVIS. I think——

The CHAIRMAN. Is there an investigation on now in the Department of Justice for the purpose of determining whether or not the Radio Corporation is a trust and ought to be dissolved?

Mr. DAVIS. There is not. There was an inquiry by the Federal Trade Commission which resulted in the publication of a pamphlet called "Radio" that you gentlemen know about.

The CHAIRMAN. Yes.

Mr. DAVIS. Following that there was a complaint filed by the Federal Trade Commission alleging these things that the Senator says. That hearing went on for somewhat more than four years. Testimony was taken all over the United States. The basic and fundamental contracts of the company were inquired into. And after four and a half years, when the Government had taken all of its testimony, the companies concerned came in and filed a motion to dismiss, based on the ground that the Federal Trade Commission had no jurisdiction and that on the facts as proved in the Government's case the allegations had not been proved. The case was argued, elaborate briefs were prepared, and more than five-sixths of the arguments and briefs were devoted to the issue of the failure of the Government's proof in its own case.

Senator WHEELER. Who filed those briefs?

Mr. DAVIS. The companies defendants in the case.

Senator WHEELER. I see.

Mr. DAVIS. The motion was sustained and the case was dismissed by concurrence——

The CHAIRMAN. When?

Senator DILL. Just about a month or six weeks ago.

Mr. DAVIS. Yes; two months ago or so.

The CHAIRMAN. That is what I wanted to put in. About a month ago, something like that?

Mr. DAVIS. Somewhat more than that.

Senator DILL. Now, since that time?

Mr. DAVIS. Since that time there was filed by the Federal Trade Commission a complaint based on one continuing contract of the corporation with respect to licensing of set manufacturers and based on one clause; I believe that is correct.

Senator DILL. No; Mr. Davis, since that time you are aware that all of the evidence taken in the Federal Trade case has been transferred to the Department of Justice, are you not?

Mr. DAVIS. I remember that there was a request that that be done, sir.

Senator WHEELER. And that has been done. And that they are now considering that evidence with a view to determining whether or not a suit should be brought.

Mr. DAVIS. You asked me if there were pending cases.

Senator WHEELER. No, no; he did not ask you whether there were pending cases, as I understand. He asked you whether the Department of Justice did not have under consideration at the present time the question as to whether or not they should bring a suit to dissolve the Radio Corporation of America as being a trust. That is the way I understood it.

Mr. DAVIS. I did not so understand the Senator's question. With respect to the examination of the testimony, sir, I have the same hearsay evidence about the Attorney General that you have. The Attorney General does not usually inform us about what he is engaged in investigating.

Senator COUZENS. May I ask one question dwelling upon the administration. It is perfectly obvious that if the administrative features are to be performed by the Department of Commerce they would have to have a bureau with a director, is that not so?

Mr. DAVIS. It is.

Senator COUZENS. Yes. Why could not that bureau exist in the commission just as well as it could in the Department of Commerce?

Mr. DAVIS. Perhaps it could.

Senator COUZENS. Well, that is the point I am trying to make. In all this discussion I have not heard any reason for transferring the administrative features from the commission to the Department of Commerce. For the obvious reason that in any case this work has to be done by a bureau head, by a director of a bureau, and I, for the life of me, can not see what difference it makes whether that bureau and director are under the Department of Commerce or under the Radio Commission.

Mr. DAVIS. The radio was administered by the Department of Commerce before the Federal radio act of 1927.

Senator COUZENS. Oh, that is begging the question. We understand that.

Mr. DAVIS. And what I am trying to point out is that the bureau exists, the organization exists. The organization is there now.

Senator DILL. Well, most of it has gone over to the Radio Commission, however—Mr. Terrell, Mr. Dellinger, and their assistants.

Mr. DAVIS. I believe they have not gone over there.

Senator DILL. Well, they certainly are there.

Senator COUZENS. That is immaterial.

Senator WHEELER. No; that does not matter.

The CHAIRMAN. Gentlemen, it is now 12 o'clock and we must adjourn.

Senator WHEELER. Let me ask you this: How many frequencies or channels have been allotted to the Radio Corporation of America at the present time?

The CHAIRMAN. The committee will rise until 10.30 to-morrow morning, and we will have a more quiet room somewhere. I do not know where we will go. There is too much noise in this room. I will notify you. We all the time say we are going to close the hearing, but we did not believe every Senator had so many questions to ask. The whole subject is interesting and we are all tremendously interested in it.

(Thereupon, at 12 o'clock an adjournment was taken until 10.30 a. m. the next day, Thursday, February 7, 1929.)

CONTINUING FEDERAL RADIO COMMISSION TO MARCH 16, 1930

THURSDAY, FEBRUARY 7, 1929

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE COMMERCE,
Washington, D. C.

The committee met, pursuant to adjournment on yesterday, at 10.30 o'clock a. m. Thursday, February 7, 1929, in room 212, Senate Office Building, Senator James E. Watson, chairman, presiding.

Present: Senators Watson (chairman), Fess, Goff, Pine, Sackett, Glenn, Wheeler, Hawes, Black, and Wagner.

Also present: Commissioners Ira E. Robinson, E. O. Sykes, O. H. Caldwell, and Harold A. Lafount.

The CHAIRMAN. The committee will be in order. Colonel Davis, you may resume, answering such questions as may be asked you.

STATEMENT OF MANTON DAVIS, VICE PRESIDENT AND GENERAL ATTORNEY OF THE RADIO CORPORATION OF AMERICA—Resumed

Senator HAWES. Mr. Davis, I read an elaborate statement that you made to the House committee, and I wonder if you could not economize in time by having this put into the record as your statement. It is the statement that Mr. Davis made in the House on the whole subject.

Mr. DAVIS. I shall be very glad indeed, sir, to do so.

Senator WHEELER. Well, I thought he made a complete statement yesterday. Do we want to put in the record every statement that this man has made?

Senator HAWES. Oh, he has not covered the point.

Senator WHEELER. I have no objection.

Mr. DAVIS. I think the statement that I made yesterday, Senator, covered no points in that line.

Senator WHEELER. Well, what does this cover? We might be interested to know what we are putting into the record, at least.

Mr. DAVIS. Surely. That covers generally the attack on the Radio Corporation of America concerning a so-called patent pool.

Senator WHEELER. Well, I do not think that the——

The CHAIRMAN. Why do you not just ask him briefly, Senator Hawes? I have no objection to that going in, but if you just ask briefly these very questions and let him answer quickly and succinctly, would that not cover it?

Mr. DAVIS. Senator, may I suggest to you that these 17 pages are themselves the résumé of literally thousands of pages of documents.

I could not answer the questions that you might ask me with respect to that as tersely as they are there answered.

Senator HAWES. Mr. Chairman, the reason I asked the question was entirely in the interest of economy of time. It seems that we have only one question to decide here, and that is whether we would continue this commission or not.

The CHAIRMAN. That is the question.

Senator HAWES. We have railroad consolidations; we have the Neff confirmation; we have a variety of matters that we ought to take up, and if this is going to run on and run on forever we will never get through with it.

The CHAIRMAN. I quite agree with you.

Senator HAWES. I suggest, Mr. Chairman, that we ought to confine the investigation as largely as possible to whether this commission shall be continued or discontinued.

Senator WHEELER. Well, that is what he has been telling us.

Senator HAWES. Well, we have gone over the same thing time and time again. We have had several experts from the commission.

The CHAIRMAN. I assume this, Senator Hawes, that they are asking the witness, he being the vice president and general attorney, as he calls it, of this corporation, as to whether or not there is a monopoly in this business; whether or not the Radio Corporation of America and its allied and associated interests gobbled up everything connected with this great agency. Not for the purpose of investigating that question but for the purpose of finding out whether or not a commission having authority would sit by and permit that sort of a thing to be done without at least notifying somebody about it in order that if there be such a thing it might be stopped. I am assuming that that is the object of questions of this kind. We have no power to go in and investigate whether or not there is a monopoly. I understand that is being investigated elsewhere, has been investigated elsewhere, probably will be investigated elsewhere. My understanding is that the object of these questions now is to throw such light on that phase of the situation as will tend to show us whether or not the commission permitted that sort of thing to go on without any protest, if it is going on, and it will not take 15 minutes to cover that whole business.

Senator HAWES. Why can we not get down to the 15-minute basis then and finish this hearing?

The CHAIRMAN. Ten minutes. I am waiting now for him to go on.

Senator HAWES. I would like to have that statement go in the record.

The CHAIRMAN. Do you want that whole thing to go in?

Senator HAWES. There is not much of it.

The CHAIRMAN. Seventeen pages, he says.

Senator WHEELER. Eighteen pages of it; and it goes into a lot of things that are not before this committee at all. He takes up the question of the issuing of short-wave lengths to some other radio corporation.

Senator HAWES. Was not this a statement that you made before the House committee, Mr. Davis?

Mr. DAVIS. It was, indeed; yes, sir.

Senator HAWES. Well, just in the interest of economy of time and for the benefit of the Senate, I thought it should be in the Senate

hearings, so when the Senate takes it up they would have this statement. I thought it would save time.

Senator WHEELER. There is only one objection to that, Senator Hawes, and that is this: As I have glanced it over here I think there are some things in here which, if we put them in the record, would result in that other people would want to come here and be heard about this.

The CHAIRMAN. Well, let us go on with this and then we can determine this after a while when Mr. Davis gets through. Do you want to ask any more questions, Senator?

Senator WHEELER. Yes.

The CHAIRMAN. All right.

Senator WHEELER. Has he finished his statement? I did not think he had finished his statement.

Mr. DAVIS. At your adjournment on yesterday I think there was a question that you just asked me that I was in process of giving the answer to.

The CHAIRMAN. You finished that statement you had, did you not?

Mr. DAVIS. Yes.

Senator WHEELER. I did not know that you had completed your statement. Well, what is your conclusion, then? Do you think that the Radio Commission should be continued or do you not think it should be continued?

Mr. DAVIS. The personal opinion that I expressed, Senator, was that the law as now written and without any change would perhaps serve everyone better.

Senator WHEELER. Well, can you answer it definitely? Then, as I understand it, you do not think that the Radio Commission should be continued?

Mr. DAVIS. But the law as now written does——

Senator WHEELER. No, no, Mr. Davis; I mean you feel that this bill that we have here before us should not be passed? Put it that way.

Mr. DAVIS. I do, sir.

Senator WHEELER. That is what I wanted to get at.

Mr. DAVIS. That is my personal opinion, as I explained to you yesterday, and I attempted to tell you the reasons.

Senator WHEELER. And your reason is that you feel that they are taking up too much of their time handling so-called executive matters that could be well handled by one man?

Mr. DAVIS. Or a department.

Senator WHEELER. Or a department.

Mr. DAVIS. The kind of department and the kind of organization that is already in existence and under the law and in operation. That department is already organized.

Senator WHEELER. Well, I do not agree with you other than that you would say that the Department of Commerce is already organized.

Mr. DAVIS. The radio department in the Department of Commerce, Senator.

Senator WHEELER. But that department in the Department of Commerce has practically been turned over now to the Radio Com-

mission, or if it has not it should be turned over to the Radio Commission.

Mr. DAVIS. The law, in my opinion, Senator, does not contemplate that. In fact, there are a great many administrative functions under the law being performed by the department at this time that are not under the law being performed by the commission. And amongst others of them is the great organized field force throughout the United States engaged in the inspection of radio stations.

Senator WHEELER. You referred yesterday particularly to the international—well, would you call them international channels?

Mr. DAVIS. Channels; yes.

Senator WHEELER. And you said that they were being allocated by the different foreign governments either to themselves or to some private concern in that country. Let me ask you this: Has the Radio Corporation of America got stations in practically all of these foreign country in Europe?

Mr. DAVIS. The Radio Corporation of America, Senator, has no station in any foreign country.

Senator WHEELER. Well, do you have some arrangements with these foreign governments with reference to having the exclusive use of sending messages over their stations?

Mr. DAVIS. We have what we call traffic contracts.

Senator WHEELER. Well, what are those traffic contracts?

Mr. DAVIS. Oh, they vary in each individual case. They are separately negotiated in each case.

Senator WHEELER. What is your traffic contract with England, for instance?

Mr. DAVIS. Our traffic contract with England is with the British Marconi Co. I believe if I have understood the purport of your question, it is to get what was referred to in examination in the House as exclusive contracts?

Senator WHEELER. Yes.

Mr. DAVIS. I think that is the purport of your question. Now, we have no exclusive contract with any government or with any country that precludes the erection of any station in that country——

Senator WHEELER. The fact is, however, that they will not permit anyone else to erect a station, will they?

Mr. DAVIS. The situation is this, Senator: A radio circuit, just like a wire circuit, has two ends. The Radio Corporation contracts with whomsoever operates the ends on the other side. In some instances they are private companies. In other instances they are governmental departments. In some instances the stations are operated by the Government although owned by private parties.

The CHAIRMAN. Is there anything in your contract with any of these foreign countries that precludes the possibility of the Radio Corporation of America having and establishing and owning and operating stations over there?

Mr. DAVIS. No, sir.

The CHAIRMAN. There is not?

Mr. DAVIS. No, sir. But I think perhaps the Senator was trying to find out from me whether in my opinion there was anything in our contract that precluded them from having other stations other than the ones that were contracting with us. My answer to that is no.

We do attempt to make and we do make exclusive circuit contracts, traffic contracts.

Now, if I may explain that it is this: A radio circuit, just like a wire circuit, has two ends, and it is just as inconvenient, it is just as uneconomic to cut a radio circuit and break it and transmit to some one else as it is a wire line. For if our circuit should be broken here while the other end of the circuit should be transmitting to some other station then our facilities during that time would be idle. So that the operating agency that creates a circuit with us, we constanly contract that that operating agency shall give to us all the messages that it has, and we as an operaing agency shall give to it all the messages that we have.

Now, the condition that you speak of may arise in view of the Government being itself the operating agency. If that be true, then, as the result of those contracts we doubtless will get all the traffic that that operating agency controls. It will not be as a result, however, of any exclusive arrangement in our contract. It will be as a result of a policy established in that government and by that government for operation in that country, a policy that our contract does not create, that we can not control, that is outside of our jurisdiction and is outside of the jurisdiction of the United States.

Senator WHEELER. You say there is no provision in your contract providing for that?

Mr. DAVIS. There is no provision in our contract excluding any other station operating in those countries.

Senator WHEELER. Well, no provision in your contract, for instance, with Great Britain or with Germany, to the effect that they shall not permit messages to be sent other than through you?

Mr. DAVIS. There is not.

Senator WHEELER. Is there any understanding to that effect that they will not?

Mr. DAVIS. The agreement is that that operating agency, as an operating agency, shall give to us over our circuits all the messages that it gets, and we to it.

Senator WHEELER. And the result of that agreement is, of course, that in most of these countries you receive and get the exclusive right practically to receive all messages that come from that country; isn't that correct?

Mr. DAVIS. Not as the result of the contract. A result of the condition that those governments create in their own countries and for their own purposes.

Senator WHEELER. But I ask you if, as a result of this arrangement, others were not excluded from sending any messages to this country excepting that they came through you; is that not correct?

Mr. DAVIS. Senator, no. There is nothing to preclude anyone in France sending a message from France if France will permit it.

Senator WHEELER. That is the point.

Mr. DAVIS. Answering your question quite specifically, Senator, the arrangement precludes nobody. The policy of France may preclude.

Senator WHEELER. The practical effect of it is, however, that they are precluded; is it not?

Mr. DAVIS. In some cases where governments themselves——

Senator WHEELER. Well, what governments? Give me the instances.

Mr. DAVIS. It is right difficult, sir. I doubt if I can. In Norway, in Sweden, in Denmark, in Poland, in Turkey, in Liberia, in many countries——

Senator WHEELER. How about Germany and England?

Mr. DAVIS. Well, I will tell you about those specifically (continuing)—in many countries the communications department of the government is the operating agency. In Germany the operating agency is a concern called Transradio. Usually I expect people would call it Telefunken. It is a private operating agency, but the traffic contracts are really made by the Reichspost Ministry, which is the German Post Office. The German Post Office in reality controls the operation of Transradio. We have a contract both with Transradio and with the German Post Office, the Reichspost Ministry. In France it is very much the same, except that we have no contract with the French Government. T. S. F. is the common name for the operating company in France.

The CHAIRMAN. Well, then, under your arrangement with Germany, nobody in Germany can transmit a message to anybody except through you; is that not right? You must have some sort of arrangement, some sort of understanding about that.

Mr. DAVIS. The distinction I am trying to make, Senator—and I do not want you to think that I am being in any manner evasive or too careful—the distinction I want to make is that we have an arrangement with the German Post Office that it will transmit to us, through its circuits to our circuits, all the traffic that it gets.

The CHAIRMAN. Sure.

Mr. DAVIS. But there is nothing in our contract that precludes the German Post Office from allowing somebody else, or the German Government from allowing somebody else to establish stations over there.

The CHAIRMAN. Well, now, as a matter of actual fact, does anybody send any messages from Germany over here except through you?

Mr. DAVIS. No; I do not think they do.

The CHAIRMAN. Do they from any European countries, Colonel?

Mr. DAVIS. Oh, yes.

The CHAIRMAN. They do?

Mr. DAVIS. Yes.

Senator WHEELER. What countries?

Mr. DAVIS. I was getting to England. In England the operating agencies are two. First is the British Marconi Co., and the other is the British Post Office itself. Now, we have a traffic contract with the British Marconi Co., by which it gives to us all of its volume of traffic. We have not any traffic contract with the British Post Office. And the British Post Office is even now sending a great deal of traffic destined to the United States to Canada for transmission in the United States. And we really think that that is not to American interests. We know it is not to the interest of our company. But there is nothing under our contract that prevents it.

Senator PINE. Are they sending anything directly to the United States?

Mr. DAVIS. No. They have never made any arrangement with us at all, and we are the only company in America that is at this present time carrying on a comprehensive international telegraph system.

Senator WHEELER. Now, let me ask you this: When I said something about it being a trust, you rather resented the idea of it being called a trust. Let me ask you if, as a matter of fact, the Supreme Court of the State of Delaware did not declare that the Radio Corporation of America was violating the provisions of the trust laws? I am not sure whether it was the Supreme Court of that State or of the United States. You can answer that yes or no, can you not?

Mr. DAVIS. Yes, and I say no. While I think I know what the Senator is talking about, would you like an explanation, or just my pat "No"?

Senator WHEELER. Yes; I would like an explanation of it. My understanding of it was that it had so declared.

Mr. DAVIS. The case to which you doubtless refer is a case that is now pending in the United States court in Delaware.

Senator WHEELER. I thought one had already been decided in the State court.

Mr. DAVIS. No; There is no such decision in the State court.

Senator WHEELER. No such decision. Well, I am not familiar. My attention was just called to it, and that was all. What was the title of that case?

Mr. DAVIS. The case to which I refer?

Senator WHEELER. Yes; It was a case involving patents, was it not?

Mr. DAVIS. Radio Corporation of America against Lord and others.

Senator WHEELER. Against whom?

Mr. DAVIS. Lord and others.

Senator WHEELER. Involving patents?

Mr. DAVIS. Yes; it involved some of our patent license contracts under the agreement by which we license certain radio-set manufacturers.

Senator WHEELER. Yes; and did not the court in that case hold that you were violating the provision of the Sherman antitrust law with reference to that?

Mr. DAVIS. Senator, the case is pending. It has not been tried.

Senator WHEELER. It has not been tried?

Mr. DAVIS. It has not been tried.

Senator WHEELER. Did they issue a temporary injunction?

Mr. DAVIS. There was a temporary injunction applied for and issued.

Senator WHEELER. I see. But no permanent injunction?

Mr. DAVIS. Oh, no; the case is pending and it has not been tried.

Senator WHEELER. Well, was there a hearing upon the temporary injunction?

Mr. DAVIS. Yes.

Senator GOFF. Was your company the petitioner?

Mr. DAVIS. No; the petitioners in the case were a number of organizations that claimed that the Radio Corporation in a certain license contract was precluding them from selling radio dealers.

Senator WHEELER. Was that the De Forest?

Mr. DAVIS. The receiver of the De Forest company was one of the plaintiffs. I will be very glad indeed to tell you the facts and the circumstances of that case if you desire.

Senator WHEELER. They applied for an injunction, did they not?

Mr. DAVIS. An injunction; yes.

Senator WHEELER. And was an injunction issued or a restraining order issued without a hearing first?

Mr. DAVIS. It was heard on affidavit as is usual in such cases and on the face of the bill.

Senator WHEELER. First of all a restraining order was issued by the United States court, was it not?

Mr. DAVIS. Well, I believe a temporary injunction was the first order that was issued.

Senator WHEELER. Well, I thought first the restraining order and then a temporary injunction followed that after a hearing.

Mr. DAVIS. Senator, I am not sure.

Senator WHEELER. Who are the largest stockholders of the Radio Corporation of America?

Mr. DAVIS. There are a great many of them, sir. I will say that there are 18,000 stockholders of record in the company.

Senator WHEELER. Let me ask you this: Does the General Electric Co. own a large portion of the stock?

Mr. DAVIS. The General Electric Co. owns a good deal. It has a large amount of stock but has not a large proportion of the stock.

Senator WHEELER. Let me ask you this——

The CHAIRMAN. Pardon me, Senator. Have you a statement there where you can give us succinctly this information without wading through a long series of questions and answers?

Senator WHEELER. That is what I was trying to get at.

The CHAIRMAN. As to the capitalization, as to the shares outstanding, as to who own those shares?

Mr. DAVIS. The Senator was asking me about the General Electric Co., sir. I can give you that very quickly. The General Electric Co. owns 248,106.

The CHAIRMAN. How much?

Mr. DAVIS. 248,106.

Senator WHEELER. That is common or preferred?

Mr. DAVIS. Common; all A common stock. Out of 1,155,400 shares.

The CHAIRMAN. Outstanding?

Mr. DAVIS. Yes, sir.

Senator PINE. Approximately 25 per cent.

Mr. DAVIS. No; I think that is not that much, sir. A little over 20 per cent.

Senator WHEELER. I have before me a memorandum, and I wanted to see if this was correct, stating that on page 3 of the Federal Trade Commission's Radio Industry appears a statement relative to the organization and distribution of the stock of the Radio Corporation of America. On December 31, 1922, there were outstanding 3,955,974 shares of preferred stock, with par value of $5; is that correct?

Mr. DAVIS. At that time the par value was $5.

Senator WHEELER. Yes; and 5,734,000 shares of common stock of no par value?

Mr. DAVIS. Yes, sir.

Senator WHEELER. And those are distributed as follows: General Electric Co., common stock, 1,875,000 shares; preferred stock, 620,800 shares.

Mr. DAVIS. I have no doubt, sir. I haven't the data with me to check that statement.

Senator WHEELER. Westinghouse Electric Co., 1,000,000 shares of the common stock and 1,000,000 shares of the preferred stock. United Fruit Co., 160,000 shares of the common stock and 200,000 shares of the preferred stock.

Mr. DAVIS. The shares at that time were five times greater in number than now, and the preferred stock ten times greater in number than now.

Senator WHEELER. I see. There has been a reorganization since that time?

Mr. DAVIS. There has been a change of stock so that the preferred stock, which was then $5 a share, is now $50 a share, and the number reduced proportionately. The common stock is now one-fifth in number compared with what it was then, and the common stock has no par value.

You were asking me about the General Electric Co., and I gave you its common stock, and if you desire I will give you the preferred.

Senator WHEELER. Yes.

Mr. DAVIS. It owned as of August, which is the last figure I have, 27,080 shares out of 395,597.

Senator WHEELER. The Westinghouse Electric & Manufacturing Co.?

The CHAIRMAN. Has all the preferred and common stock been issued, or is there any in the treasury?

Mr. DAVIS. There is some unissued stock.

The CHAIRMAN. What was the total issue in the beginning, and how much has been issued, and how much is in the treasury of each kind of stock?

Mr. DAVIS. Now, speaking as of January 31, 1927, which is the last statement I have of the company, there was preferred authorized 500,000 shares. There was issued as of that date 395,597.4 shares.

The CHAIRMAN. And of that amount how much had the General Electric Co. at that time?

Mr. DAVIS. Of that amount the General Electric had 248,106 shares of common and 27,080 shares of preferred.

The CHAIRMAN. Were they the largest stockholders? Are they larger than Westinghouse?

Mr. DAVIS. Yes.

Senator WHEELER. Now, the Westinghouse?

Mr. DAVIS. The Westinghouse as of August, 1928, which is the last statement I have, owned of the common shares 27,760 out of 1,155,400, and it owned of the preferred, 50,000 shares out of 395,597.4.

Senator WHEELER. How about the United Fruit Co.?

Mr. DAVIS. According to my information, Senator, it owns no stock in the Radio Corporation.

Senator WHEELER. It did originally own the stock that I called your attention to?

Mr. DAVIS. Yes. You were reading from the record of the Federal Trade Commission, and I have no doubt it is true. I do not just remember.

Senator WHEELER. And then the Radio Corporation of America in turn owns 50 per cent of the National Broadcasting Co., does it not?

Mr. DAVIS. That is correct, sir.

Senator WHEELER. And the General Electric Co. owns about 30 per cent and the Westinghouse Electric Co. owns 20 per cent?

Mr. DAVIS. Both figures are correct, sir.

Senator WHEELER. Now, who else are the larger stockholders of the Radio Corporation of America?

Mr. DAVIS. The very largest stockholders, outside of those that I have mentioned, Senator, are of record brokers. And you know the custom of dealing in stock——

Senator WHEELER. No; I do not.

The CHAIRMAN. No.

Senator WHEELER. No; I do not.

The CHAIRMAN. Why do you make such an assertion as that?

Mr. DAVIS. Then, I am sure that the Senators will not admit that they know anything about the issue of stock.

The CHAIRMAN. No; and of course we always admit the fact.

Mr. DAVIS. It is not easy to tell who owns stock listed on the books of the company in the names of brokerage firms.

Senator WHEELER. Well, can you give me the large stockholders as you have them there?

Mr. DAVIS. Is it essential to your inquiry, sir? I do not like to. If you are insistent I shall be very glad.

The CHAIRMAN. Is there any secret about it?

Senator WHEELER. Yes; is there any secret as to who owns your company or who owns the stock in it?

Mr. DAVIS. In so far as the company is concerned, sir, there is not. I do not know how a stockholder would feel about it.

Senator WHEELER. You do not think they would feel ashamed of it?

The CHAIRMAN. I would feel good if I had it.

Mr. DAVIS. So would I. There is a concern, J. S. Bache & Co., 42 Broadway, New York, owns 10,373 shares of common and 625 shares of preferred.

Arthur E. Braun and George C. Moore, trustees under the will of T. H. Given, own 8,000 of A common and 12,500 of A preferred.

The CHAIRMAN. I don't think you care about that?

Mr. DAVIS. H. Content & Co., 111 Broadway, New York, own 31,790 of common.

Dominick & Dominick, 115 Broadway, owns 18,138 common and 80 preferred.

Hornblower & Weeks, 10,406⅕ common and 111.5 preferred.

W. E. Hutton & Co., 52 Wall Street, New York, 13,110⅗ of common.

Senator FESS. Those are all brokers in New York; are they not?

Mr. DAVIS. I think they are. I do not know.

Senator FESS. Would that be the investment companies' money or that of clients?

Mr. DAVIS. Senator, I would have to speculate on that just the same as you would. Of the facts I know nothing at all

Senator FESS. I do not know whether this is a proper inquiry or not. I have been considerably concerned about what is the basis for

the high range of stock prices. For instance, that of the radio company.

Senator WHEELER. Yes; I was going to ask him that.

Senator FESS. It has gone too high. And it is an interesting study to me as to just what is the basis of that. It is certainly way beyond anything that is the substantial value. I can see that if very responsible, powerful financiers are buying and buying heavily, that would probably run it way up, because people have confidence in their judgment. I do not know that this is a proper inquiry, but it is one of the things that I have been wondering about as to just what is the basis of this skyrocketing of the stock market, especially in radio, which went so high.

Mr. DAVIS. Senator, you are asking me to speculate, and I will be very glad indeed to tell you all that I know and think.

Senator FESS. I will not insist upon it.

The CHAIRMAN. He is not asking you to speculate. He is asking you whether you do speculate.

Senator FESS. I do not know whether it is a proper inquiry.

Senator WHEELER. I think it is proper. We have to deal with this problem, and I think it is entirely proper that we should find out.

The CHAIRMAN. To give his opinion?

Senator WHEELER. Yes.

Mr. DAVIS. My opinion is all I can give you, sir.

The CHAIRMAN. Yes.

Mr. DAVIS. Apropos of that I will say that the price of the stock of the Radio Corporation on the stock market is as much a surprise to those inside of the corporation as it is to those on the outside.

Senator FESS. Well, that is an interesting fact.

Mr. DAVIS. There are a great many of us who have our nose to the grindstone attempting to earn for those who invest money in the stock, dividends on the investments that they make, that find ourselves in no small degree embarrassed by the value that people in the market put on the stock and the consequent expectation that investors have on the returns that they may sometime realize on their investments. It does not make it easy for those who work for the corporation to have such high value placed on the stock itself. Now, there are a great many new things peeping out of the laboratories in radio. I tried to give you some of them yesterday. The interest of the public in these radio-receiving sets has been very great. The pyramiding volume of the sales of radio-receiving sets is a constant surprise to those of us who work for the corporation. We have a budget of orders, and for the last several years that budget of what we expect the manufacturers to produce for the whole year is overreached before half the year is gone, and it is very difficult to adjust production to demand.

Then I told you of the contribution that radio had made to the talking machine art; that is, the orthophonic and panatrope devices are radio's contribution. That has interested the public.

Then the talking movies have largely been developed, very largely been developed, in the radio laboratories.

Television is in process of being developed. I do not know how television escaped out of the laboratory door to be talked about, but it came out too soon. Those things always embarrass the companies. People expect a great many things from television.

And, all together the development of radio has been so fast, it has been so spectacular, there have been so many different fields that have been opened up by radio-laboratory development that the public evidently is intrigued and sees the possibility of a reproduction of the Ford experience or of the telegraph or of the telephone or any of these other great fundamental things wherein some people invested a few hundred dollars in the early stages and lived in affluence thereafter. It is the imagination of the public.

Senator FESS. I was going to say that where a very responsible house would buy 30,000 shares, if that were known—and it is usually known—that of itself would stimulate the confidence of the buying public that this must be very good or that house would not buy. I think that justifies the question of Senator Wheeler in trying to find who these stockholders are. Then, on the other hand, yesterday the Federal Reserve Board made an announcement that was rather a startling one in reference to money being used for speculative purposes, which indicates that the Federal Reserve Board is thinking on the same line, that there is some basis of investment that is not sound, in reference to high rates of interest.

The CHAIRMAN. There are a good many books written on the relation of price to value. Of course the price of a stock after all may not have any real relationship with the value of that stock as represented by substantial assets or fixed returns. Is not the price of radio stock a good bit psychological?

Mr. DAVIS. I think so. If I should read you——

The CHAIRMAN. No; I want your opinion. Do not read me anything. Your opinion?

Mr. DAVIS. I think it is altogether psychological, sir.

Senator FESS. Suppose the owners of property had their stocks on the market, and some very large financial houses would want to get control of that and the owners would not want them to get control, and they would get to bidding in the market on that, the man or the company that owns it bids in the market against the people who are trying to get control of it, they certainly would not go beyond what they thought would justify the price. And at the same time I have been bewildered about this variation of the stock market, and I have been considerably concerned about what effect it will have upon our industry, whether the industry is sufficiently solid that it could withstand any interruption that might come when the bottom went out. I do not want you, as a representative of the company, to make any statement that might be misinterpreted, but I was just speaking of the concern I have as a student, not as a possessor, because I am not fortunate enough to possess any stocks.

Mr. DAVIS. I can say very definitely—I think I can say very certainly—that there is no fight over the control of radio, consequently I think that the speculative value of radio stock is not in any degree on a fight for control. This matter of the increase, the very large increase of stock-market value, as the Senator very well knows, is not in any degree limited to radio.

Senator FESS. No; I know.

Mr. DAVIS. It goes all over the whole board.

Senator FESS. That is true; but radio has been an outstanding factor the last few months.

Mr. DAVIS. Yes.

Senator FESS. Because it has called the attention of everybody to the height to which it has reached.

Mr. DAVIS. What I intended to say a moment ago, Mr. Chairman, when I said altogether this is the public's imagination—what I intended to say was that the spread between actual assets and actual earning power—there is so great a spread between that and market value—must of necessity be built on the public's expectation of large earnings in the future.

The CHAIRMAN. Psychology.

Senator WHEELER. What were your earnings last year?

Mr. DAVIS. Just a bit more than $18,000,000.

Senator WHEELER. What dividends did you pay?

Mr. DAVIS. The company has never paid any dividends except 7 per cent dividend on its preferred stock.

Senator BLACK. May I ask you this: What part of it is voting stock?

Mr. DAVIS. It is all voting stock.

Senator BLACK. Preferred and common?

Mr. DAVIS. Yes.

Senator BLACK. Who are the directors?

Mr. DAVIS. Mr. Gordon Abbott, Mr. Cornelius N. Bliss, Mr. Arthur E. Braun, Mr. Paul D. Cravath, Mr. Albert G. Davis, Mr. Harry P. Davis, Mr. John Hays Hammond, jr., Gen. James G. Harbord, Mr. Edward M. Harden, Mr. Edwin M. Herr, Mr. Edward J. Nally, Mr. Edwin W. Rice, jr., Mr. David Sarnoff, Mr. James R. Sheffield, Mr. Gerard Swope, and Mr. Owen D. Young.

Senator BLACK. Do you know how many of them are officers in a public utility company or electric company like the General Electric Co.? Do you know just off-hand?

Mr. DAVIS. I was asked very definitely and I can tell you with respect to General Electric and Westinghouse; I was asked specifically about them in the House, and I found out, but as to other public utility organizations I do not know, sir. Mr. Paul D. Cravath, Mr. Edwin M. Herr, and Mr. Harry P. Davis are directors of the Westinghouse Co. Mr. Albert G. Davis, Mr. Edwin W. Rice, Mr. Gerard Swope, and Mr. Owen D. Young are directors of the General Electric Co.

Senator BLACK. You do not know about the others?

Mr. DAVIS. I do not know about the others; no, sir.

Senator WHEELER. How many of them are directors of any banking house?

Mr. DAVIS. I have no information on that, Senator.

Senator WHEELER. Are any of them directors or partners in the House of Morgan?

Mr. DAVIS. I have no information on that, Senator.

The CHAIRMAN. General Harbord is the president, is he not?

Mr. DAVIS. He is, sir.

Senator WHEELER. How many shares of stock does he own?

Mr. DAVIS. I was about to remark to you a moment ago, sir, that those who are responsible for the executive control of the company are very small stockholders in it, which is some indication at least that there is a good deal of surprise to them about it.

Senator HAWES. Mr. Chairman, I would like to ask a question of the Chair. What in the world has this to do with the question

of whether this commission shall be continued or not, in your own judgment? I would like to know, because I am anxious to know whether we are going to get through with this hearing, because we have so many other things to come before the committee. We can go on for a month like this.

The CHAIRMAN. Oh, yes, longer than that.

Senator BLACK. I think it has a good deal to do with it. When they are objecting to the continuation of the commission we want to know who are objecting.

Senator HAWES. Who are objecting?

Senator BLACK. The Radio Corporation of America.

Senator HAWES. I did not understand him to say that the other day.

The CHAIRMAN. Yes, he said this morning, Senator Hawes, when you were out, that in his judgment it would be better if the Radio Commission was not continued, but the executive features or administrative features should be left in the hands of one man, and the appellate features in the hands of the commission.

Mr. DAVIS. May I——

The CHAIRMAN. I want to ask this question. Has the Radio Commission been unfriendly to the Radio Corporation of America? Is that why you do not want them continued?

Mr. DAVIS. No, I do not think unfriendly. I do not believe that we have been treated very favorably as to some of our applications, particularly on the applications in the short wave domestic field.

The CHAIRMAN. How have you been treated in that respect?

Mr. DAVIS. We filed our applications for the channels in which to go into domestic communication in the United States. We filed our applications along with others, and so far have received no channels whatever.

The CHAIRMAN. That is the point-to-point?

Mr. DAVIS. That is the point-to-point service within the United States.

The CHAIRMAN. Yes, domestic.

Mr. DAVIS. Our belief is——

The CHAIRMAN. And have other petitions been granted?

Mr. DAVIS. Yes.

The CHAIRMAN. To whom, and how extensive?

Mr. DAVIS. I have not got them all.

The CHAIRMAN. Well, not all of them, but just lump it off.

Mr. DAVIS. Well, the biggest lump was to an organization called the Universal Wireless Co., and another 20 to the newspapers.

The CHAIRMAN. And you have received no favor of that kind up to the present time?

Mr. DAVIS. No, sir.

The CHAIRMAN. If you call it a faver.

Mr. DAVIS. Our contention is that we have developed that art in America; that——

The CHAIRMAN. How many have you applied for, Colonel?

Mr. DAVIS. We applied for 33½ channels on a separation basis of two-tenths of 1 per cent, but in our application we suggested that we could operate really in America, where the art is more closely controlled, on a basis of one-tenth of 1 per cent separation, and therefore we asked for 67 new channels.

The CHAIRMAN. And how many are there?

Senator SACKETT. What percentage of separation has been granted in the 40 channels?

Mr. DAVIS. Two-tenths of 1 per cent.

Senator SACKETT. And what in the 20 channels?

Mr. DAVIS. The same.

Senator GOFF. Well then, you feel that you have been the victim of invidious distinction, to put it in a word, do you?

Mr. DAVIS. Yes; Senator.

Senator GOFF. And that is one of the reasons why you would object to the continuance of the Radio Commission?

Mr. DAVIS. No, Senator, that is not correct. We must go before the Radio Commission——

Senator GOFF. Well, is it one of the contents, so to speak, of the general motive that you entertain which actuates you to object to its continuance?

Mr. DAVIS. Well, perhaps that is true. Might I add?

Senator GOFF. Certainly.

Mr. DAVIS. And may I respond to Senator Black——

Senator GOFF. I want to say this, Colonel. I am very anxious to get right down to this issue: Shall we continue this commission or shall we discontinue?

Mr. DAVIS. Yes.

Senator GOFF. Now you have gone into a very illuminative and very educative and very inspiring field of discussion, and it seems to me that its only relevancy is to show the broad, general application of radio to the bill now before this committee. And from that broad, general field the committee is to make its deductions. I do not think that is quite helpful to us, because we know generally the breadth of this field, and we would like to come down, speaking now for myself, to the concrete question: Should this commission be continued or should it be discontinued? And that is the matter that is in my mind predominantly all the time.

Mr. DAVIS. Several Senators have stated what the opinion of my corporation is with respect to the continuance of the commission. I attempted to say in the beginning of my statement, and I would like to repeat, that my opinion with respect to that is my own personal opinion, undiscussed with any member of my company, and undirected by any member. I am not sure what will be the consequence of my stating my personal opinion, but you asked me for it, Senator, and I know no other way to respond to such questions than to tell you actually what I think.

The CHAIRMAN. Has there been any meeting of the board of directors or the president and other officials connected with your establishment for the purpose of coming to a conclusion about this question before this committee?

Mr. DAVIS. There has not.

The CHAIRMAN. Were you or anybody else asked to come here to reflect that opinion?

Mr. DAVIS. I was not.

Senator GOFF. Let me suggest to you——

Senator SACKETT. Let us have that statement which he wants to make. He is ready to make it.

Senator GOFF. That goes to my question. In answer to the question that has been propounded to you will you advise this committee as you would advise your board of directors, not disclosing, of course, to the committee any of the confidential matters that would exist between you and your board which you think it would be improper for you as the general attorney to disclose here, but advise this committee as you would advise your board of directors, as to whether or not in your field of experience this commission should or should not be continued?

Mr. DAVIS. Exactly. It was exactly on that basis and it was from that point of view that I did express a personal opinion to the Senators.

I shall answer your question, Senator, as if there were no Radio Commission, and as if you were writing some new legislation, and nothing clouded any of our opinion or influenced our opinion except our experience in the art. My opinion is this, that five men, nontechnical, in a swift-moving, swift-growing art, whose decisions have not only nation-wide but world-wide influence, and before whom hundreds and hundreds of decisions must come, having the limitations on the power of delegation that generally exists in a committee or a commission of this sort, simply can not possibly pass the water under the mill fast enough to be useful to an art of this kind. With the hundreds of ships at sea, the hundreds of radio stations of all kinds with all their ability to interfere each with the other, and with the many hundreds of stations all over the world that have the ability to interfere each with the other, that decision concerning what America shall do and what a particular person shall do in the particular art, made as the result of hearings and evidence and discussion and debate, can not possibly be made in time and swift enough to be useful in that art. The Radio Commission going for one year found itself with its job undone and behind. At the end of two years I believe the commission will bear me out when I assert that they are further behind than they were at the end of one. I express a personal opinion when I say at the end of three years they will be further and further behind, and as time goes on the avalanche of things undone will be greater and greater.

Senator WHEELER. Well, do you think that is due to the fact entirely that there are five men on the commission, or is it not because of the fact that the problems are growing so rapidly?

Mr. DAVIS. It is due to both, Senator, I think.

Senator WHEELER. Well, is it not largely due to the latter, that the problems have been growing so rapidly?

Mr. DAVIS. Men must understand a very complicated art, and if their understanding must come to them through hearings and debates, discussions and evidence——

Senator WHEELER. Of course, you must remember also that the Interstate Commerce Commission never catches up with its work because of the problems that it has before it. That is true of a great many bodies.

The CHAIRMAN. Have you finished your statement?

Senator HAWES. Mr. Davis, just to keep the record clear. You did not ask to appear before this committee, sir?

Mr. DAVIS. I was directed to appear before it, as I understand. I was told that I had been subpœnaed.

Senator HAWES. And your discussion of the commission is not volunteered, it was brought out by questions; is that correct?

Mr. DAVIS. That is entirely correct, sir.

Senator HAWES. So that any expression about the commission is an individual expression of your own without consultation with the officers of your association, and you accept the responsibility for it as being brought out by questions which you did not feel that you could refuse to answer; is that correct?

Mr. DAVIS. That is entirely correct, sir.

Senator FESS. Mr. Chairman, it was the statement yesterday of Colonel Davis, just now repeated, that, in his judgment, a year from now they will be further behind that leads me to ask him two or three specific questions on that particular issue.

The CHAIRMAN. Certainly.

Senator FESS. I understood you, Mr. Davis, yesterday, to say that the major portion of the work is administrative, and your idea—this is the thing that caught my attention—your idea would be that of the great mass of matter laid before the commission the greater proportion of it is purely administrative, and that the commission ought to be relieved of all except what is controverted, and when the matter is presented to them, if it is purely administrative, it should be determined by a board that does not go into the quasi judicial. Now, is there any machinery now existing without this commission that would permit that?

Mr. DAVIS. Oh, yes, sir; that exists under the law. Under the law it is.

Senator FESS. Point that out.

Mr. DAVIS. A long time before the Radio Commission was established there was established the Radio Bureau of the Department of Commerce, and when this law was drafted the Radio Bureau of the Department of Commerce continued, functioned, is still in existence, and is functioning.

Section 4 of the radio act lays down the various things that the commission itself shall perform. Section 5 provides that:

> From and after one year after the first meeting of the commission created by this act, all the powers and authority vested in the commission under the terms of this act, except as to the revocation of licenses, shall be vested in and exercised by the Secretary of Commerce; except that thereafter the commission shall have power and jurisdiction to act upon and determine any and all matters brought before it under the terms of this section.

And then the act continues:

> It shall also be the duty of the Secretary of Commerce—
>
> (*a*) For and during a period of one year from the first meeting of the commission created by this act, to immediately refer to the commission all applications for station licenses or for the renewal or modification of existing station licenses.

Now those are the things that go to him during the first year. [Continuing reading:]

> (*b*) From and after one year from the first meeting of the commission created by this act, to refer to the commission for its action any application for a station license or for the renewal or modification of any existing station license as to the granting of which dispute, controversy, or conflict arises or against the granting of which protest is filed within 10 days after the date of filing said application—

And then the act goes on to prescribe certain other things that shall be done. Paragraph C is:

(*c*) To prescribe the qualifications of station operators, to classify them according to the duties to be performed, to fix the forms of such licenses, and to issue them to such persons as he finds qualified.

(*d*) To suspend the license of any operator for a period—

And then it goes on and gives a good many reasons for suspending.

(*e*) To inspect all transmitting apparatus to ascertain whether in construction and operation it conforms to the requirements of this act, the rules and regulations of the licensing authority, and the license under which it is constructed or operated.

(*f*) To report to the commission from time to time any violations of this act, the rules, regulations, or orders of the commission, or of the terms or conditions of any license.

(*g*) To designate call letters of all stations.

And so forth.

The whole series——

Senator FESS. Now is that functioning?

Mr. DAVIS. Oh, yes. Yes; the radio bureau as an administrative body is functioning at this time; and in contemplation of the act the radio bureau—of course the act says the Secretary of Commerce, but in reality by designation it would be the radio bureau—the radio bureau was to have been the body for deciding all things in the first instance, except those which resulted in controversies and which were under the law to be referred to the commission.

Senator FESS. Well, now, do you think that in view of the fact that the commission is so far behind, that there are being reported to the commission or referred to the commission matters that ought to go to this administrative body?

Mr. DAVIS. A great many of the matters which under section 4 for the first year the Radio Commission must decide are, in my opinion, administrative matters. And then, with the extension of the Radio Commission for an additional year, they are continuing to decide these matters, and then if you again extend it they will again so continue. And it is that reason that suggests to me that with the development of the art and with new matters coming under the art that there will be ever and ever an increasing load.

Senator WHEELER. Well, let me ask you this: What difference does it make, for instance, whether an executive department is set up under the commission or whether it is set up in the Department of Commerce? That is what I am unable to get from all of your statements. I do not see what particle of difference it makes as to whether or not the Radio Commission has some one who attends to these details which must be attended to, or whether it is done in the Department of Commerce.

Mr. DAVID. First is the difficulty perhaps under the law and the difficulty the Radio Commission has found in practice of delegating to one man the performance of duty which the law gives to five.

Senator WHEELER. What makes you say that they found difficulty in delegating to some one man?

Mr. DAVIS. I believe I am correct in saying, sir, that the Radio Commission in all instances has acted through the majority of the commission.

Senator WHEELER. Well, has that not been in controverted matters?

Mr. DAVIS. I do not think so. I think in all matters.

Senator WHEELER. You think in all matters?

Mr. DAVIS. Even in ship licenses, hundreds of those, I think they have conceived it to be their duty. And I believe had I been their counsel I should have advised them that it was their duty to bring all matters before the commission for commission action.

Senator FESS. Whether it is administrative or not?

Mr. DAVIS. If it is the duty which under section 4 was charged by the law to the commission for doing. I believe that has been their construction of their own responsibility. And then again, Senator, responding to your statement, the bureau that you speak of that might be organized under the Federal Radio Commission is already organized under the law.

Senator WHEELER. Let me ask you this. Is it not a fact that your chief opposition to the Radio Commission is because of the fact that they did grant some licenses to a concern which you felt ought to be granted to you? Isn't that true?

Mr. DAVIS. On my soul, Senator, that is not true. The question of the difficulty of getting action on the many things which from time to time we have constantly had to take up with the commission.

Senator WHEELER. Well, you feel that you would get much better treatment when it is over in the Department of Commerce, isn't that true?

Mr. DAVIS. Faster action. And now with respect to the distinction between administrative and judicial action. The rule of precedure laid down by the law is that every action shall be taken according to public convenience, interest, and necessity. Some one might say that that is a judicial function. Indeed, as I answered yesterday to some Senator—indeed yes, but every administrative function involves in some measure the application of a judicial point of view. Whether it is to be done or not, how it is to be done, and so forth, all in some measure involve judicial action. But we have had hearings, we have discussed at great length from time to time, and the commission, in my mind, has done its level best, and it has done its diligent best to expedite matters. But its inability despite its diligence, to expedite matters has handicapped America in this art and is impairing America's position throughout the world in this art.

Senator GOFF. Mr. Chairman, I want to ask Colonel Davis now a question in view of what he said purely to clarify this record. As I understand your judgment and opinion it is this: The present radio act creating the commission has conferred upon the commission not only judicial but administrative powers. The commission has assumed under the construction it has given to this act, that its duty is to discharge the obligations arising under the judicial, as well as the administrative departments and has declined to delegate to any one individual or to anybody the discharge of the administrative functions of this art?

Mr. DAVIS. Senator, I do not think that expresses my view. I do not think it expresses, if I may say so, the fact.

Senator GOFF. Certainly, I want your view.

Mr. DAVIS. The act itself, as I read it, was a compromise. The act itself specifically charges the Radio Commission with the performance of many of these functions during a period of one year following the enactment of the statute.

Senator GOFF. Well, now, Colonel, is that not just an answer to my question, argumentatively speaking? You have answered my question just as I asked the question of you.

Mr. DAVIS. Except that you asked me if the commission had declined to permit administrative functions to be done administratively.

Senator GOFF. No; I did not ask you that.

Mr. DAVIS. I misunderstood your question then, Senator.

The CHAIRMAN. You misunderstood him.

Senator GOFF. I am not going to take up any more time.

Senator HAWES. The point you tried to make in response to these questions is, as I understand it, that the board is attempting, under the construction of the law that you approved yourself, to act jointly on every question, judicial or administrative, and because of the number of issues brought before it it is impossible to do this with any proper degree of speed; is that a correct statement?

Mr. DAVIS. I think that is quite a fair statement, sir.

Senator HAWES. Now, is there anything else that you want to say to this committee, because I think we ought to move along, Mr. Chairman.

Mr. DAVIS. I came to be of service to the committee, Senator. I want to answer questions.

Senator HAWES. I would like to know how long we are going to continue, Mr. Chairman?

The CHAIRMAN. Well, if there are no further questions of the witness he will be excused. Senator Sackett has said that he wanted to ask Mr. Caldwell some questions.

Senator WHEELER. I think Mr. Sykes was on the stand and had not finished.

The CHAIRMAN. Yes. I hope that we will be able to close these hearings to-morrow. Of course, this examination has been in a sense ancillary.

Senator FESS. Rather valuable, however.

Senator WHEELER. Oh, yes.

The CHAIRMAN. And most interesting.

Senator WHEELER. We can not intelligently pass upon the question, in my judgment, unless we do get a lot of information concerning it.

Mr. DAVIS. May I thank all you gentlemen for your patience?

Senator WHEELER. I do not think anyone can complain that we have had too many hearings with reference to radio.

Senator GOFF. Possibly we have been too analytical in our analysis.

Senator HAWES. Mr. Chairman, we took up the question of the confirmation of Mr. Neff on the Board of Mediation. We held hearings, and then at the request of one of the sides to the controversy we had an adjournment. We have about a half hour's work to do on that, or an hour at least. Now, that is being suspended. The question of railroad consolidation is being put aside, and we are drawing to a close in this session. I believe we should devote our attention strictly to the bill before us and finish as quickly as we can.

Senator WHEELER. I think the commission ought to be fully heard, Senator. Judge Sykes has not been heard fully, as I recall; he had not finished his statement, because we put him aside to let

Mr. Davis go on the stand. And I do not know whether there is any other member of the commission that should appear or not.

The CHAIRMAN. Senator Sackett has requested twice that Mr. Caldwell be put on the stand. He wants to ask him some questions. I can see nothing in the way now to prevent our closing these hearings to-morrow. The House had three weeks. We have now had four days, and to-morrow will make the fifth.

Senator GOFF. Mr. Chairman, I want Judge Robinson, the chairman of this commission, to make a short statement.

Senator WHEELER. Yes; I want to hear him.

Senator GOFF. I want to hear him and I want him to express his opinion.

The CHAIRMAN. What idea have you that it will be a short statement?

Senator GOFF. Simply because I have always found that Judge Robinson was very concise and very analytical.

The CHAIRMAN. I have a matter which I wish to place in the record, a letter from the chairman of the United States Shipping Board inclosing a statement.

(The letter and statement are here copied in the record in full, as follows:)

UNITED STATES SHIPPING BOARD,
Washington, February 6, 1929.

Hon. JAMES E. WATSON,
United States Senate, Washington, D. C.

DEAR SENATOR WATSON: Please find accompanying this a copy of statement in regard to an anonymous letter read on February 4 before the Committee on Merchant Marine and Fisheries of the House of Representatives while that committee was holding hearings on the bill for the extension of the life of the Federal Radio Commission.

I am asking Chairman White, of the Merchant Marine and Fisheries Committee, to see that this statement is placed in the record in order to counteract the anonymous charges which received publicity at the hearings. I am wondering if it would not be well, at the same time, to incorporate the statement in the record of the hearings before your Radio Committee. If you think well of the suggestion, I trust that you will see that it is introduced and printed as part of the committee hearings.

Very truly yours,

T. V. O'CONNOR, *Chairman.*

STATEMENT OF MR. T. V. O'CONNOR, CHAIRMAN OF THE UNITED STATES SHIPPING BOARD, IN ANSWER TO A LETTER ADDRESSED TO REPRESENTATIVE A. M. FREE AND READ AT THE HEARINGS BEFORE THE HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES FEBRUARY 4

"Just why my name should have been dragged into the hearings before the Committee on Merchant Marine and Fisheries, which has been considering a bill for the exension of the life of the Federal Radio Commission, is beyond my comprehension," said Chairman T. V. O'Connor, of the Shipping Board, when his attention was directed to a letter from an alleged resident of Buffalo addressed to Congressman Free, of California, referred to in the published hearings.

"I have not now and never had any financial interest whatever in the Universal Wireless Communications Corporation, and have no expert knowledge of the science of radio communication," continued Chairman O'Connor. "During professional visits to a member of my family in Buffalo, Doctor Nathansohn mentioned the subject of wireless telegraphy and spoke of his interest in the use of short-wave lengths for communicating between points within this continent. I became interested in his enthusiasm and when he announced his intention of coming to Washington I offered to lend him, as a fellow Buffalonian, any assistance in my power in the development of his plans. This I gladly did, as I know Doctor Nathansohn to be a gentleman of the highest type of professional and personal honor.

"As to the members of the directorate of the Universal Co., nearly all of whom reside in my home city, Buffalo, N. Y., I know them to be men of high standing in the community and I believe them to be fully able to finance such an enterprise as that with which they are connected. There is no excuse for the inseration of scurrilous attacks upon the men who are connected with the Universal Co. by men who are unknown, except as they have been brought into the limelight through anonymous communications addressed to certain members of the committee. But for the official position which I occupy I should consider the slur on myself as too contemptible to notice, for, as I have said in the first instance, I have not and never have had any financial interest whatever in the Universal Wireless Communications Corporation. I am further confident that the Buffalonians who have furnished the funds and lent their names to the enterprise can and will carry out, to the letter, the terms upon which their licenses were granted."

FEBRUARY 6, 1929.

Senator HAWES. I presented a number of questions to Judge Sykes and requested that he answer them in writing. This was done in the economy of time. Judge Sykes has furnished the answer to these questions, and I will ask that the questions and answers be placed in the record at this point.

The CHAIRMAN. That will be done.

(The questions presented to Judge Sykes by Senator Hawes, and Judge Sykes's answers thereto are here printed in the record in full, as follows:)

(1) The Federal Radio Commission very recently determined how it would allocate frequencies or channels for a comprehensive system of radio telegraphy between points within the United States, did it not?

Answer to (1): Yes, in part only.

(2) For how many comprehensive systems did it provide to carry on domestic public service between points within the United States?

Answer to (2): So far there has been a comprehensive system provided for in grants to the various press communication corporations and to one public-service corporation. It is expected that other less comprehensive public-service systems will be granted.

(3) What engineering or traffic principles or data did the commission apply in coming to its conclusions?

Answer to (3): So far, an essential consideration in granting franchises to domestic public radiotelegraph service between points within the United States is the requirement that the channels be utilized economically and effectively to the fullest extent for the greatest number of people.

(4) What, if any, information do you now personally have concerning the soundness or the accuracy of those principles or data?

Answer to (4): I believe that the radio art is in the process of rapid development both as to its technical and economical phases and that all of these various developments will have to be tried out before any radio traffic principle can be proved entirely satisfactory. We have on hand certain information relative to the handling of traffic on low frequencies but it is believed that the handling of traffic on high frequencies is entirely in the experimental stage, including those in transoceanic service. It is also believed that the handling of traffic in the transoceanic service may differ slightly somewhat in principle from that utilized in the domestic service.

(5) How many organizations are there in the United States now actually carrying on radiotelegraph public service between points where both the point of origin and the point of destination of the traffic is within the United States?

Name those organizations and explain in detail the nature and the extent of the radiotelegraphic public service carried on by each of them.

Answer to (5): Three. The Mackay Radio & Telegraph Co., carrying on a service between cities on the west coast, and the Intercity Radio Telegraph Co., carrying on a service between the cities on the the Great Lakes, and the Tropical Radio Telegraph Co., carrying on a service on the Gulf coast.

(6) How many organizations are now actually carrying on radiotelegraphic public service between points in the United States and foreign countries?

Name those organizations and explain in detail the nature and the extent of the radiotelegraphic public service now actually carried on by each of them.

Answer to (6): Three (3). The Radio Corporation of America, the American Telephone & Telegraph Co., and the Tropical Radio Telegraph Co. The Radio Corporation carry on a comprehensive telegraph service with various countries throughout the world. The American Telephone & Telegraph Co. conduct a telephone service between this country and England and Belgium. The Tropical Radio Telegraph Co. carry on a radiotelegraph service between this country and Central and South America.

(7) With how many foreign countries, approximately, does each of these organizations now actually carry on radiotelegraphic public service?

Answer to (7): The Radio Corporation of America, 25; American Telephone & Telegraph Co., 2; Tropical Radio Telegraph Co., 6.

(8) How many points in the United States are reached directly by the international radiotelegraph systems of each of the organizations you have named and precisely what points in the United States are so reached?

Answer to (8): Radio Corporation of America—New York, San Francisco; American Telephone & Telegraph Co.—New York; Tropical Radio Telegraph Co.—New Orleans, Miami, Boston.

(9) How do the organizations which are now carrying on radiotelegraphic public service between points in the United States and foreign countries get their traffic to and from inland points?

Answer to (9): By utilizing land lines.

(10) Do the wire-line telegraphic companies themselves directly or indirectly carry on international telegraphic service by cables or otherwise and in competition with the radio organizations now actually carrying on radiotelegraphic public service between points in the United States and foreign countries?

Answer to (10): Yes.

(11) Until short-wave radio devices were developed was it practicable to carry on a comprehensive system of domestic radiotelegraph service?

Answer to (11). No.

(12) Since short-wave radio devices were developed has a comprehensive domestic radiotelegraph service become practicable?

Answer to (12). Yes; to a limited extent. It will not reach the small towns directly.

(13) What organizations were applicants for radio channels for the purpose of establishing compreheisive domestic radiotelegraphic services within the United States?

Answer to (13): Wireless Telegraph & Communication Co., 24 cities; Radio Corporation of America, 30 cities; Universal Wireless Communication Co., 110 cities; Mackay Radio & Telegraph Co., 16 cities; Intercity Radio Telegraph Co., 10 cities.

The CHAIRMAN. We will meet in this room to-morrow at 10.30.

(Thereupon, at 11.55 a. m. an adjournment was taken until 10.30 a. m. the next day, Friday, February 8, 1929.)

CONTINUING FEDERAL RADIO COMMISSION TO MARCH 16, 1930

THURSDAY, FEBRUARY 7, 1929

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE COMMERCE,
Washington, D. C.

The committee met, pursuant to adjournment yesterday, at 10.30 o'clock a. m., Thursday, February 7, 1929, in room 212, Senate Office Building, Senator James E. Watson, chairman, presiding.

Present: Senators Watson (chairman), Fess, Goff, Pine, Sackett, Glenn, Wheeler, Hawes, Black, and Wagner.

Also present: Commissioners Ira E. Robinson, E. O. Sykes, O. H. Caldwell, and Harold A. Lafount.

The CHAIRMAN. The committee will be in order. Colonel Davis, you may resume, answering such questions as may be asked you.

STATEMENT OF MANTON DAVIS, VICE PRESIDENT AND GENERAL ATTORNEY OF THE RADIO CORPORATION OF AMERICA—Resumed

Senator HAWES. Mr. Davis, I read an elaborate statement that you made to the House committee, and I wonder if you could not economize in time by having this put into the record as your statement. It is the statement that Mr. Davis made in the House on the whole subject.

Mr. DAVIS. I shall be very glad indeed, sir, to do so.

Senator WHEELER. Well, I thought he made a complete statement yesterday. Do we want to put in the record every statement that this man has made?

Senator HAWES. Oh, he has not covered the point.

Senator WHEELER. I have no objection.

Mr. DAVIS. I think the statement that I made yesterday, Senator, covered no points in that pamphlet.

Senator WHEELER. Well, what does this cover? We might be interested to know what we are putting into the record, at least.

Mr. DAVIS. Surely. That covers generally the attack on the Radio Corporation of America concerning a so-called patent pool.

Senator WHEELER. Well, I do not think that the——

The CHAIRMAN. Why do you not just ask him briefly, Senator Hawes? I have no objection to that going in, but if you just ask briefly these very questions and let him answer quickly and succinctly, would that no cover it?

Mr. DAVIS. Senator, may I suggest to you that these 17 pages are themselves the résumé of literally thousands of pages of documents. I could not answer the questions that you might ask me with respect to that as tersely as they are there answered.

Senator HAWES. Mr. Chairman, the reason I asked the question was entirely in the interest of economy of time. It seems that we have only one question to decide here, and that is whether we would continue this commission or not.

The CHAIRMAN. That is the question.

Senator HAWES. We have railroad consolidations, we have the Neff confirmation, we have a variety of matters that we ought to take up, and if this is going to run on and run on forever we will never get through with it.

The CHAIRMAN. I quite agree with you.

Senator HAWES. I suggest, Mr. Chairman, that we ought to confine the investigation as largely as possible to whether this commission shall be continued or discontinued.

Senator WHEELER. Well, that is what he has been telling us.

Senator HAWES. Well, we have gone over the same thing time and time again. We have had several experts from the commission.

The CHAIRMAN. I assume this, Senator Hawes, that they are asking the witness, he being the vice president and general attorney, as he calls it, of this corporation, as to whether or not there is a monopoly in this business, whether or not the Radio Corporation of America and its allied and associated interests gobbled up everything connected with this great agency. Not for the purpose of investigating that question but for the purpose of finding out whether or not a commission having authority would sit by and permit that sort of a thing to be done without at least notifying somebody about it in order that if there be such a thing it might be stopped. I am assuming that that is the object of questions of this kind. We have no power to go in and investigate whether or not there is a monopoly. I understand that is being investigated elsewhere, has been investigated elsewhere, probably will be investigated elsewhere. My understanding is that the object of these questions now is to throw such light on that phase of the situation as will tend to show us whether or not the commission permitted that sort of thing to go on without any protest, if it is going on, and it will not take 15 minutes to cover that whole business.

Senator HAWES. Why can we not get down to the 15-minute basis then and finish this hearing?

The CHAIRMAN. Ten minutes. I am waiting now for him to go on.

Senator HAWES. I would like to have that statement go in the record.

The CHAIRMAN. Do you want that whole thing to go in?

Senator HAWES. There is not much of it.

The CHAIRMAN. Seventeen pages, he says.

Senator WHEELER. Eighteen pages of it, and it goes into a lot of things that are not before this committee at all. He takes up the question of the issuing of short wave lengths to some other radio corporation.

Senator HAWES. Was not this a statement that you made before the House committee, Mr. Davis?

Mr. DAVIS. It was indeed; yes, sir.

Senator HAWES. Well, just in the interest of economy of time and for the benefit of the Senate I thought it should be in the Senate hearings, so when the Senate takes it up they would have this statement. I thought it would save time.

Senator WHEELER. There is only one objection to that, Senator Hawes, and that is this: As I have glanced it over here I think there are some things in here which, if we put them in the record would result in that other people would want to come here and be heard about this.

The CHAIRMAN. Well, let us go on with this and then we can determine this after a while when Mr. Davis gets through. Do you want to ask any more questions, Senator?

Senator WHEELER. Yes.

The CHAIRMAN. All right.

Senator WHEELER. Has he finished his statement? I did not think he had finished his statement.

Mr. DAVIS. At your adjournment on yesterday I think there was a question that you just asked me that I was in process of giving the answer to.

The CHAIRMAN. You finished that statement you had, did you not?

Mr. DAVIS. Yes.

Senator WHEELER. I did not know that you had completed your statement. Well, what is your conclusion then? Do you think that the Radio Commission should be continued or do you not think it should be continued?

Mr. DAVIS. The personal opinion that I expressed, Senator, was that the law as now written and without any change would perhaps serve everyone better.

Senator WHEELER. Well, can you answer it definitely? Then, as I understand it, you do not think that the Radio Commission should be continued?

Mr. DAVIS. But the law as now written does——

Senator WHEELER. No, no, Mr. Davis; I mean, you feel that this bill that we have here before us should not be passed? Put it that way.

Mr. DAVIS. I do, sir.

Senator WHEELER. That is what I wanted to get at.

Mr. DAVIS. That is my personal opinion, as I explained to you yesterday, and I attempted to tell you the reasons.

Senator WHEELER. And your reason is that you feel that they are taking up too much of their time handling so-called executive matters that could be well handled by one man?

Mr. DAVIS. Or a department.

Senator WHEELER. Or a department.

Mr. DAVIS. The kind of department and the kind of organization that is already in existence, and under the law, and in operation. That department is already organized.

Senator WHEELER. Well, I do not agree with you other than that you would say that the Department of Commerce is already organized.

Mr. DAVIS. The Radio Department in the Department of Commerce, Senator.

Senator WHEELER. But that department in the Department of Commerce has practically been turned over now to the Radio Com-

mission, or if it has not it should be turned over to the Radio Commission.

Mr. DAVIS. The law in my opinion, Senator, does not contemplate that. In fact, there are a great many administrative functions under the law being performed by the department at this time that are not under the law being performed by the commission. And amongst others of them is the great organized field force throughout the United States engaged in the inspection of radio stations.

Senator WHEELER. You referred yesterday particularly to the international—well, would you call them international channels?

Mr. DAVIS. Channels, yes.

Senator WHEELER. And you said that they were being allocated by the different foreign governments either to themselves or to some private concern in that country. Let me ask you this: Has the Radio Corporation of America got stations in practically all of these foreign countries in Europe?

Mr. DAVIS. The Radio Corporation of America, Senator, has no station in any foreign country.

Senator WHEELER. Well, do you have some arrangements with these foreign governments with reference to have the exclusive use of sending messages over their stations?

Mr. DAVIS. We have what we call traffic contracts.

Senator WHEELER. Well, what are those traffic contracts?

Mr. DAVIS. Oh, they vary in each individual case. They are separately negotiated in each case.

Senator WHEELER. What is your traffic contract with England, for instance?

Mr. DAVIS. Our traffic contract with England is with the British Marconi Co. I believe if I have understood the purport of your question it is to get what was referred to in examination in the House, as exclusive contracts?

Senator WHEELER. Yes.

Mr. DAVIS. I think that is the purport of your question. Now, we have no exclusive contract with any government or with any country that preclude the erection of any station in that country——

Senator WHEELER. The fact is, however, that they will not permit anyone else to erect a station, will they?

Mr. DAVIS. The situation is this, Senator. A radio circuit, just like a wire circuit, has two ends. The Radio Corporation contracts with whomsoever operates the ends on the other side. In some instances they are private companies. In other instances they are governmental departments. In some instances the stations are operated by the Government although owned by private parties.

The CHAIRMAN. Is there anything in your contract with any of these foreign countries that precludes the possibility of the Radio Corporation of America having and establishing and owning and operating stations over there?

Mr. DAVIS. No, sir.

The CHAIRMAN. There is not?

Mr. DAVIS. No, sir. But I think perhaps the Senator was trying to find out from we whether in my opinion there was anything in our contract that precluded them from having other stations other than the ones that were contracting with us. My answer to that

is no. We do attempt to make and we do make exclusive circuit contracts, traffic contracts.

Now, if I may explain that it is this: A radio circuit, just like a wire circuit, has two ends, and it is just as inconvenient, it is just as uneconomic to cut a radio circuit and break it and transmit to some one else as it is a wire line. For if our circuit should be broken here while the other end of the circuit should be transmitting to some other station then our facilities during that time would be idle. So that the operating agency that creates a circuit with us, we constantly contract that that operating agency shall give to us all the messages that it has, and we as an operating agency shall give to it all the messages that we have.

Now, the condition that you speak of may arise in view of the Government being itself the operating agency. If that be true, then as the result of those contracts we doubtless will get all the traffic that that operating agency controls. It will not be as a result, however, of any exclusive arrangement in our contract. It will be as a result of a policy established in that government and by that government for operation in that country, a policy that our contract does not create, that we can not control, that is outside of our jurisdiction and is outside of the jurisdiction of the United States.

Senator WHEELER. You say here is no provision in your contract providing for that?

Mr. DAVIS. There is no provision in our contract excluding any other station operating in those countries.

Senator WHEELER. Well, no provision in your contract, for instance, with Great Britain or with Germany, to the effect that they shall not permit messages to be sent other than through you?

Mr. DAVIS. There is not.

Senator WHEELER. Is there any understanding to that effect that they will not?

Mr. DAVIS. The agreement is that that operating agency, as an operating agency, shall give to us over our circuits all the messages that it gets and we to it.

Senator WHEELER. And the result of that agreement is, of course, that in most of these countries you receive and get the exclusive right practically to receive all messages that come from that country, isn't that correct?

Mr. DAVIS. Not as the result of the contract. A result of the condition that those governments create in their own countries and for their own purposes.

Senator WHEELER. But I ask you if as a result of this arrangement others were not excluded from sending any messages to this country, excepting that they came through you? Is that not correct?

Mr. DAVIS. Senator, no. There is nothing to preclude any one in France sending a message from France if France will permit it.

Senator WHEELER. That is the point.

Mr. DAVIS. Answering your question quite specifically, Senator, arrangement precludes nobody. The policy of France may preclude.

Senator WHEELER. The practical effect of it is, however, that they are precluded, is it not?

Mr. DAVIS. In some cases where governments themselves——

Senator WHEELER. Well, that governments? Give me the instances?

Mr. DAVIS. It is right difficult, sir. I doubt if I can. In Norway, in Sweden, in Denmark, in Poland, in Turkey, in Liberia, in many countries——

Senator WHEELER. How about Germany and England?

Mr. DAVIS. Well, I will tell you about those specifically: In many countries the communications department of the government is the operating agency. In Germany the operating agency is a concern called Transradio. Usually I expect people would call it "Telefunken." It is a private operating agency, but the traffic contracts are really made by the Reichspost Ministerium, which is the German Post Office. The German Post Office in reality controls the operation of Transradio. We have a contract both with Transradio and with the German Post Office, the Reichspost Ministerium. In France it is very much the same except that we have no contract with the French Government. T. S. F. is the common name for the operating company in France.

The CHAIRMAN. Well, then, under your arrangement with Germany nobody in Germany can transmit a message to anybody except through you; is that not right? You must have some sort of arrangement, some sort of understanding about that.

Mr. DAVIS. The distinction I am trying to make, Senator—and I do not want you to think that I am being in any manner evasive or too careful—the distinction I want to make is that we have an arrangement with the German Post Office that it will transmit to us, through its circuits to our circuits, all the traffic that it gets.

The CHAIRMAN. Sure.

Mr. DAVIS. But there is nothing in our contract that precludes the German Post Office from allowing somebody else, or the German Government from allowing somebody else to establish stations over there.

The CHAIRMAN. Well, now, as a matter of actual fact, does anybody send any messages from Germany over here except through you?

Mr. DAVIS. No; I do not think they do.

The CHAIRMAN. Do they from any European countries, Colonel?

Mr. DAVIS. Oh, yes.

The CHAIRMAN. They do?

Mr. DAVIS. Yes.

Senator WHEELER. What countries?

Mr. DAVIS. I was getting to England. In England the operating agencies are two. First is the British Marconi Co., and the other is the British Post Office itself. Now, we have a traffic contract with the British Marconi Co. by which it gives to us all of its volume of traffic. We have not any traffic contract with the British Post Office. And the British Post Office is even now sending a great deal of traffic destined to the United States to Canada for transmission in the United States. And we really think that that is not to American interests. We know it is not to the interest of our company. But there is nothing under our contract that prevents it.

Senator PINE. Are they sending anything directly to the United States?

Mr. DAVIS. No. No; they have never made any arrangement with us at all, and we are the only company in America that is at this

present time carrying on a comprehensive international telegraph system.

Senator WHEELER. Now, let me ask you this: When I said something about it being a trust you rather resented the idea of it being called a trust. Let me ask you if, as a matter of fact, the Supreme Court of the State of Delaware did not declare that the Radio Corporation of America was violating the provisions of the trust laws? I am not sure whether it was the supreme court of that State or of the United States. You can answer that yes or no, can you not?

Mr. DAVIS. Yes; and I say no. While I think I know what the Senator is talking about, would you like an explanation, or just my pat "no"?

Senator WHEELER. Yes; I would like an explanation of it. My understanding of it was that it had so declared.

Mr. DAVIS. The case of which you doubtless refer is a case that is now pending in the United States court in Delaware.

Senator WHEELER. I though one had already been decided in the State court.

Mr. DAVIS. No. There is no such decision in the State court.

Senator WHEELER. No such decision. Well, I am not familiar. My attention was just called to it, and that was all. What was the title of that case?

Mr. DAVIS. The case to which I refer?

Senator WHEELER. Yes. It was a case involving patents, was it not?

Mr. DAVIS. Radio Corporation of America against Lord and others.

Senator WHEELER. Against whom?

Mr. DAVIS. Lord and others.

Senator WHEELER. Involving patents?

Mr. DAVIS. Yes; it involved some of our patent license contracts under the agreement by which we license certain radio set manufacturers.

Senator WHEELER. Yes; and did not the court in that case hold that you were violating the provision of the Sherman antitrust law with reference to that?

Mr. DAVIS. Senator, the case is pending. It has not been tried.

Senator WHEELER. Is has not been tried?

Mr. DAVIS. It has not been tried.

Senator WHEELER. Did they issue a temporary injunction?

Mr. DAVIS. There was a temporary injunction applied for and issued.

Senator WHEELER. I see; but no permanent injunction?

Mr. DAVIS. Oh, no; the case is pending and it has not been tried.

Senator WHEELER. Well, was there a hearing upon the temporary injunction?

Mr. DAVIS. Yes.

Senator GOFF. Was your company the petitioner?

Mr. DAVIS. No; the petitioners in the case were a number of organizations that claimed that the Radio Corporation, in a certain license contract, was precluding them from selling radio dealers.

Senator WHEELER. Was that the DeForest?

Mr. DAVIS. The receiver of the DeForest company was one of the plaintiffs. I will be very glad indeed to tell you the facts and the circumstances of that case if you desire.

Senator WHEELER. They applied for an injunction, did they not?

Mr. DAVIS. An injunction, yes.

Senator WHEELER. And was an injunction issued or a restraining order issued without a hearing first?

Mr. DAVIS. It was heard on affidavit as is usual in such cases and on the face of the bill.

Senator WHEELER. First of all a restraining order was issued by the United States court, was it not?

Mr. DAVIS. Well, I believe a temporary injunction was the first order that was issued.

Senator WHEELER. Well, I thought first the restraining order and then a temporary injunction followed that after a hearing.

Mr. DAVIS. Senator, I am not sure.

Senator WHEELER. Who are the largest stockholders of the Radio Corporation of America?

Mr. DAVIS. There are a great many of them, sir. I will say that there are 18,000 stockholders of record in the company.

Senator WHEELER. Let me ask you this. Does the General Electric Co. own a large portion of the stock?

Mr. DAVIS. The General Electric Co. owns a good deal. It has a large amount of stock but has not a large proportion of the stock.

Senator WHEELER. Let me ask you this——

The CHAIRMAN. Pardon me, Senator. Have you a statement there where you can give us succinctly this information without wading through a long series of questions and answers?

Senator WHEELER. That is what I was trying to get at.

The CHAIRMAN. As to the capitalization, as to the shares outstanding, as to who own those shares?

Mr. DAVIS. The Senator was asking me about the General Electric Co., sir. I can give you that very quickly. The General Electric Co. owns 248,106.

The CHAIRMAN. How much?

Mr. DAVIS. 248,106.

Senator WHEELER. That is common or preferred?

Mr. DAVIS. Common; all a common stock. Out of 1,155,400 shares.

The CHAIRMAN. Outstanding?

Mr. DAVIS. Yes, sir.

Senator PINE. Approximately 25 per cent.

Mr. DAVIS. No; I think that is not that much, sir. A little over 20 per cent.

Senator WHEELER. I have before me a memorandum, and I wanted to see if this was correct, stating that on page 3 of the Federal Trade Commission's "Radio Industry" appears a statement relative to the organization and distribution of the stock of the Radio Corporation of America. On December 31, 1922, there were outstanding 3,955,974 shares of preferred stock, with par value of $5, is that correct?

Mr. DAVIS. At that time the par value was $5.

Senator WHEELER. Yes; and 5,734,000 shares of common stock of no par value?

Mr. DAVIS. Yes, sir.

Senator WHEELER. And those are distributed as follows: General Electric Co., common stock, 1,875,000 shares; preferred stock, 620,800 shares.

Mr. DAVIS. I have no doubt, sir. I haven't the data with me to check that statement.

Senator WHEELER. Westingtouse Electric Co., 1,000,000 shares of the common stock and 1,000,000 shares of the preferred stock. United Fruit Co., 160,000 shares of the common stock and 200,000 shares of the preferred stock.

Mr. DAVIS. The common shares at that time were five times greater in number than now, and the preferred stock ten times greater in number than now.

Senator WHEELER. I see. There has been a reorganization since that time?

Mr. DAVIS. There has been a change of stock so that the preferred stock, which was then $5 a share, is now $50 a share, and the number reduced proportionately. The common stock is now one-fifth in number compared with what it was then, and the common stock has no par value.

You were asking me about the General Electric Co., and I gave you its common stock, and if you desire I will give you the preferred.

Senator WHEELER. Yes.

Mr. DAVIS. It owned as of August, which is the last figure I have, 37,080 shares out of 395,597.

Senator WHEELER. The Westinghouse Electric & Manufacturing Co.?

The CHAIRMAN. Has all the preferred and common stock been issued or is there any in the treasury?

Mr. DAVIS. There is some unissued stock.

The CHAIRMAN. What was the total issue in the beginning, and how much has been issued, and how much is in the treasury of each kind of stock?

Mr. DAVIS. Now, speaking as of January 31, 1927, which is the last statement I have of the company, there was preferred authorized 500,000 shares. There was issued as of that date 395,597.4 shares.

The CHAIRMAN. And of that amount how much had the General Electric Co. at that time?

Mr. DAVIS. Of that amount the General Electric had 248,106 shares of common and 27,080 shares of preferred.

The CHAIRMAN. Were they the largest stockholder? Are they larger than Westinghouse?

Mr. DAVIS. Yes.

Senator WHEELER. Now, the Westinghouse?

Mr. DAVIS. The Westinghouse as of August, 1928, which is the last statement I have, owned of the common shares 27,760 out of 1,155,400, and it owned of the preferred, 50,000 shares out of 395,597.4.

Senator WHEELER. How about the United Fruit Co.?

Mr. DAVIS. According to my information, Senator, it owns no stock in the Radio Corporation.

Senator WHEELER. It did originally own the stock that I called your attention to?

Mr. DAVIS. Yes. You were reading from the record of the Federal Trade Commission, and I have no doubt it is true. I do not just remember.

Senator WHEELER. And then the Radio Corporation of America in turn owns 50 per cent of the National Broadcasting Co., does it not?

Mr. DAVIS. That is correct, sir.

Senator WHEELER. And the General Electric Co. owns about 30 per cent and the Westinghouse Electric Co. owns 20 per cent?

Mr. DAVIS. Both figures are correct, sir.

Senator WHEELER. Now, who else are the larger stockholders of the Radio Corporation of America?

Mr. DAVIS. The very largest stockholders, outside of those that I have mentioned, Senator, are on the record, brokers. And you know the customs of dealing in stock——

Senator WHEELER. No; I do not.

The CHAIRMAN. No.

Senator WHEELER. No; I do not.

The CHAIRMAN. Why do you make such an assertion as that?

Mr. DAVIS. Then, I am sure that the Senators will not admit that they know anything about the issue of stock.

The CHAIRMAN. No; and, of course, we always admit the fact.

Mr. DAVIS. It is not easy to tell who owns stock listed on the books of the company in the names of brokerage firms.

Senator WHEELER. Well, can you give me the large stockholders as you have them there?

Mr. DAVIS. Is it essential to your inquiry, sir? I do not like to. If you are insistent I shall be very glad.

The CHAIRMAN. Is there any secret about it?

Senator WHEELER. Yes; is there any secret as to who owns your company or who owns the stock in it?

Mr. DAVIS. In so far as the company is concerned, sir, there is not. I do not know how a stockholder would feel about it.

Senator WHEELER. You do not think they would feel ashamed of it?

The CHAIRMAN. I would feel good if I had it.

Mr. DAVIS. So would I. There is a concern, J. S. Bache & Co., 42 Broadway, New York, owns 10,373 shares of common and 625 shares of preferred.

Arthur E. Braun and George C. Moore, trustees under the will of T. H. Given, own 8,000 of A common and 12,500 of A preferred.

The CHAIRMAN. I don't think you care about that?

Mr. DAVIS. H. Content & Co., 111 Broadway, New York, own 31,790 of common.

Dominick & Dominick, 115 Broadway, own 18,138 common and 80 preferred.

Hornblower & Weeks, 10,406⅕ common and 111.5 preferred.

W. E. Hutton & Co., 52 Wall Street, New York, 13,110⅗ of common.

Senator FESS. Those are all brokers in New York, are they not?

Mr. DAVIS. I think they are. I do not know.

Senator FESS. Would that be the investment companies' money or that of clients?

Mr. DAVIS. Senator, I would have to speculate on that just the same as you would. Of the facts I know nothing at all.

Senator FESS. I do not know whether this is a proper inquiry or not. I have been considerably concerned about what is the basis for the high range of stock prices. For instance, that of the Radio Co.

Senator WHEELER. Yes, I was going to ask him that.

Senator FESS. It has gone too high. And it is an interesting study to me as to just what is to basis of that. It is certainly way beyond anything that is the substantial value. I can see that if very responsible, powerful financiers are buying and buying heavily, that would probably run it way up, because people have confidence in their judgment. I do not know that this is a proper inquiry, but it is one of the things that I have been wondering about as to just what is the basis of this skyrocketing of the stock market, especially in radio which went so high.

Mr. DAVIS. Senator, you are asking me to speculate, and I will be very glad indeed to tell you all that I know and think.

Senator FESS. I will not insist upon it.

The CHAIRMAN. He is not asking you to speculate. He is asking you whether you do speculate.

Senator FESS. I do not know whether it is a proper inquiry.

Senator WHEELER. I think it is proper. We have to deal with this problem, and I think it is entirely proper that we should find out.

The Chairman. To give his opinion.

Senator WHEELER. Yes.

Mr. DAVIS. My opinion is all I can give you, sir.

The CHAIRMAN. Yes.

Mr. DAVIS. Apropos of that I would say that the price of the stock of the Radio Corporation on the stock market is as much a surprise to those inside of the corporation as it is to those on the outside.

Senator FESS. Well, that is an interesting fact.

Mr. DAVIS. There are a great many of us, who have our nose to the grindstone attempting to earn for those who invest money in the stock dividends on the investments that they make, that find ourselves in no small degree embarrassed by the value that people in the market put on the stock and the consequent expectation that investors have on the returns that they may some time realize on their investments. It does not make it easy for those who work for the corporation to have such high value placed on the stock itself. Now, there are a great many new things peeping out of the laboratories in radio. I tried to give you some of them yesterday. The interest of the public in these radio receiving sets has been very great. The pyramiding volume of the sales of radio receiving sets is a constant surprise to those of us who work for the corporation. We have a budget of orders, and for the last several years that budget of what we expect the manufacturers to produce for the whole year is overreached before half the year is gone, and it is very difficult to adjust production to demand.

Then I told you of the contribution that radio had made to the talking machine art; that is, the orthophonic and panatrope devices are radio's contribution. That has interested the public.

Then the talking movies have largely been developed, very largely been developed in the radio laboratories.

Television is in process of being developed. I do not know how television escaped out of the laboratory door to be talked about, but it came out too soon. Those things always embarrass the companies. People expect a great many things from television.

And, all together the development of radio has been so fast, it has been so spectacular, there have been so many different fields that have been opened up by radio laboratory development that the public evidently is intrigued and sees the possibility of a reproduction of the Ford experience or of the telegraph or of the telephone or any of these other great fundamental things wherein some people invested a few hundred dollars in the early stages and lived in affluence thereafter. It is the imagination of the public.

Senator FESS. I was going to say that where a very responsible house would buy 30,000 shares, if that were known—and it is usually known—that of itself would stimulate the confidence of the buying public that this must be very good or that house would not buy. I think that justifies the question of Senator Wheeler in trying to find who these stockholders are. Then on the other hand, yesterday the Federal Reserve Board made an announcement that was rather a startling one in reference to money being used for speculative purposes, which indicates that the Federal Reserve Board is thinking on the same line, that there is some basis of investment that is not sound, in reference to high rates of interest.

The CHAIRMAN. There are a good many books written on the relation of price to value. Of course the price of a stock after all may not have any real relationship with the value of that stock as represented by substantial assets or fixed returns. Is not the price of radio stock a good bit psychological?

Mr. DAVIS. I think so. If I should read you——

The CHAIRMAN. No; I want your opinion. Do not read me anything. Your opinion?

Mr. DAVIS. I think it is altogether psychological; sir.

Senator FESS. Suppose the owners of property had their stocks on the market, and some very large financial houses would want to get control of that and the owners would not want them to get control, and they would get to bidding in the market on that, the man or the company that owns it bids in the market against the people who are trying to get control of it, they certainly would not go beyond what they thought would justify the price. And at the same time I have been bewildered about this gyration of the stock market, and I have been considerably concerned about what effect it will have upon our industry, whether the industry is sufficiently solid that it could withstand any interruption that might come when the bottom went out. I do not want you as a representative of the company to make any statement that might be misinterpreted, but I was just speaking of the concern I have as a student, not as a possessor, because I am not fortunate enough to possess any stocks.

Mr. DAVIS. I can say very definitely—I think I can say very certainly, that there is no fight over the control of radio, consequently, I think that the speculative value of radio stock is not in any degree on a fight for control. This matter of the increase, the very large

increase of stock market value, as the Senator very well knows, is not in any degree limited to radio.

Senator FESS. No; I know.

Mr. DAVIS. It goes all over the whole board.

Senator FESS. That is true, but radio has been an outstanding factor the last few months.

Mr. DAVIS. Yes.

Senator FESS. Because it has called the attention of everybody to the height to which it has reached.

Mr. DAVIS. What I intended to say a moment ago, Mr. Chairman, when I said altogether this is the public's imagination—what I intended to say was that the spread between actual assets and actual earning power—there is so great a spread between that and market value—must of necessity be built on the public's expectation of large earnings in the future.

The CHAIRMAN. Psychology.

Senator WHEELER. What were your earnings last year?

Mr. DAVIS. Just a bit more than $18,000,000.

Senator WHEELER. What dividends did you pay?

Mr. DAVIS. The company has never paid any dividends except 7 per cent dividend on its preferred stock.

Senator BLACK. May I ask you this: What part of it is voting stock?

Mr. DAVIS. It is all voting stock.

Senator BLACK. Preferred and common?

Mr. DAVIS. Yes.

Senator BLACK. Who are the directors?

Mr. DAVIS. Mr. Gordon Abbott, Mr. Cornelius N. Bliss, Mr. Arthur E. Braun, Mr. Paul D. Cravath, Mr. Albert G. Davis, Mr. Harry P. Davis, Mr. John Hays Hammond, Jr., General James G. Harbord, Mr. Edward M. Harden, Mr. Edwin M. Herr, Mr. Edward J. Nally, Mr. Edwin W. Rice, Jr., Mr. David Sarnoff, Mr. James R. Sheffield, Mr. Gerard Swope, and Mr. Owen D. Young.

Senator BLACK. Do you know how many of them are officers in a public utility company or electric company like the General Electric Co.? Do you know just offhand?

Mr. DAVIS. I was asked very definitely and I can tell you with respect to General Electric and Westinghouse; I was asked specifically about them in the House and I found out, but as to other public-utility organizations I do not know, sir. Mr. Paul D. Cravath, Mr. Edwin M. Herr, and Mr. Harry P. Davis are directors of the Westinghouse Co. Mr. Albert G. Davis, Mr. Edwin W. Rice, Mr. Gerard Swope, and Mr. Owen D. Young are directors of the General Electric Co.

Senator BLACK. You do not know about the others?

Mr. DAVIS. I do not know about the others; no, sir.

Senator WHEELER. How many of them are directors of any banking house?

Mr. DAVIS. I have no information on that, Senator.

Senator WHEELER. Are any of them directors or partners in the house of Morgan?

Mr. DAVIS. I have no information on that, Senator.

The CHAIRMAN. General Harbord is the president, is he not?

Mr. DAVIS. He is, sir.

Senator WHEELER. How many shares of stock does he own?

Mr. DAVIS. I was about to remark to you a moment ago, sir, that those who are responsible for the executive control of the company are very small stockholders in it, which is some indication at least that there is a good deal of surprise to them about it.

Senator HAWES. Mr. Chairman, I would like to ask a question of the Chair. What in the world has this to do with the question of whether this commission shall be continued or not, in your own judgment? I would like to know, because I am anxious to know whether we are going to get through with this hearing, because we have so many other things to come before the committee. We can go on for a month like this.

The CHAIRMAN. Oh, yes; longer than that.

Senator BLACK. I think it has a good deal to do with it. When they are objecting to the continuation of the commission we want to know who are objecting.

Senator HAWES. Who are objecting?

Senator BLACK. The Radio Corporation of America.

Senator HAWES. I did not understand him to say that the other day.

The CHAIRMAN. Yes; he said this morning, Senator Hawes, when you were out, that in his judgment it would be better if the Radio Commission was not continued, but the executive features or administrative features should be left in the hands of one man, and the appellate features in the hands of the commission.

Mr. DAVIS. May I——

The CHAIRMAN. I want to ask this question: Has the Radio Commission been unfriendly to the Radio Corporation of America? Is that why you do not want them continued?

Mr. DAVIS. No; I do not think unfriendly. I do not believe that we have been treated very favorably as to some of our applications, particularly on the applications in the short-wave domestic field.

The CHAIRMAN. How have you been treated in that respect?

Mr. DAVIS. We filed our applications for the channels in which to go into domestic communication in the United States. We filed our applications along with others, and so far we have received no channels whatever.

The CHAIRMAN. That is the point-to-point?

Mr. DAVIS. That is the point-to-point service within the United States.

The CHAIRMAN. Yes; domestic.

Mr. DAVIS. Our belief is——

The CHAIRMAN. And have other petitions been granted?

Mr. DAVIS. Yes.

The CHAIRMAN. To whom, and how extensive?

Mr. DAVIS. I have not got them all.

The CHAIRMAN. Well, not all of them, but just lump it off.

Mr. DAVIS. Well, the biggest lump was to an organization called the Universal Wireless Co., and another 20 to the newspapers.

The CHAIRMAN. And you have received no favor of that kind up to the present time?

Mr. DAVIS. No, sir.

The CHAIRMAN. If you call it a favor.

Mr. DAVIS. Our contention is that we have developed that art in America; that——

The CHAIRMAN. How many have you applied for, Colonel?

Mr. DAVIS. We applied for 33½ channels on a separation basis of two-tenths of 1 per cent, but in our application we suggested that we could operate really in America, where the art is more closely controlled, on a basis of one-tenth of 1 per cent separation, and therefore we asked for 67 new channels.

The CHAIRMAN. And how many are there?

Senator SACKETT. What percentage of separation has been granted in the 40 channels?

Mr. DAVIS. Two-tenths of 1 per cent.

Senator SACKETT. And what in the 20 channels?

Mr. DAVIS. The same.

Senator GOFF. Well then, you feel that you have been the victim of invidious distinction, to put it in a word, do you?

Mr. DAVIS. Yes, Senator.

Senator GOFF. And that is one of the reasons why you would object to the continuance of the Radio Commission?

Mr. DAVIS. No, Senator, that is not correct. We must go before the Radio Commission——

Senator GOFF. Well, is it one of the contents, so to speak, of the general motive that you entertain which actuates you to object to its continuance?

Mr. DAVIS. Well, perhaps that is true. Might I add?

Senator GOFF. Certainly.

Mr. DAVIS. And may I respond to Senator Black——

Senator GOFF. I want to say this, Colonel. I am very anxious to get right down to this issue: Shall we continue this commission or shall we discontinue?

Mr. DAVIS. Yes.

Senator GOFF. Now you have gone into a very illuminative and very educative and very inspiring field of discussion, and it seems to me that its only relevancy is to show the broad general application of radio to the bill now before this committee. And from that broad general field the committee is to make its deductions. I do not think that is quite helpful to us, because we know generally the breadth of this field, and we would like to come down, speaking now for myself, to the concrete question: Should this commission be continued or should it be discontinued? And that is the matter that is in my mind predominantly all the time.

Mr. DAVIS. Several Senators have stated what the opinion of my corporation is with respect to the continuance of the commission. I attempted to say in the beginning of my statement, and I would like to repeat, that my opinion with respect to that is my own personal opinion, undiscussed with any member of my company, and undirected by any member. I am not sure what will be the consequences of my stating my personal opinion, but you asked me for it, Senator, and I know no other way to respond to such questions than to tell you actually what I think.

The CHAIRMAN. Has there been any meeting of the board of directors or the president and other officials connected with your establishment for the purpose of coming to a conclusion about this question before this committee?

Mr. DAVIS. There has not.

The CHAIRMAN. Were you or anybody else asked to come here to reflect that opinion?

Mr. DAVIS. I was not.

Senator GOFF. Let me suggest to you——

Senator SACKETT. Let us have that statement which he wants to make. He is ready to make it.

Senator GOFF. That goes to my question. In answer to the question that has been propounded to you will you advise this committee as you would advise your board of directors, not disclosing, of course, to the committee any of the confidential matters that would exist between you and your board which you think it would be improper for you as the general attorney to disclose here, but advise this committee as you would advise your board of directors, as to whether or not in your field of experience this commission should or should not be continued?

Mr. DAVIS. Exactly. It was exactly on that basis and it was from that point of view that I did express a personal opinion to the Senators.

I shall answer your question, Senator, as if there were no Radio Commission, and as if you were writing some new legislation, and nothing clouded any of our opinion or influenced our opinion except our experience in the art. My opinion is this, that five men, nontechnical, in a swift-moving, swift-growing art, whose decisions have not only nation-wide but world-wide influence, and before whom hundreds and hundreds of question must come for decision, having the limitations on the power of delegation that generally exists in a committee or a commission of this sort, simply can not possibly pass the water under the mill fast enough to be properly useful to an art of this kind. With the hundreds of ships at sea, the hundreds of radio stations of all kinds with all their ability to interfere each with the other, and with the many hundreds of stations all over the world that have the ability to interfere each with the other, decisions concerning what American shall do and what a particular person may do in the particular art, made as the result of hearings and evidence and discussion and debate, can not possibly be made in time and swift enough to be useful in that art. The Radio Commission going for one year found itself with its job undone and behind. At the end of two years I believe the commission will bear me out when I assert that they are farther behind than they were at the end of one. I express a personal opinion when I say at the end of three years they will be farther and farther behind, and as time goes on the avalanche of things undone will be greater and greater.

Senator WHEELER. Well, do you think that is due to the fact entirely that there are five men on the commission, or is it not because of the fact that the problems are growing so rapidly?

Mr. DAVIS. It is due to both, Senator, I think.

Senator WHEELER. Well, is it not largely due to the latter that the problems have been growing so rapidly?

Mr. DAVIS. Men must understand a very complicated art, and if their understanding must come to them through hearings and debates, discussions, and evidence——

Senator WHEELER. Of course you must remember also that the Interstate Commerce Commission never catches up with its work because of the problems that it has before it. That is true of a great many bodies.

The CHAIRMAN. Have you finished your statement?

Senator HAWES. Mr. Davis, just to keep the record clear. You did not ask to appear before this committee, sir?

Mr. DAVIS. I was directed to appear before it, as I understand. I was told that I had been subpœnaed.

Senator HAWES. And your discussion of the commission is not volunteered; it was brought out by questions, is that correct?

Mr. DAVIS. That is entirely correct, sir.

Senator HAWES. So that any expression about the commission is an individual expression of your own without consultation with the officers of your association, and you accept the responsibility for it as being brought out by questions which you did not feel that you could refuse to answer, is that correct?

Mr. DAVIS. That is entirely correct, sir.

Senator FESS. Mr. Chairman, it was the statement yesterday of Colonel Davis, just now repeated, that in his judgment a year from now they will be farther behind that leads me to ask him two or three specific questions on that particular issue.

The CHAIRMAN. Certainly.

Senator FESS. I understood you Mr. Davis, yesterday, to say that the major portion of the work is administrative, and your idea—this is the thing that caught my attention—your idea would be that of the great mass of matter laid before the commission the greater proportion of it is purely administrative, and that the commission ought to be relieved of all except what is controverted, and when the matter is presented to them, if it is purely administrative it should be determined by a board that does not go into the quasi judicial. Now is there any machinery now existing without this commission that would permit that?

Mr. DAVIS. Oh, yes, sir, that exists under the law. Under the law it is.

Senator FESS. Point that out.

Mr. DAVIS. A long time before the Radio Commission was established there was established the Radio Bureau of the Department of Commerce, and when this law was drafted the Radio Bureau of the Department of Commerce continued, functioned, is still in existence and is functioning.

Section 4 of the Radio act lays down the various things that the commission itself shall perform. Section 5 provides that:

> From and after one year after the first meeting of the commission created by this act, all the powers and authority vested in the commission under the terms of this act, except as to the revocation of licenses, shall be vested in and exercised by the Secretary of Commerce; except that thereafter the commission shall have power and jurisdiction to act upon and determine any and all matters brought before it under the terms of this section.

And then the act continues:

> It shall also be the duty of the Secretary of Commerce—
>
> (A) For and during a period of one year from the first meeting of the commission created by this act, to immediately refer to the commission all applications for station licenses or for the renewal or modification of existing station licenses.

Now those are the things that go to the Secretary of Commerce and not to the Radio Commission even during the first year. [Continuing reading:]

(B) From and after one year from the first meeting of the commission created by this act, to refer to the commission for its action any application for a station license or for the renewal or modification of any existing station license as to the granting of which dispute, controversy, or conflict arises or against the granting of which protest is filed within 10 days after the date of filing said application—

And then the act goes on to prescribe certain other things that shall be done by the Secretary of Commerce and not by the Radio Commission. Paragraph C is:

(C) To prescribe the qualifications of station operators, to classify them according to the duties to be performed, to fix the forms of such licenses, and to issue them to such persons as he finds qualified

(D) To suspend the license of any operator for a period—

And then it goes on and gives a good many reasons for suspending.

(E) To inspect all transmitting apparatus to ascertain whether in construction and operation it conforms to the requirements of this act, the rules and regulations of the licensing authority, and the license under which it is constructed or operated.

(F) To report to the commission from time to time any violations of this act, the rules, regulations, or orders of the commission, or of the terms or conditions of any license.

(G) To designate call letters of all stations.

And so forth.

The whole series——

Senator FESS. Now is that functioning?

Mr. DAVIS. Oh, yes. Yes, the Radio Bureau as an administrative body is functioning at this time. And in contemplation of the act the Radio Bureau—of course the act says the Secretary of Commerce, but in reality by delegation preference would be by the Radio Bureau—the Radio Bureau was to have been the body for deciding all things in the first instance except those which resulted in controversies and which were under the law to be referred to the commission.

Senator FESS. Well now, do you think that in view of the fact that the commission is so far behind, that there are being reported to the commission or referred to the commission matters that ought to go to this administrative body?

Mr. DAVIS. A great many of the matters which under section 4 for the first year the Radio Commission must decide are in my opinion administrative matters. And then with the extension of the Radio Commission for an additional year they are continuing to decide these matters, and then if you again extend it they will again so continue. And it is that reason that suggests to me that with the development of the art and with new matters coming under the art that there will be ever and ever an increasing load.

Senator WHEELER. Well, let me ask you this: What difference does it make, for instance, whether an executive department is set up under the commission or whether it is set up in the Department of Commerce? That is what I am unable to get from all of your statements. I do not see what particle of difference it makes as to whether or not the Radio Commission has some one who attends to these details which must be attended to, or whether it is done in the Department of Commerce.

Mr. DAVIS. First is the difficulty perhaps under the law and the difficulty the Radio Commisison has found in practice of delegating to one man the performance of duty which the law gives to five.

Senator WHEELER. What makes you say that they found difficulty in delegating to some one man?

Mr. DAVIS. I believe I am correct in saying, sir, that the Radio Commission in all instances has acted through a majority of the commission.

Senator WHEELER. Well, has that not been in controverted matters?

Mr. DAVIS. I do not think so. I think in all matters.

Senator WHEELER. You think in all matters?

Mr. DAVIS. Even in ship licenses, hundreds of those, I think they have conceived it to be their duty. And I believe had I been their counsel I should have advised them that it was their duty to bring all matters before the commission for commission action.

Senator FESS. Whether it is administrative or not?

Mr. DAVIS. If it is a duty which under section 4 was charged by the law to the commission for doing. I believe that has been their construction of their own responsibility. And then again, Senator, responding to your statement, the bureau that you speak of that might be organized under the Federal Radio Commission is already organized under the law.

Senator WHEELER. Let me ask you this: Is it not a fact that your chief opposition to the Radio Commission is because of the fact that they did grant some licenses to a concern which you felt ought to be granted to you? Isn't that true?

Mr. DAVIS. On my soul, Senator, that is not true. The question of the difficulty of getting action on the many things which from time to time we have constantly had to take up with the commission is the basis of my opinion.

Senator WHEELER. Well, you feel that you would get much better treatment when it is over in the Department of Commerce, isn't that true?

Mr. DAVIS. Faster action. And now with respect to the distinction between administrative and judicial action: The rule of procedure laid down by the law is that every action shall be taken according to public convenience, interest, and necessity. Some one might say that that is a judicial function. Indeed, as I answered yesterday to some Senator—indeed yes, but every administrative function involves in some measure the application of a judicial point of view. Whether it is to be done or not, how it is to be done, and so forth, all in some measure involve action judicial in nature. But we have had hearings, we have discussed at great length from time to time. and the commission, in my mind, has done its level best, and it has done its diligent best to expedite matters. But its inability, despite its diligence, to expedite matters has handicapped America in this art and is impairing America's position throughout the world in this art.

Senator GOFF. Mr. Chairman, I want to ask Colonel Davis now a question in view of what he said purely to clarify this record. As I understand your judgment and opinion it is this: The present radio act creating the commission has conferred upon the commission not only judicial but administrative powers. The commission has as-

sumed under the construction it has given to this act, that its duty is to discharge the obligations arising under the judicial as well as the administrative departments and has declined to delegate to any one individual or to any body the discharge of the administrative functions of this art?

Mr. DAVIS. Senator, I do not think that expresses my view. I do not think it expresses, if I may say so, the fact.

Senator GOFF. Certainly; I want your view.

Mr. DAVIS. The act itself, as I read it, was a compromise. The act, itself, specifically charges the Radio Commission with the performance of many of these functions during a period of one year following the enactment of the statute.

Senator GOFF. Well now, Colonel, is that not just an answer to my question, argumentatively speaking? You have answered my question just as I asked the question of you.

Mr. DAVIS. Except that you asked me if the commission had declined to permit administrative functions to be done administratively.

Senator GOFF. No; I did not ask you that.

Mr. DAVIS. I misunderstood your question then, Senator.

The CHAIRMAN. You misunderstood him.

Senator GOFF. I am not going to take up any more time.

Senator HAWES. The point you tried to make in response to these questions is, as I understand it, that the board is attempting under the construction of the law that you approved yourself, to act jointly on every question, judicial or administrative, and because of the number of issues brought before it, it is impossible to do this with any proper degree of speed. Is that a correct statement?

Mr. DAVIS. I think that is quite a fair statement, sir.

Senator HAWES. Now, is there anything else that you want to say to this committee, because I think we ought to move along, Mr. Chairman.

Mr. DAVIS. I came to be of service to the committee, Senator. I want to answer questions.

Senator HAWES. I would like to know how long we are going to continue, Mr. Chairman?

The CHAIRMAN. Well, if there are no further questions of the witness he will be excused. Senator Sackett has said that he wanted to ask Mr. Caldwell some questions.

Senator WHEELER. I think Mr. Sykes was on the stand and had not finished.

The CHAIRMAN. Yes. I hope that we will be able to close these hearings to-morrow. Of course, this examination has been in a sense ancillary.

Senator FESS. Rather valuable, however.

Senator WHEELER. Oh, yes.

The CHAIRMAN. And most interesting.

Senator WHEELER. We can not intelligently pass upon the question, in my judgment, unless we do get a lot of information concerning it.

Mr. DAVIS. May I thank all you gentlemen for your patience?

Senator WHEELER. I do not think anyone can complain that we have had too many hearings with reference to radio.

Senator GOFF. Possibly we have been too analytical in our analysis.

Senator HAWES. Mr. Chairman, we took up the question of the confirmation of Mr. Neff on the board of mediation. We held hearings, and then, at the request of one of the sides to the controversy, we had an adjournment. We have about a half hour's work to do on that, or an hour, at least. Now, that is being suspended. The question of railroad consolidation is being put aside, and we are drawing to a close in this session. I believe we should devote our attention strictly to the bill before us and finish as quickly as we can.

Senator WHEELER. I think the commission ought to be fully heard, Senator. Judge Sykes has not been heard fully, as I recall; he had not finished his statement, because we put him aside to let Mr. Davis go on the stand; and I do not know whether there is any other member of the commission that should appear or not.

The CHAIRMAN. Senator Sackett has requested twice that Mr. Caldwell be put on the stand. He wants to ask him some questions. I can see nothing in the way now to prevent our closing these hearings to-morrow. The House had three weeks. We have now had four days and to-morrow will make the fifth.

Senator GOFF. Mr. Chairman, I want Judge Robinson, the chairman of this commission, to make a short statement.

Senator WHEELER. Yes; I want to hear him.

Senator GOFF. I want to hear him and I want him to express his opinion.

The CHAIRMAN. What idea have you that it will be a short statement?

Senator GOFF. Simply because I have always found that Judge Robinson was very concise and very analytical.

The CHAIRMAN. I have a matter which I wish to place in the record; a letter from the chairman of the United States Shipping Board, inclosing a statement.

(The letter and statement are here copied in the record in full, as follows:)

UNITED STATES SHIPPING BOARD,
Washington, February 6, 1929.

Hon. JAMES E. WATSON,
United States Senate, Washington, D. C.

DEAR SENATOR WATSON: Please find accompanying this a copy of statement in regard to an anonymous letter read on February 4 before the Committee on Merchant Marine and Fisheries of the House of Representatives while that committee was holding hearings on the bill for the extension of the life of the Federal Radio Commission.

I am asking Chairman White, of the Merchant Marine and Fisheries Committee, to see that this statement is placed in the record in order to counteract the anonymous charges which received publicity at the hearings. I am wondering if it would not be well, at the same time, to incorporate the statement in the record of the hearings before your Radio Committee. If you think well of the suggestion, I trust that you will see that it is introduced and printed as part of the committee hearings.

Very truly yours.

T. V. O'CONNOR, *Chairman.*

STATEMENT OF MR. T. V. O'CONNOR, CHAIRMAN OF THE UNITED STATES SHIPPING BOARD, IN ANSWER TO A LETTER ADDRESSED TO REPRESENTATIVE A. M. FREE, AND READ AT THE HEARINGS BEFORE THE HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES, FEBRUARY 4

"Just why my name should have been dragged into the hearings before the Committee on Merchant Marine and Fisheries, which has been considering a bill for the extension of the life of the Federal Radio Commission, is beyond my comprehension," said Chairman T. V. O'Connor, of the Shipping Board,

when his attention was directed to a letter from an alleged resident of Buffalo addressed to Congressman Free, of California, referred to in the published hearings.

"I have not now and never had any financial interest whatever in the Universal Wireless Communications Corporation and have no expert knowledge of the science of radio communication," continued Chairman O'Connor. "During professional visits to a member of my family in Buffalo, Doctor Nathansohn mentioned the subject of wireless telegraphy and spoke of his interest in the use of short wave lengths for communicating between points within this continent. I became interested in his enthusiasm and when he announced his intention of coming to Washington I offered to lend him, as a fellow Buffalonian, any assistance in my power in the development of his plans. This I gladly did, as I know Doctor Nathansohn to be a gentleman of the highest type of professional and personal honor.

"As to the members of the directorate of the Universal company, nearly all of whom reside in my home city, Buffalo, N. Y., I know them to be men of high standing in the community, and I believe them to be fully able to finance such an enterprise as that with which they are connected. There is no excuse for the insertion of scurrilous attacks upon the men who are connected with the Universal company by men who are unknown, except as they have been brought into the limelight through anonymous communications addressed to certain members of the committee. But for the official position which I occupy I should consider the slur on myself as too contemptible to notice, for, as I have said in the first instance, I have not and never have had any financial interest whatever in the Universal Wireless Communications Corporation. I am further confident that the Buffalonians who have furnished the funds and lent their names to the enterprise can and will carry out to the letter the terms upon which their licenses were granted."

Senator HAWES. I presented a number of questions to Judge Sykes and requested that he answer them in writing. This was done in the economy of time. Judge Sykes has furnished the answers to these questions, and I will ask that the questions and answers be placed in the record at this point.

The CHAIRMAN. That will be done.

(The questions presented to Judge Sykes by Senator Hawes, and Judge Sykes' answers thereto are here printed in the record in full, as follows:)

(1) The Federal Radio Commission very recently determined how it would allocate frequencies or channels for a comprehensive system of radio telegraphy between points within the United States, did it not?

Answer to (1). Yes; in part only.

(2) For how many comprehensive systems did it provide to carry on domestic public service between points within the United States?

Answer to (2). So far there has been a comprehensive system provided for in grants to the various press communication corporations and to one public-service corporation. It is expected that other less comprehensive public-service systems will be granted.

(3) What engineering or traffic principles or data did the commission apply in coming to its conclusions?

Answer to (3). So far, an essential consideration in granting franchises to domestic public radio-telegraph service between points within the United States is the requirement that the channels be utilized economically and effectively to the fullest extent for the greatest number of people.

(4) What, if any, information do you now personally have concerning the soundness or the accuracy of those principles or data?

Answer to (4). I believe that the radio art is in the process of rapid development both as to its technical and economical phases and that all of these various developments will have to be tried out before any radio traffic principle can be proved entirely satisfactory. We have on hand certain information relative to the handling of traffic on low frequencies, but it is believed that the handling of traffic on high frequencies is entirely in the experimental stage, including those in transoceanic service. It is also believed that the handling of traffic in the transoceanic service may differ slightly somewhat in principle from that utilized in the domestic service.

(5) How many organizations are there in the United States now actually carrying on radio telegraph public service between points where both the point of origin and the point of destination of the traffic is within the United States?

Name those organizations and explain in detail the nature and the extent of the radio telegraphic public service carried on by each of them.

Answer to (5). Three. The Mackay Radio & Telegraph Co. carrying on a service between cities on the west coast, and the Intercity Radio Telegraph Co. carrying on a service between the cities on the Great Lakes, and the Tropical Radio Telegraph Co. carrying on a service on the Gulf coast.

(6) How many organizations are now actually carrying on radio telegraphic public service between points in the United States and foreign countries?

Name those organizations and explain in detail the nature and the extent of the radio telegraphic public service now actually carried on by each of them.

Answer to (6). Three. The Radio Corporation of America, the American Telephone & Telegraph Co., and the Tropical Radio Telegraph Co. The Radio Corporation carry on a comprehensive telegraph service with various countries throughout the world. The American Telephone & Telegraph Co. conduct a telephone service between this country and England and Belgium. The Tropical Radio Telegraph Co. carry on a radio telegraph service between this country and Central and South America.

(7) With how many foreign countries approximately does each of these organizations now actually carry on radio telegraphic public service?

Answer to (7) The Radio Corporation of America, 25; American Telephone & Telegraph Co., 2; Tropical Radio & Telegraph Co., 6.

(8) How many points in the United States are reached directly by the international radio telegraph systems of each of the organizations you have named and precisely what points in the United States are so reached?

Answer to (8). Radio Corporation of America, New York, San Francisco; American Telephone & Telegraph Co., New York; Tropical Radio Telegraph Co., New Orleans, Miami, Boston.

(9) How do the organizations which are now carrying on radio telegraphic public service between points in the United States and foreign countries get their traffic to and from inland points?

Answer to (9). By utilizing land lines.

(10) Do the wire line telegraph companies themselves directly or indirectly carry on international telegraphic service by cables or otherwise and in competition with the radio organizations now actually carrying on radio telegraphic public service between points in the United States and foreign countries?

Answer to (10). Yes.

(11) Until short-wave radio devices were developed was it practicable to carry on a comprehensive system of domestic radio to telegraph service?

Answer to (11). No.

(12) Since short-wave radio devices were developed has a comprehensive domestic radio telegraph service become practiceable?

Answer to (12). Yes; to a limited extent. It will not reach the small towns directly.

(13) What organizations were applicants for radio channels for the purpose of establishing comprehensive domestic radio telegraphic services within the United States?

Answer to (13). Wireless Telegraph & Communication Co., 24 cities. Radio Corporation of America, 30 cities. Universal Wireless Communication Co., 110 cities. Mackay Radio & Telegraph Co., 16 cities. Intercity Radio Telegragh Co., 10 cities.

The CHAIRMAN. We will meet in this room to-morrow at 10.30.

(Thereupon, at 11.55 a. m. an adjournment was taken until 10.30 a. m. the next day, Friday, February 8, 1929.)

CONTINUING FEDERAL RADIO COMMISSION TO MARCH 16, 1930

FRIDAY, FEBRUARY 8, 1929

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE COMMERCE,
Washington, D. C.

The committee met, pursuant to adjournment on yesterday, at 10.30 o'clock a. m., Friday, February 8, 1929, in room 212 Senate Office Building, Senator James E. Watson, chairman presiding.

Present: Senators Watson (chairman), Couzens, Fess, Goff, Pine, Sackett, Dill, Wheeler, Hawes, Black, and Wagner.

Also present: Commissioners Ira E. Robinson, E. O. Sykes, O. H. Caldwell, and Harold A. Lafount.

The CHAIRMAN. The committee will be in order. Judge Sykes, you may take the stand.

STATEMENT OF HON. EUGENE O. SYKES, VICE CHAIRMAN FEDERAL RADIO COMMISSION—Resumed

The CHAIRMAN. You were asked certain questions, Judge Sykes, and you were to give written answers.

Commissioner SYKES. Yes, sir; I gave those answers to Senator Hawes, who asked for them, and he made them a part of the record.

The CHAIRMAN. Have you any further statement you want to make voluntarily?

Commissioner SYKES. Senator, I would like to make a short statement with reference to the testimony of Colonel Davis. If I understood him correctly Colonel Davis testified that the Federal Radio Commission was getting farther and farther behind each year. That is absolutely a mistake. On the contrary, the records show and the facts are that the Federal Radio Commission has made a great deal of progress.

I would refer first to the broadcasting situation. Briefly, they have adopted a plan and made an allocation under that. As I stated a few days ago, of course that is not frozen; it is plastic. We may decide that certain changes may be made. But we have done that.

Now, when we take the point-to-point communications, we have allocated for transoceanic services for this Government. About a year ago we held hearings on that subject. We understood that it was quite important for this Government to have these allocations made by the Federal Radio Commission as soon as we were thoroughly satisfied to whom they should be made. That has been done. I am rather gratified to say that the United States is ahead of all

other nations that were members of this conference, Senator, in allocating transoceanic waves.

Then when we come to the continental band, as I stated in my testimony of a day or two ago, because of interferences with North American countries it was necessary to try and have some agreement among these countries. We had an informal conference some months ago with the Canadian authorities and authorities of other governments. Under an understanding—an understanding, I will put it—we were enabled to make certain allocations in the continental band, which we have done. A week or two ago some of us went to Canada as delegates to attend another conference of these North American countries, and though an agreement has not yet been absolutely reached, in my opinion; and agreement will be reached, and when that is done the Federal Radio Commission will take up and will be ready to allocate the other continental bands. It is merely waiting for this agreement. Instead of being behind, the commission is making substantial progress.

There is another thing I merely want to allude to, that Colonel Davis alluded to, and that is ship licenses. Ship licenses as a general rule are purely administrative matters. All ship licenses have now been issued. There was for a while a little delay in the matter, because there were certain legal questions as to who should be licensed that the commission had to determine. When that was determined ship licenses went out. And that is practically administrative. It goes as a matter of course at the present time. And I repeat that, in my opinion, the commission has made very substantial progress and will keep up with whatever matters come before it.

Senator WHEELER. Let me ask you this, Judge Sykes. Mr. Davis emphasized the fact that this bureau in the Department of Commerce would be much better able to handle these purely ministerial duties than would the commission itself. What have you to say about that?

Commissioner SYKES. Why, Senator, we are able to handle the purely ministerial matters just as well as anybody else. I think really one of the matters he meant was there was some delay in the first instance in passing on applications for licenses. Those matters have to be considered by the commission, if it does not go as a matter of course, and I think that is entirely proper. I should think we should give most careful consideration to the question of issuing licenses.

Senator WHEELER. That is as to whether it is in the public interest or not?

Commissioner SYKES. Whether it is in the public interest. I differ with the colonel again about that being purely an administrative matter. I grant that it is with ships and amateurs and things like that, but in a great many instances it is not. Take the broadcasting situation. Take the point-to-point commercial licenses. I think there it is more of a judicial question in the first instance as to whether or not in the public interest that license should be granted. And I think the commission should thoroughly consider those applications for licenses.

Senator WHEELER. That is why they created the commission, I thought.

Commissioner SYKES. Well, I would judge so, Senator.

The CHAIRMAN. Colonel Davis seemed to make complaint that none of the short waves had been allocated to his organization, and that about all of them had been given to somebody else. I do not remember who the somebody else is.

Commissioner SYKES. His complaint was that in the continental band 40 allocations had been made to the Universal Wireless Communication Co. (Inc.).

The CHAIRMAN. Yes.

Commissioner SYKES. Twenty to press associations, and none had yet been made to the Radio Corporation of America. In the transoceanic band they have about 65 frequencies which operate over the world.

The CHAIRMAN. Sixty-five out of how many?

Commissioner SYKES. I will have to look that up, Senator. It is between 6,000 and 23,000 kilocycles. I will be glad to get it for you, Senator. It is hard for me to remember figures. The 65 channels were assigned, out of a total of 228 channels claimed by the United States.

Senator WHEELER. Somebody stated to me that you had granted all of the frequencies or chanels in the United States to the Universal Wireless Co.

Commissioner SYKES. Senator, by virtue of having been on the Canadian conference I think I can assure you gentlemen—that is still secret as to what was done—but I think we will be ready in a little while—there will be other frequencies in the continental band to be allocated by the commission, and they will be allocated as the commission thinks in the public interest. Whether or not the Radio Corporation of America will get them depends upon whether the commission thinks their application is in the public interest.

Senator PINE. Is the volume of business before the commission greater or less than it was a year ago, Judge; the pending business?

Commissioner SYKES. Senator, it is increasing all the time. I thoroughly agree with Colonel Davis's statement as to the way the importance of radio is increasing all the time. And, as I stated in my original testimony, I think it is becoming more and more important and will continue to become so for some time, sir.

Senator FESS. Do you agree with the colonel that in a year from now you will be farther behind than you are now?

Commissioner SYKES. Senator, you were not here—I just testified that the colonel was mistaken when he stated that we were farther behind than we were a year ago, and farther behind a year ago than we were when we started. We have made very substantial progress, sir.

Senator FESS. I was wondering whether our conception of radio was so imperfect; we had assumed that the problem would be near solution within a certain time by the commission, and I was wondering whether complications are so cumulative that it is getting worse all the time?

Commissioner SYKES. No, sir. The commission has settled a number of broad questions of policy. For instance, whether you should parallel wire communications in the United States with wireless. There have been a number of broad policy questions settled. Allocations are being made all the time just as fast as we can.

Senator FESS. Have you gone into the suggestion he made to separate the purely administrative from the semijudicial?

Commissioner SYKES. Well, we have it very well separated, Senator, in our office. The commission wastes no time on purely administrative matters at all.

Senator GOFF. I think the judge answered that question before you came in, Senator Fess.

Senator FESS. I had been under the impression all the time——

Commissioner SYKES. I might say this. Of course, gentlemen, you know that for the first year we had practically nothing, due to the failure of the deficiency bill. We had only a few employees then and not a full commission all the time. We lost two commissioners by death and one by resignation. But Congress was very liberal with the commission a year ago. It took us some time to get our force organized after the appropriations were made. But we are very well organized now and getting better systematized all the time.

Senator FESS. Are you having all the support that is necessary in the way of appropriations?

Commissioner SYKES. Yes, sir.

Senator FESS. I think that our attitude has been rather inconsistent. We were demanding certain things on the part of the public, yet we hesitated in passing the legislation for weeks and weeks and weeks, and finally authorized the commission and refused the appropriations.

Commissioner SYKES. That was the failure of the original deficiency bill.

Senator FESS. And held the commission responsible for a lot of complaints. I think it is an outlandish inconsistency, and I have been wondering whether there has been any crippling of the commission.

Commissioner SYKES. Congress was very good, sir, to the commission last year. We got a very liberal appropriation.

The CHAIRMAN. They got all they asked for.

Commissioner SYKES. Thanks to Judge Robinson and Mr. Lafount, to their powers of persuasion, and to what Congress understood about it; we have no alibi this year, sir, in other words, on account of that.

Senator FESS. Are these resignations that we are having on the commission due to disgust with the efforts of the commission to please the public and finding it impossible to please the public? Why are these resignations?

Commissioner SYKES. Well, Mr. Pickard, I understand, has gone with the Columbia Broadcasting System. I understand he has a very nice position with them. I assume he preferred that to being a member.

The CHAIRMAN. More money and a better job, that is it.

Commissioner SYKES. I think that is true, Senator.

Senator FESS. That is not a subject of criticism.

Commissioner SYKES. I think Commissioner Caldwell wants to get back into the publishing business. It is interesting work, Senator, hard work, but very interesting and very important.

Senator FESS. I was about to say, I had been under the impression that the commission's life ought to be extended, but I was somewhat

mpressed with what Colonel Davis said in reference to the administrative and judicial features.

Senator WHEELER. Well, Senator, I went into that with him just before you came in, and he said that the distinction between his viewpoint and that of Colonel Davis is that Colonel Davis feels that these wave lengths and frequencies should be allocated without having to be passed upon by the whole commission, and that their view is that when Congress created the body Congress did it with the view that the commission should pass upon them to determine as to whether or not they should be allocated, or whether it was in the public interest that they should be allocated to this concern or to that concern.

Senator FESS. Of course, that does not have any effect on me; if anybody comes in and files a complaint that they have not gotten what they wanted, that does not amount to that much to me, but the principle that was involved here on that was somewhat important.

Senator WHEELER. How does the bureau that they have established in the Department of Commerce function in connection with the commission?

Commissioner SYKES. Under the act, Senator, the radio division of the Department of Commerce continues to exercise certain original jurisdiction. The supervisors of radio, who to a certain extent police that field, there are 50 or 60 of those men scattered all over the United States; they inspect stations to see that they are operating on their power and frequency and do the police supervision, you might say, over that.

The CHAIRMAN. The way that happened, Senator, was this. Over on the House side they were in favor of casting all this on the Department of Commerce, and when it came over to this side we said "Commission or no legislation." And then there was a sort of a compromise arrangement, the idea being that the commission should operate for a year, and that then it should go back into the Department of Commerce. So it left a partial agency in the Department of Commerce to take the thing up in case it went back there. That is the way it came up. Purely a compromise proposition.

Commissioner SYKES. I would like to say that we have very good cooperation, indeed, with the radio division of the Department of Commerce.

Senator SACKETT. In your administration of the law as you have been doing it under this extension of a year, is the commission arranging any definite way to turn it over at the end of this year to the Department of Commerce? Have you been looking toward that at all, or are you working just as you have been, with the idea that the commission would be continued?

Commissioner SYKES. Why, we are working, Senator, to keep up with the work so that we will be as well up with it as possible in case it is turned over.

Senator SACKETT. Well, I know, but I meant more than that. Are you working with a definite plan toward turning it over, or are you working with the idea that the commission's life will be extended?

Commissioner SYKES. Well, I would say really neither, because we are merely doing this work up until March 15 that we have to do. We will be prepared to turn it over to the Department of

Commerce at that time if that should happen. For instance, we have asked them this about licenses, and so forth, that in case they took it over, when would they prefer to have licenses expire; should we issue them as we had been doing, or what they preferred about that. Their answer was to continue just as we were.

The CHAIRMAN. Are there any further questions of Judge Sykes? If not, you will stand aside, Judge, and Mr. Caldwell will take the stand. Senator Sackett has some questions he wanted to ask Commissioner Caldwell.

STATEMENT OF HON. O. H. CALDWELL, COMMISSIONER, FEDERAL RADIO COMMISSION

The CHAIRMAN. Will you state your name and position for the record, please?

Commissioner CALDWELL. My name is O. H. Caldwell. I am the commissioner from the first zone, and my term expires February 23.

Senator SACKETT. Do you expect to continue on the commission after that time?

Commissioner CALDWELL. I have asked the President not to consider reappointing me.

Senator SACKETT. You have been on the commission how long? Since its creation?

Commissioner CALDWELL. I have been a member of the commission from its very beginning.

Senator SACKETT. I simply want your views upon the question that the committee has before it of the extension of this act for a further term of the commission, whether you are in favor of that, or whether it would be better for the industry to turn it over, as the law now provides, to the Department of Commerce. I want you to give your views and reasons, leaving it to you to make such a statement as you see fit.

Senator WHEELER. I think you ought to ask him that question not only with respect to the industry, but as to the general public.

Senator SACKETT. Well, I mean to cover the whole ground, Senator. I do not mean to limit it at all. I did not want to examine him; I wanted him to make a statement giving us the benefit of his views.

Commissioner CALDWELL. Well, Senator, to give you a conscientious answer to that question requires me to disagree with some of my very good friends—the author of this bill, Senator Watson, and my associates on the commission.

Senator FESS. There is no violence in that. Go ahead. We want to hear your views.

The CHAIRMAN. Why yes; we disagree here all the time.

Senator FESS. Yes; constantly.

The CHAIRMAN. Go right to it.

Senator GOFF. Disagreement is the spur to progress.

Commissioner CALDWELL. To answer your question directly, I feel that the bill should not be passed, and that radio administration should go back to the Department of Commerce. My reasons for this view are several. First, as you know, the administration of radio is a highly technical function, and it should be in the hands of compe-

tent experts. Our experience on the commission has shown that only men who understand the problem thoroughly themselves will find within themselves the courage and the determination to take some of the difficult steps that are necessary in the public interest.

The CHAIRMAN. Well, do you mean that the work of the commission up to this time then has been a partial failure because they have not had such men, or have they had them?

Commissioner CALDWELL. I feel that the commission would have worked to better advantage with men who themselves thoroughly understood the problem.

The CHAIRMAN. Well, wherein would the work have been advanced? Wherein would the situation have been improved over what it is to-day if there had been a different personnel on the commission?

Commissioner CALDWELL. There is no doubt, Senator, in my mind, that the allocations of broadcasting would have been finished many months ago, during the summer, as had been originally planned. That the broadcasting reallocations would have taken effect in July. We would have been able to work out any difficulties that had arisen, and we would have been able to give the country a satisfactory broadcasting arrangement and an arrangement that was in accordance with the principles of sound radio.

Senator WHEELER. What do you mean by that, "sound radio"?

Commissioner CALDWELL. All radio men, Senator, are agreed on certain principles of allocation, about cleared channels, powers of stations—in other words the method of laying down to the American people the maximum of radio service, but the work of the Radio Commission has always been a compromise. And the pity of it is that it has always been a compromise away from what is sound scientifically. In many affairs of life I believe in men getting around a table and reaching a compromise. But when the physician gives his opinion in a case and gives his diagnosis, it is the height of absurdity to call in men who do not understand medicine or surgery and attempt to compromise with the physician's expert opinion.

Senator WHEELER. Well I do not entirely agree with you on that. I have seen cases where they have disagreed with the physicians.

The CHAIRMAN. And the patient got well.

Senator WHEELER. And the patient got well.

Senator FESS. They frequently die, though.

Senator WHEELER. I know in one instance at least where he lived.

Commissioner CALDWELL. I think all of you gentlemen, Members of Congress, will recall that radio was handled best and the complaints were fewest when radio was under the supervision of the Department of Commerce, under Secretary Hoover.

Some questions have been asked as to just what the radio division of the Department of Commerce is. That radio division at present consists of 135 people, in comparison with the Radio Commission's present staff of 82 people. The staff of the radio division of the Department of Commerce includes 65 trained radio men who are competent radio experts, scattered over the country. The Radio Commission at this time has only four trained radio men outside of the two officers who have been loaned it by the Army and Navy. The ratio there is 65 to 4 trained radio men, the rest of the employees in both organizations being largely clerical.

The CHAIRMAN. What do those trained radio men do in the Radio Division of the Department of Commerce, Mr. Caldwell?

Commissioner CALDWELL. In the Radio Division of the Department of Commerce under the Secretary of Commerce those men supervise the operation of all of the radio stations of the country, including the ships, the land stations, the broadcasting stations, and 16,000 amateurs.

The CHAIRMAN. Do you mean to say that the commission has no authority or jurisdiction or control over that?

Commissioner CALDWELL. The commission has no authority or jurisdiction over the Commerce Radio Division staff except that they cooperate together very successfully. But the commission has often been embarrassed by the fact that it did not have such authority over its own policing staff.

The CHAIRMAN. So that the operation of these stations is controlled then on the inside and not by the commission?

Commissioner CALDWELL. The operation is supervised, Senator.

The CHAIRMAN. Supervised.

Commissioner CALDWELL. Supervised by these trained men of the Department of Commerce.

The CHAIRMAN. Do you mean to say then that after an allocation takes place and the station is established that the supervision of it passes out of the hands of the commissioners over into the hands of this other body?

Commissioner CALDWELL. No, Senator. The supervision and inspection, the determining of whether the station is properly operating with respect to power and frequency is reported by the Department of Commerce.

The CHAIRMAN. Reported to whom?

Commissioner CALDWELL. Reported to the head of that division, who in turn, as a matter of courtesy purely, reports it to the Federal Radio Commission.

Senator WHEELER. Well, why as a matter of courtesy?

Commissioner CALDWELL. Well, as a matter of governmental cooperation would be perhaps a better way to put it.

The CHAIRMAN. There is no law for it?

Commissioner CALDWELL. There is no legal requirement. In addition to that, this Radio Division of the Department of Commerce——

The CHAIRMAN. Well now, let me get at that a little. Where does final authority rest in a matter of that kind? Suppose they find that the station is off its frequency?

Commissioner CALDWELL. Final authority in all licensing rests with the Federal Radio Commission.

The CHAIRMAN. That is quite true. But suppose they find that a station is off its frequency, not conducting itself in accordance with the general order of the commission, has this board in the Department of Commerce authority to make it align itself?

Commissioner CALDWELL. It has no authority except to report the facts to the Federal Radio Commission, and then——

The CHAIRMAN. And then they have authority?

Commissioner CALDWELL. The commission may then cite the station for a revocation of its license.

The CHAIRMAN. Yes.

Commissioner CALDWELL. The licensing authority under the present operation of the law——

The CHAIRMAN. I understand that thoroughly. And then the functioning of the board in the Department of Commerce is one of inspection?

Commissioner CALDWELL. Yes, sir; it is one of inspection.

The CHAIRMAN. Yes.

Commissioner CALDWELL. And at the present time all of the amateur licenses of the 16,000 amateurs, which is the largest class of radio licenses, are being issued by the Department of Commerce, are being handled by their local supervisors, which has lifted a great load off of the commission. All of the technical schools also have their licenses issued by the Department of Commerce. So that the Department of Commerce with its trained staff of 65 technical men and about 60 clerks is handling a tremendous inspection and supervision job, and in addition there has been delegated to it an administration job.

The CHAIRMAN. Well now, let us find out about that. They handle the licensing of all of the amateurs?

Commissioner CALDWELL. Yes, Senator, and of the technical schools.

The CHAIRMAN. Was that turned over to them by the commission, or did the commission never have authority itself to issue the licenses?

Commissioner CALDWELL. The original authority resides in the commission.

The CHAIRMAN. Yes.

Commissioner CALDWELL. But as a matter of practical operation the commission has turned that class of licensing over to the Department of Commerce, which has carried it on and very successfully. Because the commission is not equipped and has not equipped itself to handle that vast amount of amateur work.

As I see it, the clean-up work of reconstruction which followed the 1926 break down of the law (and which, of course, was the chief reason for appointing this Federal Radio Commission), this work of reallocating the broadcasting band is now 80 to 85 per cent finished. The recent reallocations have been along the lines that were originally laid down by the Department of Commerce——

Senator WHEELER. That is for broadcasting?

Commissioner CALDWELL. Referring now to broadcasting.

Senator WHEELER. Yes.

Commissioner CALDWELL. The principal thing—and I followed closely the history of your radio legislation—the crisis which caused the formation of the Radio Commission was the breakdown of the law with its relation to broadcasting. The commission was called in to straighten up this broadcasting situation and to put the stations back on the proper lines.

Senator FESS. Do you mean by the breakdown of law when the decision was given in one of the courts that the Department of Commerce had no authority?

Commissioner CALDWELL. Yes, Senator. At that time, although the broadcasting channels were then filled, and although Mr. Hoover requested that no additional stations come on the air or change their

power, some 250 stations nevertheless started up and several hundred other stations——

The CHAIRMAN. Squatted on the air.

Commissioner CALDWELL. And several hundred other stations increased their power, changed their wave lengths. It was exactly as if in a city the property lines had suddenly been wiped out, persons had camped, and squatted—had set up peanut stands in the public parks and out in the streets. The property lines were gone. It was then the commission's duty to come in and restore the chaotic situation to some semblance of operating efficiency.

Now, in the first year the commission did not succeed in doing a proper job in that respect. But I believe that the plan now laid down carries the essential outlines and that that work is now 85 per cent finished and can very properly be turned back to the administrative staff in the Commerce Department, which has always handled it so successfully.

The principal value of a commission under such circumstances was the elimination of individual or personal responsibility in getting these stations back, reducing their time and reducing their powers and getting some semblance of order. There has been a great value there of having four or five men to pass on cases.

Senator WHEELER. So they could pass the buck, is that all?

Commissioner CALDWELL. Yes; so they could "pass the buck." A commission is a very useful body for passing the buck; but that period of its operation is now over and should be over.

Senator WHEELER. So you think that we should have created the commission just as a temporary proposition so they could pass the buck, and then, after their usefulness is over, is that it?

Commissioner CALDWELL. That is my opinion, Senator, after a very careful study of this situation from the very beginning.

Senator WHEELER. Well, why should we have created a commission just to pass the buck among themselves, instead of having one man have the temerity to stand up and say, "I am going to do this," if he was right about that?

Senator SACKETT. That is what we did do.

Senator WHEELER. No; we did not.

Commissioner CALDWELL. The creation of a commission has aided in solving that reallocation problem very effectively. But now we are at the point where the broadcasting situation is once again back nearly to the original lines laid down by the Department of Commerce, and any changes that are made from now on will, in my opinion, be much better in the skilled hands of this existing technical staff than in the hands of a nontechnical organization such as the Radio Commission.

The CHAIRMAN. You say that the plan of the present allocation was designed as laid out by the Department of Commerce before this commission was created and that they simply followed out those plans?

Commissioner CALDWELL. No; I say that the principles that the commission has followed in the last reallocation are the principles which are agreed upon by all engineers. They are the principles on which the Department of Commerce was itself operating, because it had followed engineering principles. That was the reason

that you gentlemen had so little trouble with the radio situation when it was in the hands of the Department of Commerce.

Senator WHEELER. Well, the reason that we passed this law was because of the fact that there was so much trouble in the Department of Commerce.

Commissioner CALDWELL. Senator, if you will recall the circumstances, the trouble really developed when the law broke down and authority was taken away from the Department of Commerce. Then a situation of riot and anarchy had arisen in radio which the Department of Commerce had no legal authority to control.

Senator WHEELER. Well, that was one of the reasons, of course, why we passed this law, but another reasons, of course, why we passed the law was to try and protect the public interest and see that these channels were not all given to one great corporation or great monopoly. At least that was my understanding of the reason, or one of the reasons and the chief reason why we passed the law.

Commissioner CALDWELL. I feel as you do, Senator, that a group of men will always be a much fairer jury to bring about justice when the facts and the testimony can be brought before them. But when it comes to any question of administration, the delays that occur from five men having different points of view and responding to different interests and impulses, simply estop all progress.

Senator WHEELER. Well, that is true about anything, of course. I mean that is true about legislation and everything else, as a matter of fact. But the question always comes back to the point as to whether or not you want a benevolent dictator or whether you want to have a representative form of government.

Commissioner CALDWELL. I want to see the people of the United States given the best radio service.

Senator WHEELER. Yes; surely.

Commissioner CALDWELL. And I want to see American radio take an outstanding position before the world.

Senator WHEELER. Well, I haven't the slightest doubt about that. I think everybody feels the same way about it. The question is whether or not we are going to repose all this power to allot these in the hands of some one dictator or whether we are going to put it in the hands of a commission. That is the only thing.

Commissioner CALDWELL. Yes.

Senator HAWES. Mr. Commissioner, from what you said, you draw a distinction as to the duties of the commission. Part is judicial, you might say, and part is administrative.

Commissioner CALDWELL. Exactly, Senator.

Senator HAWES. And you think that the judicial function of the board is useful. But when they get into the administrative portion of their work, because it is a commission there is delay and confusion and lack of activity; is that it?

Commissioner CALDWELL. And lack of understanding. In other words, unless the men who are attempting to administer a situation have an understanding of the problem there will be no progress in the administration. And certainly in an art like this that is changing every year, every week——

Senator HAWES. I wanted to get that clear in my mind. Now, the work of the Department of Commerce is administrative, largely?

Commissioner CALDWELL. At the present time, yes; and if this bill is not passed the administrative work of the commission would go to the Department of Commerce.

Senator HAWES. The administrative work?

Commissioner CALDWELL. Yes.

Senator HAWES. But you believe, however, that the commission, so far as its discretion is employed in defining policies, has a usefulness in that field?

Commissioner CALDWELL. Oh, preeminently, Senator. In fact, I was just about to state my belief that the commission should be left free to perform its important appellate and judicial duties of reviewing the controversies and the controversial cases without being overloaded with all of this administrative detail with which it is being cluttered up at the present time.

Senator HAWES. So, your thought is that the administrative details should be left to the Department of Commerce, but judicial review and settlement of policies could well remain for a period with the board?

Commissioner CALDWELL. Yes. And, if Senator Watson's bill is not passed and if the law which now exists is allowed to take its course, that result will follow.

Senator WHEELER. Let me ask you right there, Mr. Caldwell: Do you consider it a purely administrative duty for the commission to have the say as to whether or not they will allocate to the Radio Corporation of America, for instance, all of the short wave lengths in the United States or a large number of them, or any portion of them? Do you call that administrative or judicial?

Commissioner CALDWELL. That certainly, as the members of the commission have stated before me, sir, partakes of a judicial character. But it is my belief that the first decisions can be made by an administrative officer; that the way can be cleared, and then where controversies arise those can be settled by review before the commission.

Senator WHEELER. Well, now, let me ask you right there—that is the point that I had in mind: Suppose, for instance, the Radio Corporation of America—we will take them just as an illustration, or take any other radio company, the Universal, or any one of them—appear before the Department of Commerce—one man, is it up there?—and they ask for an allocation of 20 or 30, or 40 or 50, or whatever they may want, of these wave lengths or channels, or whatever you may designate them. The question immediately comes up as to whether or not that is in the public interest. Now, your idea is that that should be decided by one man; and then, if there is controversy about it, that it should be appealed to the commission, as I understand it; is that correct?

Commissioner CALDWELL. I think that would greatly simplify the situation, gentlemen. But let me point out——

Senator WHEELER. Let me follow that up and then you may state. But suppose there is not any controversy about it at all, that there is no appeal, then it never gets to the commission at all. I mean there may not be any controversy between the different radio corporations as to whether or not they want this, but there is always the general public that is interested to see whether or not one company grabs those all up, and my idea about the commission was

simply that the commission is there primarily not to settle conflicts between the different radio corporations in the United States, but is there for the purpose first of all as an agency of the Congress of the United States to protect the public. And I feel that the public is probably better protected in a commission of five than the public would be protected to simply leave it up to the judgment of one man and then only have it go to the commission when some other corporation comes in and says, "I want this," and then it is appealed to the commission. That is my thought about it.

Commissioner CALDWELL. If there is a controversy that would be then referred to the commission, absolutely.

Senator WHEELER. But the only chance for controversy would be when these companies would be in conflict.

Commissioner CALDWELL. Well, a citizen or some other applicant. Some other citizen may apply.

Senator WHEELER. Yes; but, Mr. Caldwell, you know perfectly well that the average citizen does not know what is going on in radio in the country.

Commissioner CALDWELL. But the great trouble and the great difficulties and delays in the commission have been in reaching technical solutions—in reaching answers on the technical problems. As in the case of the allocations, instead of establishing principles, we have delayed and delayed. And the quantity of undetermined license applications that are still before us have resulted simply from the fact that we have not first solved the technical issues which are self-evident to all radio men.

Senator WHEELER. Then I would not say that the trouble was because of the fact that it was a commission, but the trouble was with the kind of men that the President of the United Staes had appointed on the commission.

The CHAIRMAN. Has the commission seriously disagreed on these questions that have arisen from time to time, either administrative or those of a judicial nature?

Commissioner CALDWELL. Well, only as any five men will, Senator, the commissioners hold different points of view. And those differences have delayed action, sometimes days, weeks, and months on matters which otherwise might have been administered very directly. I think in the law itself there is one fundamental difficulty which was brought out by one of the Senators in making some inquiries yesterday and that relates to this situation. At the present time, let us say, the commission makes an allocation, and then the commission is called upon to sit as judge in a controversy in which it is itself one of the contenders. Now, that is a very unfair situation.

Senator SACKETT. There is no appeal to anybody else? It is simply an appeal against its own decision?

Commisioner CALDWELL. The commission sits in judgment on an applicant who is appealing against its own decision. Complete fairness of decision and the true purpose of the commission as an appellate body, I believe, can only be attained when the commission does not have to sit in judgment in these cases where it is itself one of the contenders, or to pass judgment upon appeals from its own acts or allocations. For simple consistency certainly the administrative function should be wholly separated from the appellate function.

Bearing on this situation I recall that there was some criticism of the fact that one of the members of the commission felt that he should not sit in cases growing out of the reallocations where he had himself voted a contrary point of view, and for several months he did not take part in the hearings of the commission. I feel that that was entirely consistent, and that it certainly grew out of a high ethical sense. Because it was manifestly unfair to have a broadcaster who came before us to be judged by a man who had taken a positive or negative part in creating the situation which was then being reviewed. And my personal feeling is that the rest of the commission might very properly have refused to sit in all of these allocation cases, equally consistently, because we had voted for the allocation. So that if our ethics and our conception had been equally consistent. on the part of the rest of the commission there would have been no commission sitting at all for some months.

The CHAIRMAN. Well, on a motion for a new trial the same judge that presides sits and hears the motion.

Senator WAGNER. But he does not where there is an appeal from his decision, under our law. I was sitting in the appellate division when they were reviewing some cases that I had passed on. and I did not sit, as a matter of propriety in those cases.

The CHAIRMAN. When a motion for a new trial is made it heard by the judge who presided in the case.

Senator WAGNER. That is quite a different thing; that is not an appeal.

The CHAIRMAN. But the same judge sits and he hears the argument for new trial, when he presided during the trial of the case.

Senator WAGNER. Yes; but that is really again disposing of the thing originally. It is not a review.

Senator SACKETT. All that the applicant can ask for in the case now is for a reconsideration.

Senator WAGNER. That is all it is, a review, a reconsideration.

Senator FESS. Mr. Chairman, you stated the situation a moment ago. The House view was that we leave it to the Commerce Department; the Senate view not to do that. Do you recall the opposition in creating a permanent commission?

The CHAIRMAN. Yes.

Senator FESS. It was finally thought that if you had a commission to deal with all of the things it should not be permanent, and decided, therefore, to give it a life of one year, without any thought that it would ultimately be made permanent. I want to say that I had originally thought it ought to be left to the Commerce Department until I had talked with Secretary Hoover about it at the time. He said that under the situation it would be very difficult for the Commerce Department to adjust all the difficulties without tremendous confusion, and he was very much inclined toward the idea of a commission. You might say that is to pass the buck, and in a sense it was.

Senator WHEELER. You do not want to have the impression go out that Secretary Hoover wanted to pass the buck to the commission?

Senator FESS. No; I do not want that to be misunderstood.

Senator SACKETT. I do not think he would object to it at all.

Senator WHEELER. It is the language that we are using more or less.

The CHAIRMAN. He testified before the house committee.

Senator WHEELER. That he wanted to pass the buck?

Senator SACKETT. Yes; that is practically what it was.

Senator FESS. Well, he spoke about the inevitable confusion that could not be avoided, and I rather came to the idea that the commission was the agency through which the confusion is to be eliminated. Now, the only concern I have is whether that confusion has been sufficiently eliminated that we could proceed with the commission only as an appellate body, or whether it should be continued as it has been for two years. That is the only concern I have, and I am not entirely convinced yet as to what we ought to do in the matter. If it is a matter of making this commission permanent I am not in favor of it. I do not think that is at all justifiable unless we are going to enlarge the scope and take in communications. Then I think there is some ground. But I am not convinced at this stage that we have reached the point where we can do away with the commission except as an appellate body. I confess, Mr. Caldwell, you are quite convincing in your statements here.

Commissioner CALDWELL. I thoroughly believe in the commission as an appellate body. In answer to your question, sir——

The CHAIRMAN. As I understand you, Mr. Caldwell, you think that the commission has functioned very well up to the present time, but there is no occasion for its use in the future except as an appellate body?

Commissioner CALDWELL. I would be the last one to say, sir, that the commission has functioned well up to the present time.

Senator WHEELER. You would be the last one to say that?

Commissioner CALDWELL. I would be the last one to say that.

The CHAIRMAN. Well, you have been on that, and you say that you have not functioned well?

Commissioner CALDWELL. We are all poor, frail, human beings.

Senator PINE. Is the commission gaining on its work, or is it getting further behind all the time?

Commissioner CALDWELL. Senator, if your question relates to the administrative function I say to you that in laying down the fundamental tracks for the operation of the broadcasting service and for operation of the other services, that the commission has that well in hand, and is from 80 to 85 per cent finished right now, and that the commission might easily within the 30 or 40 days remaining of its life put the whole situation in first-class shape to be turned over.

Senator WHEELER. Well, what about these short waves?

Commissioner CALDWELL. Pardon me just a minute, Senator But, on the other hand, there are many cases of controversy to be passed upon which can properly be passed upon by the commission as an appellate body.

Senator PINE. Are there more of those than there were a year ago?

Commissioner CALDWELL. Yes; there are more growing out of the reallocation resulting from your last law. Excuse me, Senator Wheeler, what was your question?

Senator WHEELER. What about these short wave length lengths? They have not all been allocated, have they?

Commissioner CALDWELL. The principles of the short-wave allocations have been very definitely established, Senator, and a number

of them have been allocated. The field of television and broadcasting pick-up still remains to be taken up and the question of allocation there, and some of the continental waves remain to be allocated. But that work is the work for technical men. That work is being handled by Commander Craven of the Navy to-day for the commission. No commissioner present will say that he has made any technical contribution to this work of technical allocation. It has been entirely in the hands of these competent experts of the Navy who have assisted us and who have been doing a splendid job.

Senator SACKETT. You have heard Mr. Davis make the statement that the commission was getting further behind, and that next year they will be further behind in his judgment than they are to-day, and that this whole business leads to a permanency of the commission. You heard him say that in his statement, I think. What is your opinion?

Commissioner CALDWELL. I have to disagree with Colonel Davis that the commission is falling behind with respect to its direct planning of its work. But if the art progresses as rapidly as it has, a commission of nontechnical men must fall behind. There is no question of that. And they will be further and further behind each year. We must put this task into the hands of competent technical administrators who will keep up to date.

Senator SACKETT. Another question. Do you feel that the commission has passed upon the general principles of broadcasting that ought to be followed as a matter of routine largely in the future by an administrative body?

Commissioner CALDWELL. Yes, Senator; I feel that the commission has laid out sound principles in the broadcasting field, and while there have been compromises there, which are compromises—from the fullest and greatest service to the public of the country, nevertheless I have little hopes that the commission will correct its errors in that direction.

Senator SACKETT. But the general development of the art, if you may call it, has been outlined by the commission and the route which it should follow in the future?

Commissioner CALDWELL. Yes. Through the help of its technical advisers from the Army and Navy and of its three or four technical men, radio men, who are employed on its staff.

Senator SACKETT. Then you feel that having laid out the general scheme in developing the art, that the best functioning in preserving and carrying that out would be through a single administrative head with the right of appeal?

Commissioner CALDWELL. That is my belief, Senator. But I would not for one minute say that the radio art there or anywhere else is going to stand still.

Senator SACKETT. No.

Commissioner CALDWELL. Or that the principles now laid down will not be subject to revision. But they must be revised by the best technical information of the day.

Senator SACKETT. All right.

The CHAIRMAN. You said that there had been a departure from correct principles and you had no hope of the commission getting

back on the right track, or language to that effect. What do you mean by that?

Commissioner CALDWELL. Well, for example, Senator, the proper allocation of the broadcasting field, which is what Senator Sackett asked about, requires, for example, that we devote a large number of channels for exclusive or cleared operation, because when we assign a channel for exclusive operation we can serve people living throughout an area of half a million square miles, whereas if we use that channel as a shared channel we can only serve about 3,000 square miles. My feeling is that there should be 50 or 60 channels set aside for exclusive or cleared operation. There are now only 40 clear channels. That is a compromise, a compromise growing out of many forces impinged on the commission. Yet the technical solution would certainly be to assign 50 or 60 channels, which would result in the greatest service to the public.

Senator FESS. Had that been done WSAI could have been cared for, could it not?

Commissioner CALDWELL. Had 50 clear channels been provided, Senator, a number of situations like that of WSAI, the Indiana situation, the Iowa situation, the WGY situation at Schenectady, our present difficulty in Connecticut and Baltimore, where Baltimore will have to operate half time and a great 50,000 watt station in Connecticut will have to operate half time, and still others, might all have been solved.

Senator HAWES. Mr. Caldwell, is the granting of an application in your opinion a judicial function or an administrative function?

Commissioner CALDWELL. As I answered a moment ago, sir, I can see that in determining between two applicants, and because the granting of an application is always a relative function, we must measure that application against the services already rendered. It becomes a judicial function if there are other contestants for that place, and there usually are.

Senator HAWES. The reason I asked that question is this: I had been informed that there were some applications that had been pending as far back as February, 1927 that had not been acted upon. Is that a correct statement?

Commissioner CALDWELL. I think that is true, Senator, and some of those applications that have been pending so long are in cases where there were not other contestants, but where the commission had simply failed to lay down the engineering background on which those were to be granted.

Senator HAWES. So that the failure to act upon a great many of these applications was not the inability of the commission to hear, but because the administrative work or the technical work back of it had not developed to a point where they could decide?

Commissioner CALDWELL. Had not been agreed upon.

Senator HAWES. Had not been agreed upon?

Commissioner CALDWELL. By the members of the commission. An agreement had not been reached. In other words, the whole administrative machinery of the commission had not been put into work.

Senator HAWES. This statement that there were before the commission matters pending since February, 1927, rather interested me. It seems as though some decision should have been made one way or the other about it. Are there many of those cases?

Commissioner CALDWELL. I think that there are some since February, 1928. My recollection is that those are in some of those short-wave fields where the commission has not been able to lay down the whole background. In part that has been due to the international question. In part it has been due to the difficulties in agreeing upon technical personnel to lay out the plan, and in part to delay in approving the reports that were furnished us.

Senator HAWES. Well, summarizing your statement, as I understand it, the Radio Commission has approximately five technical men at its disposal—five or six?

Commissioner CALDWELL. Yes. And besides it has two officers borrowed from the Army and one from the Navy and——

Senator HAWES. In its own personnel it has how many?

Commissioner CALDWELL. It has, I think, four or five.

Senator HAWES. And its technical knowledge then comes from three sources which are borrowed or lent or given as an act of courtesy from the War Department, the Navy Department, and the Department of Commerce?

Commissioner CALDWELL. Yes.

Senator HAWES. But its technical staff is extremely limited?

Commissioner CALDWELL. Out of its total staff of, I think, now about 80 people, that staff is largely clerical and legal, and there are four or five, as you say, technical men.

Senator HAWES. I would like to ask you one other question, suggested by the legal assistants. Every once in a while I read in the hearings when questions are asked here about what is called the Radio Trust. Is that in court or will it ultimately be decided by court procedure as to whether it is a trust or not?

Commissioner CALDWELL. I think I heard yesterday that there were some cases pending. There is a case regarding the Radio Corporation, which is often referred to as the trust, but as the court status of that company, sir, I am not a lawyer and I am not qualified to give you a reply. I am sure that one of the other commissioners can answer you better.

Senator HAWES. Well, the question whether it is a trust or whether it is a legitimate combination of ownerships of patents is a matter that the court will finally determine, some could will determine it, the Supreme Court?

Commissioner CALDWELL. That is a matter for the courts and is entirely out of the purview of the Radio Commission, as I understand it.

Senator HAWES. So the Radio Commission can not change the status of the Radio Corporation of America, nor can the Department of Commerce, unless it first establishes that it is doing something in contravention of the law of the land. I wanted to know whether that was on its way for determination by the courts?

Commissioner CALDWELL. I would like to have you get an expert opinion on that question from one of the legal members of the commission.

The CHAIRMAN. I want to ask two or three questions.

Senator FESS. Are we going ahead with Judge Robinson?

The CHAIRMAN. Yes; but I think we have to have a meeting this afternoon. There is nothing particularly in the Senate to keep us over there this afternoon.

Senator FESS. All right.

The CHAIRMAN. I would like to ask you two or three personal questions. I do not mean them at all in an offensive way, but to develop your ideas for the benefit of the committee and the commission and of the country. Why did you resign?

Commissioner CALDWELL. I resigned, Senator, to return to the work with which I had been associated for the last 20 years—that is, with the electrical and radio publications of the McGraw-Hill Co. I was given a leave of absence to come down here, with the understanding that I should return, at the end of my service, to that company.

The CHAIRMAN. Yes; we all recall that. Now, before the commission was formed you wrote certain editorials, did you not, opposing the formation of the commission?

Commissioner CALDWELL. I did, Senator.

The CHAIRMAN. Then afterwards you became a member of the commission. Now, is the McGraw Hill Co.—is that the name?

Commissioner CALDWELL. Yes.

The CHAIRMAN. Is the McGraw-Hill Co. in and of itself opposing the commission?

Commissioner CALDWELL. The McGraw-Hill Co. has expressed no views. Any views that have been expressed have been my own personal views and have not been discussed with any member of the McGraw-Hill organization.

The CHAIRMAN. Since you have been given to the commission, and particularly recently, now that this subject is ripe and up for discussion, has that particular publication been inveighing against the commission, or taken a position against its continuance?

Commissioner CALDWELL. I think no reference has been made to the commission in any respect in the publications with which I was connected.

The CHAIRMAN. Then, your resigning from the commission is not influenced by the publication or by the men who control that particular corporation?

Commissioner CALDWELL. My resigning from the commission is in accordance with my original purpose—first, of spending only six months or a year with the commission, and my conscientious determination to remain another year to help get this thing straightened out as I felt it should have been done the first year.

The CHAIRMAN. Yes. Now, there has been something of controversy in the commission for a little while with reference to the creation of five cleared channels, opening up five cleared channels, that is true, is it not?

Commissioner CALDWELL. Yes.

The CHAIRMAN. You took one side with another commissioner and the majority was against you?

Commissioner CALDWELL. Yes, sir.

The CHAIRMAN. That is right. Now, is that a reason for your resignation?

Commissioner CALDWELL. Oh, no, Senator.

The CHAIRMAN. Not at all?

Commissioner CALDWELL. No.

Senator SACKETT. You are not resigning because you are sore?

Commissioner CALDWELL. No, indeed. I am resigning because I am obligated to return to the field where I was formerly located.

The CHAIRMAN. You are not resigning because you do not want to get sore?

Commissioner CALDWELL. No.

Senator FESS. Mr. Chairman, was not that the evidence that was brought out when we were discussing the confirmation?

The CHAIRMAN. Of Caldwell?

Senator FESS. Yes.

The CHAIRMAN. That was all brought out very vigorously.

Senator FESS. That he was being loaned to us for a while. Of course, we can not tell it, but everybody knows it.

The CHAIRMAN. And I thought that for the sake of the commissioner himself, as well as for the commission, it ought to be cleared up. Or rather, to make a definite statement of it. That is why I asked.

Commissioner CALDWELL. Senator, any editorial views that I formerly had as to the difficulty of a commission of five men operating administratively on a scientific subject such as radio—such views have been greatly reinforced and strengthened by my actual experience on the commission itself, and particularly in the last year, by the difficulty in getting men of different points of view and nontechnical points of view to handle problems which are purely technical, and the answers to which are simple and direct in engineering principles.

Senator WHEELER. Well, that is true of the Interstate Commerce Commission and true of Congress.

Senator SACKETT. True of commissions generally.

Senator WHEELER. Yes; true of commissions generally.

Senator GOFF. Well, if you reduced that to its ultimate conclusion that might be true of the Supreme Court, might it not?

Commissioner CALDWELL. I am not a lawyer, Senator.

Senator GOFF. I know, but the Supreme Court is made up of lawyers and not made up of technical men in the different fields.

Senator WHEELER. You mean they have all passed the bar examination.

Senator GOFF. They are not all members of the bar, but they are all of them eminent lawyers.

Senator WHEELER. I did not have reference to this supreme court, I meant to some supreme courts.

Commissioner CALDWELL. I should certainly yield at all times, Senator, to the viewpoint of a lawyer on the law rather than to attempt to compromise with him on his viewpoint of the legal principles.

Senator GOFF. The reason I asked you that question was that I could not escape the conclusion that there was an idea in your testimony that this Radio Commission could not effectively discharge its functions because it was not made up of technical men, and that your view was that the Radio Commission should be a commission exercising appellate jurisdiction but composed of technical members.

Commissioner CALDWELL. For an appellate body I should recommend that its make-up be partially or largely judicial in character. But that there should be on it several members who are well informed

of the problem. But I believe in bringing into such a review body every point of view of human life.

Senator GOFF. In the commission as now composed you were really the only technical man upon it, were you not?

Commissioner CALDWELL. Well, in recent months I happen to have been the only man with an engineering degree, I believe.

The CHAIRMAN. Is that why they disagreed with you on the commission? Any other questions of Mr. Caldwell? If not, that will be all. Thank you, Mr. Caldwell.

Now, I think we may well meet this afternoon for a little while. We will meet in the Capitol at 2.30 and sit for a couple of hours, so as to get through with this hearing to-morrow, if, indeed, we can not do so to-day. There are a couple of gentlemen here who want to be heard, but I do not know whether they want to be heard on this direct point. If they do not we can not hear them, because we are not going to sit here and listen to a long rigamarole about the whole business. I think, of course, we must hear Judge Robinson.

Senator WHEELER. He wants to be heard.

The CHAIRMAN. There are two men here whose names I do not know who have asked to be heard.

Senator GOFF. Can you not ask them to rise and state their complaints or their views?

The CHAIRMAN. All right.

Maj. J. P. HOLMES. We are here as representatives of the Peoples Pulpit Association. I asked Senator Watson yesterday afternoon for the opportunity to be heard in a brief statement confined largely to a recommendation which we had to make with reference to the continuation of the commission, and told him that it involved, of necessity, our reasons for stating our position. And that we certainly would not go any further afield than certain testimony that had already been introduced yesterday did go afield. It will not take over 30 minutes. It is a written, prepared statement which we would like very much to make.

Senator WAGNER. He might submit the statement.

The CHAIRMAN. Well, come up this afternoon. And then there was some other man who spoke to me.

Mr. JOHN D. COSTELLO, of San Francisco, Calif. In the talk with the chairman yesterday afternoon on the general subject that I am here about I asked that I might be given an opportunity to appear before the committee. I do not desire to avail myself of it.

The CHAIRMAN. You do not?

Mr. COSTELLO. No.

The CHAIRMAN. Thank you very, very much. Judge Robinson, you will be here this afternoon, then?

Judge ROBINSON. Yes. May I not be heard now?

The CHAIRMAN. We are going to adjourn right now. You could not very much more than get started in 10 minutes.

Judge ROBINSON. Do you desire to hear me immediately after lunch?

The CHAIRMAN. Yes.

Judge ROBINSON. In other words, I will be the first witness?

The CHAIRMAN. Yes. We will now adjourn until 2.30 this afternoon, to meet in the committee room in the Capitol.

(Thereupon, at 11.50 a. m. a recess was taken until 2.30 p. m. the same day, Friday, February 8, 1929.)

AFTER RECESS

The committee reconvened at 2.30 p. m. Friday, February 8, 1929, in the Committee Room in the Capitol.

The CHAIRMAN. The committee will be in order. We will now hear you, Judge Robinson.

STATEMENT OF HON. IRA E. ROBINSON, CHAIRMAN FEDERAL RADIO COMMISSION

The CHAIRMAN. You are the chairman of the commission?

Chairman ROBINSON. I am.

The CHAIRMAN. What are your views about the continuation of this commission, and why do you entertain those views?

Chairman ROBINSON. It would be very detrimental to the American public interest not to enact the proposed legislation. When I say that I want it understood that I am not at all influenced by desire to hold position. I did not ask to be appointed to the Radio Commission. I am not asking to remain there, though delighted to render public service in such an important matter.

There are very many reasons why this bill should pass. One of them I may mention first is that it will save another hiatus in the administration of radio. There have been many such. The first year, as you have been told by other commissioners, and as you know by the history of radido legislation and administration, the commission was hampered by lack of funds and also by two deaths in its personnel. Congress at last in the deficiency bill of last spring provided ample funds. They were not available until the 1st of June. It was not until practically the middle of August that a working organization such as we have had for the last several months was in existence and handling the administration. Engineers and lawyers were not obtained until about that time. Since then there has been progress made and good work done. Differences of opinion have existed, but not as many as ordinarily in such an important subject, or within a body of five men.

Now if the radio administration must go back to the Department of Commerce it means another hiatus. I think I know the subject well, and I know out of the experience I have had there it would be six months before the Department of Commerce could prepare and get in line for the systematized operation such as we have going now. That, of itself, is to my mind a sufficient reason. No business man in his own organization would make such a change as is proposed.

I want also to refer to this. Although it has been covered again this morning by Judge Sykes I want to impress it upon you. The Radio Commission is at present the governing body of radio. If the proposed bill does not pass, the Department of Commerce—the Secretary of Commerce—becomes the governing authority in radio. The Federal Radio Commission is governing radio to-day, but how? By a license system. We are a licensing board. It may not be true in a technical legal sense, that the American people own the spectrum and will parcel it out to licensees, but it is virtually so.

The very first step in any matter of the governing of radio is an application for license. It is filled out and, of course, the applicant says it is in the public interest, convenience, and necessity, and swears to the same. Here is an applicant who proposes to act as a trustee in the public interest in the use of some of the public's property—and I use that term broadly when I say that. The very first consideration is that of a high legal question: Is it in the public interest to grant this particular applicant a license? How much does it interfere with other service? And of course I need not go further; you know the many ramifications and lines into which that would go.

Now, Col. Manton Davis wanted radio licensing to go back to the Secretary of Commerce, and of course it can not go to the secretary himself with his manifold duties, but to a division head, besause, says Colonel Davis, it is merely administrative. But it ought not to be administrative, if he means that that is to present summarily an application and to carry away a license, because there never should be, to my mind, the grant of a public franchise to anybody unless there be full hearing and an opportunity for any member of the public to be heard.

Since last April we have been according to everybody interested opportunity to be heard. As to the short-wave applications there has been a preliminary meeting, very much study made of the testimony heard there, and then when it came on for final hearing we gave formal hearing on the 25th and consecutive days thereafter, of September, with press notices to the public.

So if there is a reverting of it to the Secretary of Commerce or to his division head he must be—what? He must act primarily, in the very first instance, as a judicial officer to determine a judicial question. I want to say it can be done better by five upstanding men, particularly in view of the fact that radio is all important to the American people. I have never seen any such interest in anything in my many years of life, I may say, as there is in radio. And it is growing and becoming more important. It would be quite unfortunate for this great thing to go slightly protected. What is it? It is the voice, the very expression of the soul of the American people. Ought it not to be guarded, to be put into right hands?

There are, of course, other matters why the commission's life should be extended, but those matters have been very fairly and completely covered by Commissioners Sykes and Lafount. I think that is about all I have to say, except to answer any questions that are asked me.

The CHAIRMAN. Any questions, Senators?

Senator DILL. What about the need of power for the commission in the employment of attorneys at a better salary than now?

Chairman ROBINSON. I am glad you have asked that because that is all important. I intended to say in the preliminary statement that I made that there was now being started the establishment of a radio jurisprudence. It ought not to be started or handled by a mere department head. That feature of it alone calls for the judgment and the direction of five men of full knowledge of all human elements of life and broad experience in various phases of life. And I do not know any element of our work that is more important, Senator Dill, then directing a proper start of what we may call radio jurisprudence.

Now very wisely Congress in the passage of the Dill-White bill took care of the whole subject as you saw it then. I think that you will admit that perhaps your minds were largely on broadcasting at that time. But look at the growth of the other features—how much more important than the mere jazz and music and speech over the broadcasting stations are the world-wide communications which are in our hands to be handled properly—I think not only properly but slowly and cautiously. The Radio Commission is not proceeding any slower than Congress usually does, I might say, or any legislative or judicial body.

Now in view of the fact that we must mark the beginning of radio law, the interpretation of this law—you have had a great deal of wisdom in it; a great deal of foresight; it works well; of course you will revise in many particulars—in view of that fact, as I said, we must have lawyers, independent ones, and have them right at hand for that direction.

Judge Sykes testified before the committee as to the WGY case. There is an example of our needs. The General Electric Co. is attacking the whole range of radio administration, attacking even to the point of bringing in the doctrine of vested rights. And yet you passed a bill here in which you required a waiver in order to get license—and they now claim a right to use that frequency, 790 kilocycles, continuously, without regard to the commission's order, though they signed a waiver of any claim to it against the regulatory powers of the United States. That illustrates just one of the instances of how we must guard the legislation you have put into force.

I never doubted the constitutionality of this act under the interstate commerce feature of it or other features. There is the spectrum belonging to the American people, as I say, for the expression of its heart and soul, its communication—that ought to be guarded and protected. I want to say, and I can not blow the ram's horn too loudly, that it is the duty of Congress to see that that expression is never monopolized or given to one group, and when I say that I am merely using the words of Herbert Hoover as he used them before the House committee a little over two years ago.

Senator DILL. Judge, I was not here, but I read in the newspapers that Mr. Davis complained that they were not being treated quite as he thought they should about short wave lengths. I wonder if you have in mind the comparative treatment of the Radio Corporation with other companies?

Chairman ROBINSON. I have it generally in mind. They have 67 of the transoceanic channels as against 30, I believe, for Mr. Mackay's companies; a lesser number for any of the others who have been granted. They have, as I recall, 17 experimental licenses as against perhaps 10 for the next lower licensee. They have through the Radio-Marine Corporation, a subsidiary of theirs, and the Radio Corporation (Ohio company), and the Illinois company approximately 1,100 of the 1,700 ship licenses. And I might go on.

Senator DILL. That is, all the rest only have 600?

Chairman ROBINSON. All the rest 600; all others. And I might go on and deny that which I was surprised to hear Colonel Davis say, that his company had been subject to an invidious distinction. Personally, I——

The CHAIRMAN. Well, what about the short waves?

Chairman ROBINSON. I am thinking of the short waves.

Senator DILL. These were the short waves that he was talking about.

The CHAIRMAN. My attention was called to something else for a moment.

Senator DILL. Then they have what might be called the lion's share now in the short-wave field?

Chairman ROBINSON. It would seem so, Senator Dill. I want to say this, that there is not a member of that commission but what deals fairly with everybody. As far as I am concerned I reserve the right, of course, to go into all elements of these matters, and to determine it in the end in the general public interest. I know no doctrine upon which a license may be issued by the people except in consideration of a general public return in service under that license.

It was the practice of the radio division of the Department of Commerce when it had this subject to license every Tom, Dick, and Harry throughout the country for mere private use, giving him a private right. That could no more be done than Congress could give me this room for the private practice of law in the city of Washington.

Senator DILL. Of course, it should be said in defense of the Department of Commerce that at that time it was helpless under the law.

Chairman ROBINSON. Oh, yes; and then there was an ample number of channels, and the matter was growing. It was true as to the broadcasting and short waves. That was true when you wrote this law. There was not the frigid status as to channels nor was there the demand.

Senator DILL. In other words, as I understand, the commission's policy now is as far as possible to grant wave-lengths in the different commercial fields, and the short waves particularly, so as to serve a public rather than a private use?

Chairman ROBINSON. A utility, a general utility interest. That I think, has become in the last few weeks rather firmly established in practice.

The CHAIRMAN. Any other questions?

Senator WHEELER. Judge, do you know anything about that case that was decided against the Radio Corporation of America in Delaware?

Chairman ROBINSON. I do.

Senator WHEELER. Can you tell us just briefly what that was?

Chairman ROBINSON. I know of it, of course, as a member of the commission, and it is a subject of much interest to every member of the commission, because under section 13 of the law, if any licensee is finally convicted of violation of the Clayton law or Sherman antitrust law we are obliged to deny license.

A letter came to me as Chairman from counsel opposing the Radio Corporation in that case, saying that the Radio Corporation had been finally convicted, and asking that I bring it to the attention of the commission. We found, however, that upon hearing on preliminary injunction there had been such a decree or finding of guilty of some violation of a patent, and that they had applied to the Supreme Court of the United States for certiorari on that and had

been refused. My attention was also called to their brief asking for a rehearing, signed by Mr. John W. Davis and other eminent counsel, in which they state that while it was a mere interlocutory order, yet upon the merits, upon the return of the case to the Delaware District Court—by the way, the case had gone through the United States Court of Appeals at Philadelphia, two to one decision, Judge Buffington writing the dissenting opinion, that while it was merely interlocutory, the judgment finding them guilty of some infringement of patent or something else along that line—I have not gone into it that definitely, Senator Wheeler—that there must be the same judgment on the merits, and therefore the Supreme Court of the United States ought to take it now.

Now, Colonel Davis has been before us, and others have, and have made their explanation in that regard, saying that that is not true, but that the case is set for a hearing, and that there are other phases of it to be heard. This brief said it all turned upon the legal question, to-wit, the interpretation of a written contract, clause 9 in the particular contract in controversy.

Senator WHEELER. That is what the brief said whey they appeared before the Supreme Court for certiorari?

Chairman ROBINSON. Yes. But our general counsel has advised us that it is now back in the district court for a hearing on the merits and set for one day this month, I believe.

Senator WHEELER. And if the contention of those opposing the Radio Corporation of America should be sustained there would be a question as to whether or not the licenses of the Radio Corporation of America should be by the commission revoked? I mean there is that question that might come up, is there not?

Chairman ROBINSON. Well, read section 13, gentlemen.

Senator WHEELER. Yes. I have it right before me.

Chairman ROBINSON. If finally adjudged guilty we must deny license.

Senator WHEELER. That is the point that I wanted to make. If they were found guilty it would be the duty of the commission to revoke their license under this law, and is not that, in your judgment, the principal reason why the Radio Corporation of America is so very much opposed to this law?

Chairman ROBINSON. It may be. Of course——

Senator WHEELER. Of course, I appreciate that is calling for your conclusion or your opinion.

Chairman ROBINSON. I shall keep a clear, open mind as to the Radio Corporation of America and all other applicants. If I fail to have an open mind as to any one of them I shall excuse myself from sitting.

Senator WHEELER. But that question is involved, is it not?

Chairman ROBINSON. Oh, yes; undoubtedly, Senator. Here is a law which the Congress made on the doctrine of competition. Not on this new doctrine of a well-regulated monopoly. Section 17 and other sections of that law breathe forth that spirit of competition with this public convenience, radio. Now, if that were otherwise I and my fellow commissioners, I am quite sure, would follow it, but we must follow it as we find it there, and grant only after a study of what competition will work in the interest of the American public.

Senator DILL. But your experience has not led you to think that the competition should be taken out of the law?

Chairman ROBINSON. It has not. In fact you heard my statement a while ago——

Senator DILL. If there is any one thing over which the Government has control that there ought to be competition in it would seem that it should be radio.

Chairman ROBINSON. Undoubtedly.

The CHAIRMAN. Any other questions of Judge Robinson? If not, you are excused, Judge. We will hear Mr. Schuette.

STATEMENT OF OSWALD F. SCHUETTE, CHICAGO, ILL., EXECUTIVE SECRETARY RADIO PROTECTIVE ASSOCIATION

The CHAIRMAN. Give the reporter your name and who you are and what you are doing.

Mr. SCHUETTE. Oswald F. Schuette, 134 South La Salle Street, Chicago, executive secretary, Radio Protective Association.

Senator DILL. That is an organization of independent manufacturers?

Mr. SCHUETTE. That is an organization of independent manufacturers of radio.

We want to say to this committee that we favor the extension of the life of this commission as provided by the Watson bill. We favor the extension of the restriction that is imposed by the same bill for the granting of license for one year for commercial licenses and three months for broadcasting licenses. And we are in favor of the provision that would enable that commission to employ the best counsel that it can employ. We feel that in all of those provisions there will be protection for the independents in the industry, for the independent manufacturers as well as for the independent broadcasters and for the independent communication companies, all of whom have the same problem that we have had of facing a monopoly in the industry.

I have heard in this testimony, that there is a distinction between administrative and judicial aspects of the administration of the law, and that the administrative features should be given to the Department of Commerce, which would mean to one man in the Department of Commerce. We disagree with that, because we feel that it is not a matter of clerical routine at all; that every decision that this commission has made has been a decision that is based on policies, and that these questions arise before the licenses are granted and not afterwards.

Senator DILL. The administrative work comes really after they have been granted?

Mr. SCHUETTE. After the policy has been fixed, after license has been granted. The interests who would like to get a larger share than they now have of the licenses would feel their interests best served if they had to deal with an individual in the Department of Commerce. They would not deal with the Secretary of Commerce, of course, because the Secretary would have to delegate that to some one else, else he would have to stop operations while he decided these questions of policy. And there is the same question of monopoly in the granting of the license as there is in the question of

getting the license. One man might do better than a commission, just as a monopoly might serve radio better than competition in the industry, but we believe that Congress favors competition, and we believe that progress in the industry can only come as the result of competition. And we believe that if it is important that the administrative details be carried out by one body, the administrative features that are now in the hands of the Department of Commerce could certainly be placed in the hands of the Federal Radio Commission.

The Federal Radio Commission to our mind is on a par with the Interstate Commerce Commission. That it deals with a great many problems that are purely administrative, that can be taken care of by clerks, but that fundamentally it deals with questions of policy.

The other point that was brought up here was the question of the importance of technical knowledge, and that this ought to be left to engineers. Now there is not a business in the country that is worth running that is run by engineers. No railroad is run by engineers, no utility company is run by engineers; even the Radio Corporation is not run by engineers. If the engineers run this thing the public would be left out. If lawyers could run things you would not need Congress; you could hire the highest priced lawyer and let him make the laws. We feel that the engineering knowledge in the radio art ought to be made subject to the interest of the people, and that it ought to be made subject to the Radio Commission. That the engineers of the Radio Commission employs ought to find a way of making possible the carrying out of the policies fixed by the commission, from an engineering standpoint, rather than to tell the commission that you must do this and that, that you must have 60 clear channels instead of 40 because engineering demands seem to justify that. If you should let engineers run the street cars in the District of Columbia the engineers would route them in such a manner that they would all run on the level streets; they would run them all on such streets as F and G, and instead of running the street car lines up to the Capitol they would move down the Capitol to a level with the street car lines.

We are in favor of continuing this restriction of limiting commercial licenses to one year and broadcasting licenses to three months for the reason that Judge Robinson referred to. There is now pending in the court a case, the final decision of which may be reached at any time, and whenever that final decision is reached the licensing authority is bound to refuse to grant further licenses to the company involved. As I read section 13 it does not provide for revoking the licenses that are now in existence. Section 13 provides that the licensing authority shall refuse to grant licenses. Therefore if that restriction were dropped from the law and the existing statute were thereby reenacted, so to speak, a commercial license could be granted for five years, a broadcasting license could be granted for three years, and the recipients of those licenses would then for five years escape the penalties of section 13. Therefore it is important that pending a decision of that sort the law should keep those licenses in the hands of this commission where, at the end of a period of one year in the case of commercial licenses or a period of three months in the case of broadcasting licenses it will not need to revoke them, it will merely be compelled to refuse to grant further license.

Section 15 provides that the judge who hands down that final decision may impose the penalty of the revocation of the existing license, and I have no doubt that in that case the judge will be asked to impose that penalty on the Radio Corporation of America.

Senator WHEELER. You are familiar with that Delaware case, are you not?

Mr. SCHUETTE. Yes, sir.

Senator WHEELER. Just what was the issue in that case?

Mr. SCHUETTE. The Radio Corporation of America made a license agreement with 25 set manufacturers for the use of a group of its patents, and in that license agreement put a clause requiring the makers of those sets to buy from the Radio Corporation of America the tubes needed initially to operate those sets. That covered, according to the testimony that was taken in the court, beween 75 and 80 per cent of the sets manufactured in this country, and thereby paralyzed the independent radio-tube industry.

Senator DILL. You neglected to say that the patents had expired on the tube.

Mr. SCHUETTE. The patents had expired on the tube that was involved there.

Senator DILL. Yes. By the contract they were making they were continuing, as it were, a patent that had already expired.

Mr. SCHUETTE. Yes. Under one of the sections of the Clayton act a group of our independent tube makers went to the United States District Court in Wilmington and obtained a preliminary injunction against that clause. That was appealed to the United States Circuit Court of Appeals, and the preliminary injunction was suspended pending the decision by the Appellate Court.

In trying to prevent the issuance of that injunction, both in the District Court and in the United States Circuit Court of Appeals, all of the facts in the case were brought in to the court. After the decision by the United States Circuit Court of Appeals the Radio Corporation of America petitioned the United States Supreme Court for a writ of certiorari, and in that petition they did not mention to the Supreme Court that this was an interlocutory decree. The entire petition is taken up with the statement of the law as it relates to this tube clause. The Supreme Court refused the writ of certiorari. Thereupon they filed a petition for rehearing, and in the petition for rehearing they said that although this did involve an interlocutory decree, yet the facts were admitted and the question was entirely on the legality of the tube clause in that contract.

The Supreme Court again refused to listen to the case and denied the petition for a rehearing. On Monday of next week the preliminary injunction will come up in Judge Morris's court in Wilmington, Del., and then the question of making it permanent will be taken up. And doubtless there will be an appeal from whatever decision there is there.

Senator DILL. There will be a hearing on the merits?

Mr. SCHUETTE. There will be a hearing on the merits, and how much more merit there is left after the affidavits that were presented originally, I do not know.

Senator DILL. Mr. Schuette, I wish you would state, because I think some of the members of the committee may not be familiar

with it, the terms of this licensing agreement that they have made as to payment for the use of their patents?

Mr. SCHUETTE. The agreement requires a minimum payment of $100,000 a year, with a royalty of 7½ per cent on the total value or the total selling price of the set complete with cabinet, eliminators, loud speaker, and whatever else goes with the set. In other words, it is equal to 7½ per cent on the turnover of the licensee. In addition to that it requires the licensee to make available to the Radio Corporation of America, the American Telephone & Telegraph Co., the General Electric Co., and the Westinghouse Electric & Manufacturing Co. any inventions that the licensee may own in any field—not limited to the radio field.

Senator DILL. Let me ask you about that. That is a question that comes up in connection with the Zenith automatic tuning device. Is that available to the Radio Corporation of America?

Mr. SCHUETTE. Under the terms of that agreement it must be made available to them.

Senator DILL. I notice the Zenith say they are going to license that for use by other set manufacturers.

Mr. SCHUETTE. Well, as to the other set makers, they can license the other set makers and, of course, this does not mean they must give it free. If there is a dispute as to the amount, it is to be fixed under the New York Statute of Arbitration. But the broadness of it is indicated by the fact that they must turn over to the Telephone Co. any telephone inventions they might have.

Senator DILL. When this preliminary injunction was issued, the Radio Corporation then ceased to try to enforce clause 9, did they not?

Mr. SCHUETTE. No; the injunction was originally issued last winter, in December, as I remember it, and was suspended. And the Radio Corporation of America continued to enforce clause 9 despite the statement that was made here the other day that that had been suspended.

Senator DILL. That is the tube clause?

Mr. SCHUETTE. Clause 9 is the tube clause. They continued that in force until last July, when, after the Federal Trade Commission had issued a formal complaint against that clause, the Radio Corporation sent a telegram to all of its licensees saying that, pending the final disposition of this matter, they would not enforce clause 9. The result of that was that at that time, last July, the independent tube makers reopened their plants, and went into production.

Senator DILL. About how many tubes are used in the radio industry a year?

Mr. SCHUETTE. I haven't those figures. It runs high into the millions.

The CHAIRMAN. 60,000,000, I think.

Mr. SCHUETTE. Some such figure. It was 50,000,000 last year.

Senator WHEELER. The effect of that clause was that they were putting out of business all of the independent tube makers in the country?

Mr. SCHUETTE. Yes; and the importance of that aspect is that the tube is the heart of the radio. That if you take the tube out of the radio set, the rest of it is just hardware and cabinet work. And that the man that controls the production of the tube can con-

trol the production in the industry, and he can also control all the progress in the industry, because all the progress will be made around that tube. And if they could have destroyed those 30 or 40 tube companies and centered in their tube plants all of the production of tubes, all progress in tubes would be in their plant, because progress in this art is going to be made by independent laboratories, and the tube makers would make progress in tube making; that would be part of the progress of the radio.

Senator WHEELER. I understand that the Radio Corporation of America claim that they were really the originators and discoverers of radio.

Mr. SCHUETTE. Yes; I heard that testimony—that they were the creators of radio. They created radio just the way that President Buchanan created the Democratic Party.

The CHAIRMAN. And that is pretty bad.

Mr. SCHUETTE. Or the way William II created the German Empire. Radio was created by independent brains long before there was a Radio Corporation, and a large share of the progress in the art has been entirely outside the Radio Corporation of America laboratories; and if the Radio Corporation has helped to do anything it has helped to halt the art by stopping the independent inventors from finding markets for their products.

Senator WHEELER. That is it; has stopped the initiative on the part of the inventors because of the fact that there was a monopoly in the Radio Corporation of America, and they would not buy their products.

Mr. SCHUETTE. They must deal with the one monopoly or not sell their inventions. And, as in all other arts, a monopoly will buy an invention—if it buys it at all—and put it on the shelf if there is a danger of it making obsolete some specific part of its present production.

The CHAIRMAN. Are those independent tube manufacturers going on making tubes now?

Mr. SCHUETTE. Yes, sir; day and night and Sundays.

The CHAIRMAN. Without a license from the Radio Corporation?

Mr. SCHUETTE. They have no occasion to ask license from the Radio Corporation.

The CHAIRMAN. Well, the question is still up in the courts; is it not?

Mr. SCHUETTE. No; this particular court decision has nothing to do with the license as to the making of the tube. The tube patents have expired.

The CHAIRMAN. Yes.

Mr. SCHUETTE. The question was whether they could compel a set maker, who had a Radio Corporation license, to buy tubes from the Radio Corporation.

Senator DILL. They claim, holding the other patents, that that was a part of their right. I questioned Colonel Davis very closely on that in the patent committee. If you are interested in that question you will find that the whole thing is gone into in great detail in the hearings on Senate bill 2783, which was a bill to provide for the forfeiture of patent rights in case of conviction of monopoly. And Colonel Davis's defense was that the use of the tube was a part of the combined patent license that they sold. That was his argu-

ment. Of course, it did not stick in the court, but that was the point.

Mr. SCHUETTE. I understand, in that connection, that if the tube were a matter of general use like the wire in the set they might have had the right to say to the licensee, "You must buy your wire from us." But, in view of the fact that these tubes constitute around 80 per cent of all the tubes used in the country, the court held that that would create a monopoly and that therefore it was illegal.

The CHAIRMAN. Can any tube manufacturing concern now manufacture any kind of tube without getting a license from the Radio Corporation?

Mr. SCHUETTE. Well, I assume that the Radio Corporation has some tubes or some tube patents under which it might have the right to license makers of such tubes. But the basic tube patents expired when the Fleming patent expired.

Senator WHEELER. What has been your experience with the commission as to the concerns which you represent or that are in your organization? Have they felt that it was necessary to keep the commission for the protection of their business as well as the protection of the general public?

Mr. SCHUETTE. We feel that the power of the Radio Corporation in the fields of communication and in the fields of broadcasting is used as part of their power in destroying the independents in the field of manufacture, and therefore our interest in the Federal Radio Commission lies in not having them give more privileges and more franchises to this monopoly. And one of the reasons we wanted to make sure that the commission has the best counsel in the world is because of the questions that come up that are not questions for other courts to decide. For instance, we have a complaint pending before that commission against the Radio Corporation of America and its affiliated companies under section 17 of the law providing that it shall be unlawful for a wire company to have control over a wireless company, which would tend to have a monopoly or restrain commerce—we have asked the Federal Radio Commission to revoke the licenses that have been granted to companies that violate that clause. And we still feel that the commission at least should inquire before it grants any license whether a company that is asking for a license is violating section 17.

The CHAIRMAN. If the tube is, roughly speaking, nine-tenths of the whole set, and if there is no longer a monopoly in the manufacture of tubes and anybody can make them, how much of a monopoly is there, then, in the Radio Corporation of America?

Mr. SCHUETTE. You may have misunderstood me. The tube is not nine-tenths of the set. The tube is the heart of the set. Now, the heart is not nine-tenths of the body.

The CHAIRMAN. Well, the tube is the big thing.

Mr. SCHUETTE. If the tube is controlled by some one and you have to go to that some one for the tube, why, no invention you might make will do you any good. While if you can buy the tube independently you can then design an independent circuit and go out and make a radio set without coming back to the owners of the monopoly.

The CHAIRMAN. If that is true, then, how much monopoly has the Radio Corporation of America, and in what does the monopoly consist?

Mr. SCHUETTE. Through the license agreements that they make with radio set makers they are to-day in control of about 80 per cent of these sets produced in this country. Does that answer your question?

Senator DILL. Of course, the selling price of sets is greatly enhanced by the 7½ per cent royalty that they must pay to the Radio Corporation of America, and because of that the high price of all other sets enables the Radio Corporation to sell its set at a much higher price than otherwise.

Senator WHEELER. I do not think the chairman quite catches your point with reference to tubes, or else perhaps I did not.

The CHAIRMAN. No; perhaps I was wool gathering and did not grasp his statement.

Senator WHEELER. As I understand it, the Radio Corporation of American has an agreement with all of the set makers that they shall use their tubes.

Mr. SCHUETTE. That was the requirement in that license agreement.

Senator WHEELER. That was the requirement in that license agreement, and that was the thing that the independent concerns charge was a monopoly.

Mr. SCHUETTE. Yes, sir.

Senator WHEELER. Not the making of the tubes.

Mr. SCHUETTE. Not the making of the tube; the right to control the use of the tube, and the thing that would have created the large monopoly, Senator, is that if they have succeeded in destroying independent tube makers——

Senator WHEELER (interposing). They would not have a place to sell them.

Mr. SCHUETTE. They would not have a place to sell them; and therefore if an independent inventor came along to-morrow, as they have come along every month or so, with new devices by way of circuits, if that independent inventor has no place to buy tubes to put into this circuit there would be no independent sets made.

Senator DILL. How much longer do the important patents in the sets run?

Mr. SCHUETTE. Well, those vary. I would not be able to say. Some only run a few years, and some of them, of course, would run longer. The purpose of this whole monopoly agreement is to perpetuate the lives of all patents because they have an agreement among themselves that runs to 1945 that until that date they will make available to each other, grant each other exclusive licenses in specific fields, of all the patents that their laboratories might develop. And it was testified here the other day that they now have thirty-five hundred and some patents, so they have been in the position where they can say to any independents in any line of the radio art: "You can not make a set without obviously violating in some way some of these patents."

Senator COUZENS. I do not quite understand your statement a while ago, that if you could buy the tubes you could go out and make a set without having the consent of the Radio Corporation. Did I understand that?

Mr. SCHUETTE. Well, you could make a set that had no relation to these patents.

Senator COUZENS. Well, is that a practical set?

Mr. SCHUETTE. Oh, yes.

Senator COUZENS. Well then, where does the monopoly come in? If you can go out and buy tubes anywhere and assemble a set without infringing any of the patents of the Radio Corporation, where does the monopoly come in that enables them to control, as you said, 80 per cent of the sets?

Mr. SCHUETTE. Because they have succeeded in inducing 27 independent set makers to sign license agreements to build sets under a specific circuit which they control.

Senator COUZENS. Yes, but that does not compel me to sign that agreement; if I want to be an independent manufacturer I can still be an independent manufacturer.

Mr. SCHUETTE. Certainly.

Senator COUZENS. We went through the same thing in the motor-car business. The independent manufacturers went ahead and manufactured automobiles with all kinds of patents around them, and avoided patents, and we were independent producers. There was the same attempt in the motor-car business as there is in this to control the production of motor cars, but we got around it by not having to infringe any of the patents. Now you claim the same thing exists in the radio art. I do not see how, except by superior ability and influence they are able to get 80 per cent of the business.

Mr. SCHUETTE. Independent set makers are making sets all the time. You stated in your question "by influence." They have had the power of this enormous combination of theirs to dictate to these 27 makers to sign an agrement which on its face from an economic standpoint is a hazardous agreement, to say the least. I would rather have 7½ per cent on the turnover of any business than to own the business. Now they have been able to exact 7½ per cent on the turnover of the business.

Senator WHEELER. Why have they been able to exact it? Is it because of the patents they own?

Mr. SCHUETTE. It is because of the threats they make under the pretense of the patents that they control. The very threat that they will sue an independent is enough to frighten his dealers and to intimidate his trade so that a man will say, "I would rather pay 7½ per cent to a monopoly for the permission to live than to fight the monopoly and save the 7½ per cent." And every time they induce an additional independent to sign up that agreement it makes it that much harder for an independent to stay in the business.

Senator COUZENS. What they need, to use an ordinary expression then, is "guts."

Mr. SCHUETTE. We think we have some of that very thing, fighting this monopoly in the way we have.

The CHAIRMAN. What they need then is to stand up and fight this organization.

Senator COUZENS. Yes.

Mr. SCHUETTE. What we need is a department of justice and a police department to enforce the law.

Senator COUZENS. No, I do not agree with that. I do not agree that you need a police department or anything of that sort. I believe all you need is just guts enough to stand up against that sort

of thing. The motor-car manufacturers did the same thing. There the independents refused to take licenses under the Association of Licensed Automobile Manufacturers which controlled much more than 80 per cent of the industry at that time.

Mr. SCHUETTE. But it did not have $3,000,000,000 behind it, and if the automobile industry had to sell automobiles through little dealers scattered from the Atlantic to the Pacific——

Senator COUZENS. Just exactly what we had to do.

Mr. SCHUETTE (continuing). And if those little dealers were threatened that they would be sued as contributory infringers I doubt whether they would have been able to sell automobiles the way they did.

Senator COUZENS. That is exactly what happened.

Mr. SCHUETTE. And luckily in the automobile case it did not last long.

Senator COUZENS. And it need not last long with you if you had independence enough. Independents only in name, not in action.

Mr. SCHUETTE. I am sorry to hear you say that, Senator, in view of the fight that has been put by the independents. The fight that has been put up by the independents against this monopoly is one of the finest examples of courage that this country has seen. And I say that not for anything that I have done, because I have done very little, but I think, Senator, the independent manufacturers who have had to face this situation and who have had to stand behind the little dealers—and here are 27 licensees who say "If you buy our sets you do not need to fear this"—that the men who have stood up in the face of that are entitled to encouragement rather than to be told that they do not need any policeman to protect them.

Senator WHEELER. Well, the Federal Court in Delaware, at least, held that they were violating the antitrust laws and that it was a monopoly?

Mr. SCHUETTE. Yes.

Senator WHEELER. And that was sustained by the Circuit Court of Appeals in Philadelphia?

Mr. SCHUETTE. Yes.

Senator WHEELER. And then the Radio Corporation appealed to the Supreme Court, applied for a writ of certiorari to the Supreme Court of the United States, and they were refused a writ of certiorari?

Mr. SCHUETTE. Yes.

Senator WHEELER. Which ought to be really conclusive evidence that they were violating the law, that they were a monopoly.

Mr. SCHUETTE. Yes.

Senator DILL. That action was brought entirely by the independent manufacturers and not by the Department of Justice.

Senator WHEELER. Yes.

Mr. SCHUETTE. Yes; and if the independents had had to wait in that case for the decision of the United States Circuit Court of Appeals, despite the fact that Congress in writing the law said that they should be entitled to a preliminary injunction at the outset of the proceedings, to prevent their being destroyed by their big competitor while the case was pending, if they had to wait until last September before that decision some independent tube makers

would have died before the decision came, but it was due to the fact that out in the court of public opinion the feeling got so hot that the Radio Corporation of America in July decided to surrender.

Senator WHEELER. What you meant when you said they ought to have a Department of Justice was that the independents themselves had to go to work and finance some of these other concerns, did they not; the organization had to finance some of the concerns to carry on, when as a matter of fact there is a law upon the statute books which the Department of Justice itself should act upon to have enforced?

Mr. SCHUETTE. Yes; that action should not have been necessary by private hands.

Senator COUZENS. We are not talking about that particular case, because I understand that is over. But they are still continuing, as I understand, and I do not see the theory under which they are continuing to be a monopoly if it has been declared that they should not do this.

Senator DILL. Well, that was only as to the tubes.

Senator COUZENS. Oh, yes.

Senator WHEELER. On which the patents had expired. But the question of monopoly in violation of the Sherman antitrust law and the Clayton Act as affecting the set-up and organization of this combination of corporations with the Radio Corporation has never been tried out in the courts. And that is a matter that is now being investigated by the Department of Justice.

Senator COUZENS. Yes; but the witness said that there was nothing mandatory about them signing these licenses, and if there is nothing mandatory then they do it willingly.

Senator DILL. Well, only mandatory in the face of threats.

Senator COUZENS. Well, that exists with any little enterprise that wants to start up in competition with a big enterprise.

Senator DILL. In the electric-light business I am told the patents have run out, but the electric-light combine are in practical control by threatening to sue to put the others out of business.

Senator WHEELER. The same thing happened in the United Shoe Machinery case; there they didn't have to sign a contract, but if they did not do certain things there was the threat hanging over them of being put out of business.

Senator COUZENS. I was impressed with the witness' statement that they could go and buy tubes and make radio sets without having anything to do with the Radio Corporation, and that is certainly every opportunity to compete if they want to.

The CHAIRMAN. Any other question of Mr. Schuette? If not, that will be all, Mr. Schuette.

There is another gentleman who has a statement to make. Come forward, please.

STATEMENT OF MAJ. J. P. HOLMES, OF COUNSEL FOR THE PEOPLES PULPIT ASSOCIATION, BROOKLYN, N. Y.

The CHAIRMAN. Tell the committee your name and where you live and whom you represent.

Major HOLMES. I am Maj. J. P. Holmes. I think the distinguished chairman was afraid, because I said that I represented the Peoples

Pulpit Association, that whether he wanted to or not he was going to hear a sermon. I am not a preacher.

Senator DILL. Where do you come from?

Major HOLMES. I represent the Peoples Pulpit Association.

Senator WHEELER. What is that?

Major HOLMES. Owner and operator of two broadcasting stations, WBBR in New York, and WORD in Chicago. For the purposes of the record the Peoples Pulpit Association is a nonstock, charitable, educational corporation organized under the laws of the State of New York. It is operated without any thought of profit and for the sole purpose of disseminating in the public interest, convenience, and necessity helpful Bible information.

We realize that the particular purpose of this hearing is to determine whether or not the authority of the Federal Radio Commission, as now exercised, shall be continued for another year.

Senator WHEELER. Who are the organizers?

Major HOLMES. The organizers?

Senator WHEELER. Yes.

Major HOLMES. Well, it is a nonstock corporation. Its membership is composed of people who are interested in this purpose of disseminating Bible information. If you would like to know its officers I could give you their names.

Senator BLACK. Any particular sect?

Major HOLMES. No, sir; it is nondenominational.

Senator COUZENS. Includes Jews and Protestants and Catholics and all?

Major HOLMES. Yes, sir.

Senator DILL. What church do you support?

Major HOLMES. It finds no support in individual churches in view of the fact that it is not associated with any churches.

Senator WHEELER. You say they own and operate two broadcasting stations?

Major HOLMES. The Peoples Pulpit Association owns and operates two broadcasting stations.

The CHAIRMAN. Where are they?

Major HOLMES. One is located in Chicago, WORD; the other is located in New York, WBBR.

The CHAIRMAN. Who put up the money?

Major HOLMES. The people who are interested in the dissemination of helpful Bible information.

Senator COUZENS. We can not find out who the people are who put up the money. That is what we have been trying to find out, who the people are.

Major HOLMES. I wish I could give you their names, sir. I am sorry, but I do not know; I can not give you that information.

Senator WHEELER. Don't you know who put up the money for those stations?

Major HOLMES. The money is sent in by voluntary contribution, Senator Wheeler.

Senator WHEELER. Well, who put up the original money?

Major HOLMES. The original money was gathered that way.

Senator DILL. Before you had radio broadcasting?

Major HOLMES. Yes.

Senator WHEELER. Who started the organization?

Major HOLMES. It was started in 1874 to 1878, I should say. Its organizers at that time were headed by Charles T. Russell.

Senator BLACK. Is that Pastor Russell, they called him?

Major HOLMES. Yes.

Senator DILL. What did it cost to build these stations?

Major HOLMES. I should say it cost to build WORD in Chicago in the neighborhood of $125,000.

Senator DILL. And the one in New York?

Major HOLMES. The one in New York cost less than that because it is only a thousand-watt station.

Senator DILL. Well, there you have a couple of hundred thousand dollars. That is quite a lot of money. Were there not any large contributions made to that fund?

Major HOLMES. So far as I know no contribution exceeded $5,000. Indicating the vast appeal that the organization has had to individuals whom they serve.

Senator DILL. Are you here urging that the commission be continued for a year or opposing that?

Major HOLMES. No, sir, we are here to urge that it be continued.

Senator WAGNER. You did say you could give us the names of the officers?

Major HOLMES. Judge J. F. Rutherford is the president of the organization.

Senator WHEELER. Where is he judge?

Major HOLMES. Sir?

Senator HOLMES. Whereabouts is he judge?

Major HOLMES. Well, he was a judge in a court of Missouri, as far as I know. He has been for 20 years in New York For 12 years has been the president of this organization.

The CHAIRMAN. Do you advertise anything over your stations?

Major HOLMES. We advertise only the name of Jehovah God. There is no commercial advertising.

The CHAIRMAN. No commercial advertising?

Major HOLMES. No, sir.

The CHAIRMAN. How do you keep it up? By voluntary contributions?

Major HOLMES. By voluntary contributions.

Senator DILL. Are these officers on salary?

Major HOLMES. No, sir. You say salary. There is an allowance made to every member of our organization who gives his entire time and service to the organization of the necessary money for expense, money to maintain him, and an additional $20 per month.

Senator HAWES. How much does it take to maintain the president?

The CHAIRMAN. The man from Missouri.

Major HOLMES. I will say for Senator Hawes that I do not know, sir, but I imagine those figures are available. He does not live in luxurious style. We maintain our own apartment home, a sort of a little hotel where our meals are served in Brooklyn, N. Y., at our headquarters.

Senator WHEELER. Do you own the hotel, the apartment?

Major HOLMES. Yes, sir.

The CHAIRMAN. Well, let us hear what he has to say.

Senator WHEELER. It ought to be interesting.

Major HOLMES. Speaking with the authority of the president of our organization, Judge J. F. Rutherford—I might say that I did not give the other names of our officers. That question was asked me by one of the Senator. H. H. Riemer is the vice president and Mr. Arthur R. Goux, who is present here, is the secretary-treasurer of the organization

Speaking with the authority of the president of our organization, Judge J. F. Rutherford, I wish to recommend that the authority of the commission be so continued.

With the consent of the committee, I desire to present, in as brief a manner as possible, the reasons for this recommendation.

Our experience in radio broadcasting has conclusively demonstrated to us that the commission's reallocation of last November leaves much to be desired. From the standpoint of both listener and broadcaster the work of the commission is far from being complete.

Further, we believe that a regulatory body of five men is to be preferred. Experience and qualifications requisite for the impartial discharge of such far-reaching and arbitrary power are such that, in my humble opinion, no one man could be reasonably or safely intrusted with that degree of responsibility.

This leads me to recommend without hesitation that, in the interest of all broadcasters, consideration and study be given immediately to the question of incorporating in any legislation extending authority of the commission certain legal safeguards for which, I submit, there exists a very definite and crying need.

Merely to extend the period of authority of the commission will not correct certain admittedly evil results which have arisen during the past, and which may be expected to continue unless the legislation proposed include, either by clearer interpretation of the intent of the Congress as to the meaning of certain provisions of the radio act, or additional and more specific regulation of the authority of the commission.

To my mind, while in the nature of a compromise, perhaps, the whole radio act, together with the Davis amendment, was designed to prevent the monoplizing of this new contribution to human welfare and happiness by a few. In spite of this intention on the part of Congress to regulate the radio industry in the public interest, convenience and necessity, preserving the use and enjoyment of radio for the good of all the people, the actual, indisputable facts show that such intention has not been carried out.

Certain selfish commercial interests, due to their ability financially, have taken advantage of the conditions which have arisen in this comparatively new and undeveloped art, and more and more the rights of the so-called independent broadcaster have been curtailed until the time has come when, unless relief be given by the Congress, the stations outside the Radio Trust are doomed. Practically all of the cleared channels have been allocated by the commission to members of one or the other of the two great chain broadcasting systems.

Too smooth to effect written contracts, at least one of these great systems controls its affiliated so-called independent associated stations by means of operating agreements.

Senator DILL. Just a moment. You do not contend, of course, that merely because they have assigned chain stations to cleared channels that they must continue to leave them on cleared channels?

Major HOLMES. I certainly do not. I hope that they shall not, sir.

Senator DILL. You do not think any new legislation is necessary to enable them to do that, do you?

Major HOLMES. No; but I think that some legislation is necessary with reference to the intent of the Congress with regard to the monopoly that has been created by the actual allocation of these 40 cleared channels to stations that are affiliated with one or the other of these chains, and the increasing of their power to such extent that they overlap and cause heterodyne interference that ruins the programs of other stations.

Senator DILL. Well, of course, that is a matter of administration.

Major HOLMES. Yes.

Senator DILL. I have one bill pending now to limit stations to 10,000 watts power, and the great criticism is that that is interfering with administration. And that is what you are talking about; it should not be necessary to do that.

Major HOLMES. Yes.

The CHAIRMAN. Have you had any trouble on the air?

Major HOLMES. Yes; we have had trouble on the air to this extent. We spent $125,000 of poor people's money and started out to operate in Chicago on 275.1 meter with practically full time, and then by a compromise with Mr. Bellows, when commissioner for the fourth zone, as to Indiana, arranging that compromise, we were taken off of that channel and given a less number of hours but a more desirable channel, namely, 416.4 meters. We now operate on one-seventh of the time, which is two hours a day a 5,000-watt broadcasting station that cost $150,000 to build and $20,000 to $25,000 a year to operate, on 202.6 meters, and are interfered with on both sides bv heterodyne.

Senator HAWES. How much time do you occupy a day?

Major HOLMES. Well, right now two hours a day and on Sunday eight and a half hours. Two hours during the week days and eight and a half hours on Sunday. That is WORD in Chicago I have reference to. In New York it is perhaps a little more time.

Senator COUZENS. You do not think that is sufficient time to study the Bible in a week?

Major HOLMES. Well, I do not think we can devote, Senator, too much time to the study of the Bible. I think too many of us know too little about it.

Senator DILL. Do you attempt to put on anything other than your Bible instructions and Bible stories and conversations about the Bible?

Major HOLMES. Well, we do this in Chicago, for instance: The Crane Junior College, which is associated with the Chicago public-school system, puts on a program of general educational interest in which they discuss history, psychology, philosophy, agriculture, and so forth. We put on a program of music that does not contain one single jazz piece.

Senator DILL. Then in addition to that do you not buy time on some stations?

Major HOLMES. Yes, sir; we buy time on some stations. We have been forced to. And the narrative will continue to tell what else we have been forced to do in order to get the message which we have for the people over the air.

Senator DILL. All right; go ahead.

Major HOLMES. These agreements—that is to say, operating agreements—which these two broadcasting systems have negotiated with the so-called independent stations, at a hearing over in the House, Mr. Aylesworth, the president of the National Broadcasting Co., testified that these stations were just as independent of each other as the street-car system is independent of the railway system here in Washington—these agreements in effect amount to the control of the policy of the associated station. While there is no contract compelling the individual station to take an approximately equal number of sustaining and sponsored or advertising programs, if the station does not do so another outlet is found in that locality for the chain programs and they are withdrawn from the offending station.

This same regulation extends to the taking by the associated stations of certain independent programs and more particularly where these are of the nature of chain broadcasts. Their taking of these independent programs, even on the basis of contracts and for valuable consideration, is virtually prohibitive.

To illustrate more particularly with reference to my own organization, I cite the policy of the two largest chain broadcasting systems.

Both the Columbia Broadcasting System and the National Broadcasting Co. furnish two classes of broadcasting service:

(1) The commercial or sponsored program, broadcast for the large advertisers.

(2) The so-called sustaining or editorial program, embodying matter of a supposed public interest nature.

Although our association has offered in good faith to furnish programs to both of these chain broadcasting companies, to be broadcast for hire at our expense and to be paid for by these same poor people of the more humble walks of life who are interested in getting this message, and at the usual commercial rates, both companies have refused to accept the association's offer.

Senator DILL. Why?

Major HOLMES. Well, I am going to tell you why if the Senator will be good enough to indulge me to get to the end of this statement, which I do not think will take but a few more minutes. I am very anxious to state why.

Additionally, both of these chain companies up to this time have declined to grant the use of their facilities to this association under any consideration, with the single exception of a nation-wide network broadcast provided for Judge Rutherford by Mr. Aylesworth, president of the National Broadcasting Co., in July, 1927.

The persistent application of this restrictive policy by both of these chain companies has compelled this association to organize, operate, and maintain a private chain broadcasting establishment.

This private establishment has involved the leasing of desired time periods on a group of independently owned radio stations. Further, it has involved leasing telephone lines to connect these various stations for simultaneous broadcasting of the one program.

The cost of establishing and maintaining this private broadcasting establishment is considerable. Some idea of the relative cost of telephone lines alone is gained from the following comparison:

(1) Our association up to this time has contracted with the American Telephone & Telegraph Co. to furnish telephone lines to connect 20 stations to broadcast simultaneously a 60-minute program once each week for one year. That is, we have had to organize this independent chain because those two chains refused to let us have that facility. The cost of the telephone wires alone for this purpose is approximately $100,000.

(2) The National Broadcasting Co. has contracted with the American Telephone & Telegraph Co. to furnish telephone lines to connect some 58 stations to broadcast simultaneously. That is called the three networks of the National Broadcasting Co. These wires are available for exclusive use by the National Broadcasting Co. during 16 hours of every day of the entire year. They are their own private lines. Therefore, the National Broadcasting Co., according to its latest rate card—we got it to-day through its local Washington station, WRC—agrees to broadcast one 60-minute program—now remember that our wire charges for our broadcast for 60 minutes for a year, just the wire charges alone, are over $100,000—agrees to broadcast one 60-minute program over 20 stations, simultaneously, during any day-time hour—that can be gotten over the facilities of the National Broadcasting Co. for the small sum of $2,445. The rate card also shows that the same 60-minute program can be sent out over the entire red network of 42 stations once each week, for one year, for the sum of approximately $204,000. In other words, if I wanted to rent their facilities, the entire 42 stations of their facilities for one year, for one hour each week, I could get it for $204,000.

Senator DILL. And what would the other one cost?

Major HOLMES. I am going to give it to you. It is estimated that our cost for one year over less than one-half of this number of stations—because we are only using 20, and they have 42—the cost for one year over 20 stations in our private chain for broadcasting is $200,000 for the year.

Senator DILL. No; but what was the cost of the service over the National Broadcasting Co.'s chain for 52 weeks, one hour a week?

Major HOLMES. $204,000.

Senator DILL. What was the other figure?

Major HOLMES. The other figure was just for one single hour.

Senator DILL. I want to know what it figured out for the 52 weeks. It was something over a hundred thousand dollars.

Major HOLMES. If you get it for one hour you can get it during the daytime for $2,445.

Senator DILL. That would be about $112,000.

Major HOLMES. That is only for 20 stations. You can get their entire network of 42 stations for $204,000 for a year.

Senator DILL. The National Broadcasting Co.?

Major HOLMES. Yes.

Senator DILL. I thought you were giving the Columbia chain.

Major HOLMES. No, sir; this is the National Broadcasting Co. I do not have a Columbia rate card; but it is about the same, because they are competing organizations.

Senator DILL. All right.

Major HOLMES. It is estimated that our cost for one year's use of less than half this number of stations in our private chain broadcast which we have had to arrange costs us practically as much as it would cost us to use 42 stations.

Senator DILL. You do not expect the commission to compel them to do that, do you?

Major HOLMES. I think the law ought to be such as to compel them to.

Senator DILL. They invested their own money to build their own lines; unless you are going to make all radio stations sell their time to everybody—public utilities.

Major HOLMES. Yes.

Senator DILL. That is an entirely different policy. It may come to that.

Senator COUZENS. It is wholly impracticable.

Senator DILL. It is not impracticable, but it would destroy the ability of certain corporations and big commercial companies to put on their own programs to suit themselves.

Senator BLACK. I think it will eventually come.

Senator DILL. I think the building of high-powered stations operated on cleared channels is going to cause public sentiment to compel Congress to make all radio stations a public utility. I think there is no other way if they continue the policy they have started on.

Senator GOFF. In the same class as common carriers.

Senator DILL. In the same class as common carriers. That is the only way that the ordinary man in the industry would have a chance. If the commission continues to give the high-powered stations clear channels by which they blanket the air public sentiment will drive Congress to pass a law making it a public utility.

The CHAIRMAN. Well, I think that is a debatable question, Senator, but, after all, that is not the question before us at all now.

Major HOLMES. Well, the pertinency of this, Senator Watson, to the question at issue is this, that if the commission is merely to be extended these evils which have arisen are going to still be present. If the Congress does not take cognizance of them and either by clear interpretation of the radio act of 1927, which certainly was aimed to prevent that very thing, or else by some more specific legislation make this thing impossible, why, then you are going to have before long 60 cleared channels—in fact some members of the commission openly advocate that now—60 cleared channels to be occupied by the associated stations of two great broadcasting systems, and the rest are going to be crowded out of the picture entirely, and there will be no independent broadcasters—just as Mr. Schuette has testified there will be no independent radio manufacturers, there will be no independent broadcasters.

Senator COUZENS. You have demonstrated your ability to create an independent chain, have you not?

Major HOLMES. Yes; but look what it is costing us. It is costing us more than double to use half the number of stations; it costs us as much as it would be to use the entire network of more than double as many stations. I want to show something else, Senator, that they are doing, that I will bring out in a minute, in interfering with our doing that.

Now, this is another thing simply for comparison in the record. To use 51 stations in May, 1928—we used 51 stations in May, 1928—for a single 60-minute broadcast cost us for wire charges alone $15,000. Fifteen thousand dollars for wire charges alone. That did not include anything with reference to the rental of the stations' time or advertising costs. Why, you could have gotten the National Broadcasting Co.'s facilities for approximately $5,200 for the same program, and it cost us $15,000 for wire charges alone.

Senator COUZENS. Do I understand that the American Telephone & Telegraph Co. discriminated and charged you more than they do the broadcasting companies?

Major HOLMES. Well, they have to set up independent lines for us, sir, and the lines they set up for the National Broadcasting Co. are permanent lines. We can not use 15 hours a day. Mr. Aylesworth testified before the other hearing that their wire bill last year was more than $2,000,000. Of course, we do not have any such ability to compete with them. We have to have special facilities for our service.

Senator COUZENS. If you took these special facilities and created more business you could use them permanently, could you not?

Major HOLMES. Yes, but we are not in business. We are a noncommercial organization, depending upon our appeal to the people of earth who want to know more about the Bible. And they are not the class of people that are handing out sums of money in very large quantity.

Not content with merely refusing to permit us the use of their chain facilities, these chain broadcasting organizations have actually interfered with our efforts to secure their associated stations to be joined in our private chain service, thus additionally hampering our efforts to serve the people.

Mr. Aylesworth testified before the House hearing that they had a specific regulation that no chain station of their chain could take another program from another chain. Even though they are paid for it, even though it is on a purely commercial basis, they can not take them. If they do take them they become an offending station, and the chain privilege of the National Broadcasting Co. would be withdrawn. Now, although they do not have any contract—if that is not controlling them, I do not know what is control.

Senator BLACK. You mean, if the station is not busy?

Major HOLMES. Yes; it doesn't make any difference if the station is not busy. And we have actual instances which we can produce—I do not want to delay the hearing before this body, but we have actual specific instances and cases where we have gone to individual stations and offered them the prevailing price to hire the facilities of that station for an hour at which they were taking no chain program, and they refused to do so on the basis that either the National Broadcasting Co. or the Columbia System declined to let them have their privilege because it would be in violation of their general agreements, and it would endanger their being continued as chain stations. This additionally hampers our efforts to serve the people.

Senator HAWES. I wish you would please get right down to whether you favor this extension of the commission—or what changes in the law you want. We have not gone into these questions. Are you nearly through?

Major HOLMES. Yes; it will not take me very long, Senator Hawes.

Senator HAWES. I will not interrupt you.

Major HOLMES. I sat here yesterday and heard a lot of testimony that went much further afield, sir, than I think this has gone.

Senator HAWES. All right.

The CHAIRMAN. I agree with you about that.

Senator WHEELER. That is all right; go ahead.

Major HOLMES. For the purpose of correcting the public record as it appeared in the House investigation, I would like to say that we have no personal controversy with Mr. Aylesworth, the president of the National Broadcasting Co. As one present at the public hearing before the Federal Radio Commission where he offered the falicities of his organization to Judge Rutherford in that one general broadcast which we were able to effect in July, 1927, I say unhesitatingly that the move was a bold flaunt or grand-stand play before the commission in answer to our charge of discrimination on the part of his organization. When we undertook to negotiate with him in his New York office the details of that hook-up, he attempted to evade the offer by stating that it was his intention merely to proffer the use of either WEAF or WJZ, and it was not until shown the stenographic record of the hearing that he agreed to abide by the offer actually made.

Mr. Aylesworth has since that time—this is more specifically, Senator Wheeler, as to why they refused to take our programs, in answer to your question—Mr. Aylesworth has since that time publicly and privately criticized the Toronto address of Judge Rutherford. In that address the Judge gave due credit to Mr. Aylesworth and his organization for the use of its facilities. Without any malice, the address simply stated the truth—fearlessly and boldly, perhaps, but the truth just the same. The Senator has been furnished a copy of it, and I think most of the other Senators have. He stated the truth fearlessly and boldly, but he simply stated the truth. Without any apology for the address—because the truth needs no apology—I do want to say, however, that to take certain specific sentences out of their proper setting and relation, not only to the whole address as given at Toronto but to other utterances of the speaker and other writings of the speaker, and simply to quote these as representing what he said in that address, that is to give a false and unwarranted interpretation to the address and one designed to be misleading.

Subsequent to the address, Mr. Aylesworth indicated that the overwhelming preponderance of the replies received by the National Broadcasting Co. as a result of the address were entirely laudatory in character.

The physical facts would seem to indicate, therefore, that it was the calling of his bluff offer which antagonized him and prompted his persistent refusal of his facilities on the same basis which they are daily offered to others for purely commercial purposes rather than any particularly justifiable criticism of that address. That has been the only basis for their refusal, that the judge there said things which in Mr. Aylesworth's judgment should not be said over the air.

Mr. Aylesworth suggested to us that this matter was out of his hands. He could not permit the use of his facilities by our organization any more; to take it up with the National advisory council. Acting on Mr. Aylesworth's advice, we referred the matter to the advisory council of the National Broadcasting Co. They said it was not in their hands. They discussed the matter at some length and said Mr. Aylesworth and the officers of the company were entirely competent to handle it. We sent Mr. Aylesworth immediately a letter to that effect, asking the use of his facilities. Mr. Aylesworth said, "I haven't got time now." I have his telegram here.

Senator DILL. Mr. Aylesworth has not been before this committee.

The CHAIRMAN. A personal quarrel between Judge Rutherford and Mr. Aylesworth does not interest us.

Major HOLMES. This is not a mere detailing of a quarrel. This is an actual curtailment of what we consider our privileges which Mr. Aylesworth——

Senator DILL. Well, he appeared before the House committee and made a statement there. Why did you not go before the House committee?

Major HOLMES. I did.

The CHAIRMAN. And then Mr. Aylesworth went before the House committee.

Major HOLMES. And I understand Mr. Aylesworth is going to come before this committee.

The CHAIRMAN. No.

Senator HAWES. I understand you are the last witness.

Senator DILL. What we would like to know is what change you want in the law?

Major HOLMES. We make this statement in connection with that, Senator Dill. We hold that these specific acts on the part of these two broadcasting systems in refusing to grant us their facilities have been such a discrimination as to be in absolute violation of freedom of speech and freedom of religious conviction and expression and thought as guaranteed by the Constitution. We say then that any company or person attempting to monopolize, control or interfere with other companies—that is what they are doing with us—or stations in broadcasting programs should be assessed with heavy penalty and have their license canceled.

All companies broadcasting for hire, that is, commercial companies, should be made public service companies and compelled to broadcast for all without any discrimination.

Freedom of speech and religious worship as provided by the Constitution should be fully upheld.

The CHAIRMAN. What Bible programs do you put on. Is it a sermon?

Major HOLMES. We do not call it a sermon, Senator Watson, in probably what you term the accepted sense of a sermon. We put on sacred music or music of a high order, selections from operas or the classics, and that includes also a short discourse based upon some information relative to Jehovah God and His plans and purposes concerning the human family, things which are not generally understood by the people at large, things which pertain to their eternal welfare, things which are of more vital importance than a jazz

program, and the commercial advertising that you hear over the air in pratically every station that you turn to.

Senator DILL. You put your program over one of the stations here on Sundays, do you not?

Major HOLMES. Yes, sir, we broadcast right over here in Washington every Sunday.

The CHAIRMAN. Yes; I hear them every once in a while on Sunday. This organization does not belong to any particular cult, does it?

Major HOLMES. No, sir; it is universal in its appeal. It has been commended by such important men of the Jewish faith as Mr. Strauss.

The CHAIRMAN. Have you any source of revenue at all except just the money that you get in as you have stated?

Major HOLMES. Well, we manufacture in a plant which we own and operate and control in Brooklyn, books setting forth these teachings. They are not our teachings, they are teachings of the Bible. The books contain hundreds of scriptural citations, and those books are sold. There is a small amount of profit. For instance, a book that you would go down here and buy, a novel, would cost you perhaps a dollar and a half, and a book of that size we would sell for 45 cents. We do not sell any book for more than 45 cents. That is the highest price. A bound book, gold stamped, illustrated in color, and containing from 300 to 500 pages.

The CHAIRMAN. Are those religious works?

Major HOLMES. Yes, entirely.

The CHAIRMAN. Altogether religious works?

Major HOLMES. Well, religious works, not in the sense of theology or credal teachings; they are religious in the sense of being, Bible teachings.

Senator PINE. Do you ask for money?

Major HOLMES. No, sir, not as long as we have had a station nor as long as we have had a speaker going about have we ever asked for a cent. We do not know who gives the money as a matter of actual fact, in large measure. There is a little box——

The CHAIRMAN. You are the best collector, never having to ask for money, that I ever heard of.

Major HOLMES. That is because the people have been so tremendously benefited by the information that they have had. They have been taught, Senator Watson, that a man is actually immortal. That when he dies, if he has belonged to a church and has not been in the penitentiary he is going to heaven, and if he has not belonged to a church and has been in the penitentiary he is going to hell. We hold the Bible doesn't teach any such foolishness, and the people are glad to hear it.

Senator GOFF. I think you had better send that book to the Chairman.

The CHAIRMAN. I am trying to find out whether there is any hope for me or not.

Major HOLMES. Well, I should say this, Senator Watson, that we would be tremendously pleased to have this entire membership of the committee listen to our broadcast over the two Washington stations next Sunday.

The CHAIRMAN. I hear it every once in a while.

Senator DILL. What you do is to take certain parts of the Bible and discuss them, having two men speaking, one asking questions and the other answering?

Major HOLMES. Yes, dialogues, and questions and answers, and dramalogues, and so forth, all of a Bible nature.

No broadcasting company should be permitted to censor programs. Mr. Aylesworth has said in effect—and I should like for the purpose of the record to introduce his two statements, they are not very long, one of them being printed in the New York Times and the other in the New York Telegram, newspaper articles in which Mr. Aylesworth sets himself up as a censor to determine what the people of this country shall hear as far as the chain is concerned.

(The two articles, one in the Evening Telegram, New York, June 6, 1928, and the other the New York Times, July 15, 1928, are as follows:)

[From the New York Evening Telegram of June 6, 1928]

THINKS RADIO SURE TO ELECT NEXT PRESIDENT—M. H. AYLESWORTH, HEAD OF BROADCASTING COMPANY MAKES PREDICTION—HELPS VOTERS' CHOICE—SPEAKER TELLS WOMEN'S CLUBS LISTENING IN ON CAMPAIGN TALKS AIDS JUDGMENT

SAN ANTONIO, TEX, June 6.—A glimpse into the future of radio broadcasting was given the General Federation of Women's Clubs Convention here in an address by Merlin H. Aylesworth, president of the National Broadcasting Co., who termed radio a medium of universal appeal and the most powerful instrument ever placed in our hands for the national welfare.

Admitting that broadcasting so far has developed principally along entertainment lines, Aylesworth envisioned untold progress in the field of enlightenment. He cited the trend toward the cultural side of broadcasting as displayed in recent classical-music programs.

FORESEES RADIO CLERGYMAN

"With musical culture as the foundation," he said, "we are beginning to appreciate the ages-old culture of other peoples. Scripture, painting, and the fine arts in general, the knowledge of which has hitherto been the exclusive privilege of the few, are gradually unfolding themselves to the awakened consciousness of our people."

Aylesworth expressed belief the day is near when there will be what he termed a radio clergyman. This clergyman's creed will be of no import; his views will be the broad views of tolerance and he will represent the best of religious thought. He will devote his entire time and efforts to ministering to the spiritual needs of the radio congregation.

An audience of close to 50,000,000, or not quite half of the Nation's population, will listen in on the proceedings at the coming national conventions of the two great parties, he estimated. More than 70 stations will be included in the hook-up.

WILL HEAR CAMPAIGN AT HOME

Seated in the comfort of his home a voter may weigh carefully every statement of a campaign orator, he said, adding that radio is certain to introduce a sanity in our judgments which can but redound to the national welfare.

The next President will be elected by radio as a result, he said.

Aylesworth said he looks forward to a national musical comedy troupe, a national symphony orchestra, a national grand opera company, and a national church service—all of which will be available to the masses through the medium of the radio.

The radio may make available in the future a modern-language course, which would be as much a part of the curriculum of the countryside school as of a metropolitan high school, he said.

HAS CHANGED RURAL LIFE

The day will arrive, he said, when leading historians, lecturers, and others will speak to the Nation's school children. He said it is his firm conviction that eventually every prominent visitor to this country will speak into the microphone and his voice will reach into every school and home in the land.

Broadcasting has left an indelible impress on rural residents, he said, and the radio is bringing the world to the farmer's fireside and keeping him almost as well informed as his city brother.

[From the New York Times, July 15, 1928]

The day of the radio clergyman is not far distant, according to Merlin H. Aylesworth, president of the National Broadcasting Co. As part of the university of the air project it is planned to institute a series of programs entitled "Great messages of religion," in which the clergy of the Jewish, Protestant, and Roman faiths will be invited to participate, according to Mr. Aylesworth.

"Much as I would like to shun the mantle of prophet," he said, "I can not refrain from expressing the belief that the day is near when we shall nave what I am pleased to term 'a radio clergyman.' His creed is of no import; but his views shall be of the broad views of tolerance, and he shall represent the best of religious thought which the experience of 20 centuries has to offer.

"This radio clergyman will devote his entire time and efforts to ministering to the spiritual needs of the vast radio family, and his shall be the greatest congregation the world has ever known.

"There are many who contend and with no small measure of justice that radio's most praiseworthy service to the American Nation has been in the field of religion. In this sphere we aim always to sow the seeds of tolerance, for radio knows no caste, no creed, no sect. The microphones of the National Broadcasting Co. are at all times available to Jew, Roman Catholic, and to Protestant alike, to the end that all the petty and bigoted religious differences might be forever obliterated—differences which, if unchecked, might one day threatened the vary tap roots of our national structure. If we can inculcate in the minds of men of different creeds a better understanding of each other's religious beliefs, we may truly face the future quite unafraid.

"There is but one thing that we demand of the religious message that goes on the air, and that is that it be nondenominational and nosectarian in appeal," Mr. Aylesworth said. "Be our broadcaster rabbi, priest, or minister, we ask him only that he interpret the religious experience in broadest terms so that the individual listener, whoever he may be, may be brought to a fuller and finer realization of his duty to his own church and to his fellow men."

Senator DILL. Well, he does not forbid other people or other companies putting on their programs. Mr. Aylesworth's company is in the same position as a man who owns a radio station; under the law he can refuse or allow any one to broadcast as he sees fit.

The CHAIRMAN. Certainly.

Senator DILL. I do not necessarily approve it, but I think he is entirely within his rights. If you are going to take that right away from Mr. Aylesworth you will have to take it from everybody and make all stations a public utility.

Major HOLMES. That is exactly what we would like to have done, sir.

Senator DILL. This bill does not contemplate that at this time.

Major HOLMES. We say any legislation is wrong which tends to create a monopoly. Anything that is going to bring about a situation that is going to permit one man or two men—because it will be the president of the National Broadcasting Co. and the president of the Columbia system that shall determine what shall or shall not

be heard by the American people, that is what it virtually amounts to.

Senator COUZENS. I disagree with you.

Senator DILL. Yes.

Major HOLMES. Of course if we can broadcast freely, that is all right. But if they are going to stop—there are only so many channels, Senator Dill, available, and if the Radio Commission is going to allocate to one or the other of these two chain broadcasting systems all of the available channels how are you going to build up any other chains?

Senator DILL. I am not at all pleased with the way the Radio Commission is acting in connection with the chain programs.

Major HOLMES. Radio should be an open forum for the benefit of all the people. Now just two statements in conclusion.

Senator GOFF. Let me ask you a question there. Do those who assume to say what you shall say of a Biblical nature over the radio claim to know anything about the Bible?

Major HOLMES. Do you mean do we claim to know anything?

Senator GOFF. No, no; I say do those who claim to restrict or to limit or to modify what you should say over the radio about the Bible claim to know anything about the Bible itself?

Major HOLMES. Well, their actions would indicate and what they put over their chain broadcasts as Bible information would indicate that not only do they not know anything about the Bible, but the people whom they employ to do their religious radio broadcast do not know anything.

The CHAIRMAN. Well, they put over a great many very good sermons. Every Sunday afternoon you hear Rabbi Wise.

Major HOLMES. They are good moral lectures, Senator, but they are not based on the Bible.

The CHAIRMAN. And every Sunday afternoon you hear Bishop Freeman right here at St. Albans Cathedral, and you hear some of the greatest preachers in America. If they do not know anything about the Bible there is no use of discussing it. Are you through?

Major HOLMES. I want to make two short concluding statements.

The CHAIRMAN. All right.

Major HOLMES. This short recital of actual facts all subject to proof upon investigation should this committee desire a more detailed and complete presentation, and which may we say—I want to repeat again—is not the detailing of a mere personal controversy, but an actual recounting of what we believe to be an infringement of our rights as citizens of the country in whose interests this Congress is seeking to help effect a solution of the whole radio problem.

In other words, we hold in accordance with the views of the author of the Davis amendment expressed on the floor of the House and expressed in the House hearings: "Radio is not designed primarily for the entertainment or amusement of the people, as selfish commercial interests have attempted to make us believe," and have attempted to foist by virtue of their control of the programs upon us—"but rather" says Mr. Davis, "it is a God given invention to be used in advancing the more permanent and worth-while interests to aid and benefit all the people." The principle that radio is not from man but from Jehovah must be given real recognition by this

Congress before any proper solution of the problem is going to be made.

I want to say I am deeply grateful——

Senator HAWES. Do you want to determine for all of the ministers in the country what should be said on religious subjects?

Major HOLMES. No, sir.

Senator HAWES. Do you want to supplant all of the ministers that we have in every town, do you want to take the Bible and put your interpretation on it and invest $200,000 in it and have a monopoly of your interpretation of the Bible?

Major HOLMES. No; Senator Hawes, I do not.

Senator HAWES. That is what you are asking for.

Senator BLACK. What I understood he wanted was that it be made a public utility so that his organization and all others would be allowed to use it as a public utility.

Senator HAWES. I thought this gentleman wanted the Radio Corportation to teach the kind of gospel they teach.

Major HOLMES. No; I do not care what kind of gospel they teach, but I think you as a citizen and I as a citizen have the right to hear both sides of the question, and by virtue of their control they deny us the privilege of having our side heard.

Senator HAWES. But suppose the Presbyterian wants his time to discuss the Presbyterian theory of the Bible, and then the Baptist and then the Methodist, and then the Episcopalian and then the Catholic and then the Jew, and they are denied that special privilege, are they not in the same position that you are?

Major HOLMES. Two and a half hours, Senator Hawes, are given over every single Sunday afternoon to the broadcast of a Jewish discussion and a nondenominational.

Senator HAWES. Who are broadcasting that?

Major HOLMES. The National Broadcasting Co., and I think the Columbia system also. What we are attempting to ask at the hands of this committee is some legislation that will enable all organizations—we hold that Catholics and Protestants and others are now permitted that privilege—we see no reason why independent organizations who are bringing real Bible information to the people should not also be given the same privilege.

Senator HAWES. Well, everything that you have comes from the Bible, does it not?

Major HOLMES. Yes, sir. But we hold everything that they teach does not come from the Bible.

Senator HAWES. So you want a sort of a little monopoly, do you not, to give you own interpretation of the Bible?

Major HOLMES. No, sir. I think that for two and a half hours over one system every week they have a monopoly; I would like to have the same amount of time—or not the same amount, but one hour and a half a week would be sufficient, or one hour a week even would be sufficient for me to have the use of the same facilities that they have, so that the people may determine for themselves.

Senator HAWES. In other words, your manner of interpreting the Bible is not satisfactory to somebody else. Do you not want them all to have equal opportunities of giving their interpretation of the Bible?

Major HOLMES. I do not quite understand.

Senator HAWES. You have invested $200,000.

Major HOLMES. We have.

Senator HAWES. To give your own interpretation of the Bible?

Major HOLMES. It is not our interpretation of the Bible, Senator.

Senator HAWES. Whose is it?

Major HOLMES. We hold that it is what the Bible teaches.

Senator HAWES. Well then, if that is all that you are sending out, what is the use of the Bible? What is the Bible for?

Major HOLMES. Well, the Bible is God's Word.

Senator HAWES. Of course it is, and we have preachers that are telling us about it. You want to give your special interpretation of the Bible in your own way, and you have two a week, do you not?

Major HOLMES. Two hours a day.

Senator HAWES. Two hours a day. And all day Sunday. What more time do you want for your special interpretation?

Major HOLMES. That covers one little radio station in one locality, Senator Hawes. What we are asking is that not only our organization, chain organization, but any other organization——

Senator HAWES. You want to grow and expand?

Major HOLMES. Certainly.

Senator HAWES. So that you can reach all America and give just one interpretation of your own of the Bible; is that correct?

Major HOLMES. I want to repeat again that it is not our itnerpretation.

Senator HAWES. Well, whose is it, then?

Major HOLMES. Well, Almighty God is His own interpreter.

Senator HAWES. Well now, He is not running this company of yours—it is a company?

Major HOLMES. I say this, Senator Hawes. It ought to be perfectly clear to anybody. I just want to illustrate, for instance, with hell. I do not want to go into a general discussion before the committee to prolong the thing, but I have to do it in order to make clear my point. The average minister of the Gospel teaches that hell is a place of literal burning torment.

The CHAIRMAN. Very few.

Senator HAWES. You think he is wrong?

Major HOLMES. I don't think. I know it.

The CHAIRMAN. Very few teach that now, very few.

Major HOLMES. Well, you go and listen to them.

The CHAIRMAN. Oh, I go to church every Sunday and listen over the radio. There is no preacher any more that teaches that hell is literally a burning fire.

Major HOLMES. What church do you do go to, Senator Watson?

The CHAIRMAN. I go usually to the Methodist Church, to which I belong. But I go down here to hear the Presbyterian minister once in a while, and occasionally get into a Catholic church.

Major HOLMES. The actual creedal teachings, Senator Watson, of the Methodists, as they were taught by their founder, John Wesley, and right on down from his time indicate what their belief is.

The CHAIRMAN. That is long ago forgotten. They do not teach that sort of thing any more.

Senator BLACK. I move this hearing be closed.

The CHAIRMAN. Well, if we are going into the question of Christian Science faith cure, spiritualism, hypnotic suggestion, metaphysics, psychology, we will not get anywhere. Are you through?

Major HOLMES. Yes, sir.

The CHAIRMAN. Thank you.

Major HOLMES. I want to thank you and the members of the committee.

The CHAIRMAN. These hearings are closed. There will be an executive session and we will ask that every one but the members of the committee leave the room.

Mr. FORD. Mr. Chairman, Colonel Davis was compelled to return to New York and was not able to be present at the hearing to-day. He made a statement before the House Committee on Merchant Marine and Fisheries. I believe that statement was offered for the record yesterday.

The CHAIRMAN. Well, it is available to us. I have a copy of it and others have a copy of it. My understanding is that the insertion into our record of that statement was objected to because there are many statements in it which, if placed in our record, others would want to come in and controvert. It is available to us.

Senator DILL. It is already printed in the House hearings.

The CHAIRMAN. It is already printed in the House hearings, and Colonel Davis made a long statement in the record anyhow. We are familiar with it.

Senator DILL. Yes; we are familiar with it, and every Senator has a copy of it anyhow.

The CHAIRMAN. The only person I think it would be at all desirable to hear, if it is desirable to hear him, would be Mr. Aylesworth, but he is in Chicago. The hearings are now closed.

(Whereupon, at 4 o'clock p. m., Friday, February 8, 1929, the hearings were concluded.)